LEGISLATIVE COMMITTEE MINUTES

HB655

Bill as Introduced

HB 655-FN - AS AMENDED BY THE HOUSE

16Mar2023... 0807h

2023 SESSION

23-0606
09/10

HOUSE BILL ***655-FN***

AN ACT relative to the office of professional licensure and certification.

SPONSORS: Rep. C. McGuire, Merr. 27; Rep. Goley, Hills. 21; Rep. Merchant, Sull. 6; Rep. Ulery, Hills. 13; Sen. Carson, Dist 14; Sen. Lang, Dist 2

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

The bill consolidates administrative authority for the office of professional licensure and certification (OPLC) in a new chapter of law.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the office of professional licensure and certification.

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

1 New Chapter; Office of Professional Licensure and Certification. RSA 310 is repealed and reenacted to insert the following new chapter:

CHAPTER 310

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

310:1 Purpose. The purpose of the office of professional licensure and certification is to promote efficiency and economy in the administration of the business processing, record keeping, and other administrative and clerical operations of professional licensing and certification boards, including both professional healthcare licensing and professional technical licensing. The individual licensing and certification boards that are organized under the office of professional licensure and certification have specialized knowledge and experience and are separate and distinct for the purpose of regulating their various professions. Notwithstanding the unique regulatory role of each board, the legislature finds that there are opportunities for improving efficiency and customer service by providing for the joint administration of the boards' administrative, clerical, business processing, and record keeping functions. Except as provided in this section, the licensing and certification boards and entities organized under the office of professional licensure and certification shall exercise the powers, duties, functions, and responsibilities granted by statute.

310:2 Definitions; Establishment.

I. In this chapter, and as appropriate when used in any chapter listed in paragraph II:

(a) "Board" means a board, council, commission, committee, or other regulatory body with jurisdiction over professions listed in paragraph II.

(b) "Lapse" when referring to licenses shall mean expire.

(c) "License" shall include licenses, certifications or registrations required to practice a regulated profession.

(d) "Office" or "OPLC" shall mean the office of professional licensure and certification.

II. The office of professional licensure and certification shall consist of the division of licensing and board administration and the division of enforcement, under the executive director as the administrative head of the agency. The boards within the office of professional licensure and certification shall consist of:

(a) Advisory board of body art practitioners under RSA 314-A.

(b) Advisory board of court reporters under RSA 310-A:163.

(c) Advisory board of massage therapists under RSA 328-B.

(d) Advisory board of medical imaging and radiation therapy under RSA 328-J.

(e) Advisory board of recreational therapists established under RSA 326-J.

(f) Advisory board of respiratory care practitioners established under RSA 326-E.

(g) Advisory board of reflexology, structural integration, and Asian bodywork therapy under RSA 328-H.

(h) Board of accountancy under RSA 309-B.

(i) Board of acupuncture licensing under RSA 328-G.

(j) Board of architects under RSA 310-A:29.

(k) Board of barbering, cosmetology, and esthetics under RSA 313-A.

(l) Board of chiropractic examiners under RSA 316-A.

(m) Board of dental examiners under RSA 317-A.

(n) Board of directors, office of licensed allied health professionals under RSA 328-F.

(o) Board of examiners of nursing home administrators under RSA 151-A.

(p) Board of family mediator certification under RSA 328-C.

(q) Board of home inspectors under RSA 310-A:186.

(r) Board of land surveyors under RSA 310-A:55.

(s) Board of landscape architects under RSA 310-A:142.

(t) Board of licensed dietitians under RSA 326-H.

(u) Board of licensing for alcohol and other drug use professionals under RSA 330-C.

(v) Board of licensing for foresters under RSA 310-A:100.

(w) Board of manufactured housing under RSA 205-A:25.

(x) Board of medicine under RSA 329.

(y) Board of mental health practice under RSA 330-A.

(z) Board of natural scientists under RSA 310-A:81.

(aa) Board of nursing under RSA 326-B.

(bb) Board of pharmacy under RSA 318.

(cc) Board of podiatry under RSA 315.

(dd) Board of psychologists under RSA 329-B:3.

(ee) Board of professional engineers under RSA 310-A:3.

(ff) Board of professional geologists under RSA 310-A:120.

(gg) Board of psychologists under RSA 329-B.

(hh) Board of registration of funeral directors and embalmers under RSA 325.

(ii) Board of registration in optometry under RSA 327.

(jj) Board of registration of medical technicians under RSA 328-I.

(kk) Board of septic system evaluators under RSA 310-A:206.

(ll) Board of veterinary medicine under RSA 332-B.

(mm) Electricians' board under RSA 319-C.

(nn) Electrology advisory committee under RSA 314.

(oo) Genetic counselors governing board established under RSA 328-F and RSA 326-K.

(pp) Governing board of athletic trainers established under RSA 328-F and RSA 326-G.

(qq) Guardians ad litem board under RSA 490-C.

(rr) Installation standards board under RSA 205-D.

(ss) Mechanical licensing board under RSA 153:27-a.

(tt) Midwifery council under RSA 326-D.

(uu) Naturopathic board of examiners under RSA 328-E.

(vv) Occupational therapy governing board established under RSA 326-F; and RSA 326-C.

(ww) Physical therapy governing board established under RSA 328-F and 328-A.

(xx) Real estate appraiser board under RSA 310-B.

(yy) Real estate commission under RSA 331-A.

(zz) Registration of ophthalmic dispensers under RSA 327-A.

(aaa) Speech-language pathology and hearing care provider governing board established under RSA 328-F and 326-F.

(bbb) Assessing standards board under RSA 21-J:14-a.

310:3 Executive Director; Directors; Unclassified Personnel.

I. The executive director of the office of professional licensure and certification shall be an unclassified employee of the state. The executive director shall be appointed by the governor, with consent of the council, and shall serve for a term of 4 years. The executive director shall be qualified to hold that position by reason of professional competence, education, and experience. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

II. The executive director shall nominate for appointment by the governor and council the unclassified positions of director of the division of licensing and board administration and director of the division of enforcement. Each director shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director for a term of 4 years.

III. The executive director shall nominate for appointment by the governor and council the unclassified position of chief pharmacy compliance investigator and 2 unclassified pharmacy investigator positions. Each inspector shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

IV. The executive director shall nominate for appointment by the governor and council the unclassified positions of agency chief legal officer and board chief legal officer. Each officer shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

V. The salaries of the executive director, each division director, each legal officer, the chief pharmacy investigator, and each pharmacy investigator shall be as specified in RSA 94:1-a.

310:4 Duties of Executive Director.

I. The executive director, as the administrative head of the office of professional licensure and certification, may employ such clerical or other assistants as are necessary for the proper performance of the office's work and may make expenditures for any purpose which are reasonably necessary, according to the executive director, for the proper performance of the office's duties under this chapter. The office shall contract for the services of investigators, presiding officers, legal counsel, and industry experts as necessary and in consultation with the appropriate board.

II. The executive director of the office of professional licensure and certification shall be responsible for:

(a) Supervision of the division directors and chief legal officers.

(b) Employment of personnel needed to carry out the functions of the office and the boards.

(c) The examination, processing and approval or denial of an application for licensure, certification, or registration for all license types governed by the office or a board listed in RSA 310:2, based on set objective standards developed by the boards, and in accordance with RSA 541-A.

(d) The investigation of all complaints of professional misconduct in accordance with RSA 310:9.

(e) Maintenance of the official record of the office and the boards in accordance with the retention policy established by the office.

(f) Drafting and coordinating rulemaking for all boards within the office in accordance with RSA 541-A, with the advice and recommendations of the boards.

(g) Maintaining the confidentiality of information, documents, and files in accordance with RSA 91-A.

(h) Submitting, by November 1, to the speaker of the house of representatives, the president of the senate, the chairpersons of the house and senate executive departments and administration committees, and the governor, an annual report summarizing the transactions of the preceding fiscal year and a complete statement of the receipts and expenditures of the office of professional licensure and certification. The report shall be posted on the website of the office of professional licensure and certification immediately upon submission.

(i) Notwithstanding any other provisions of law to the contrary, for the performance of the administrative, clerical, and business processing responsibilities under paragraph II(b), the office and all boards shall accept electronic signatures and scans of signed documents in addition to original signatures.

310:5 Administration of the Office of Professional Licensure and Certification; Funding.

I. The executive director of the office of professional licensure and certification shall establish and collect all license, certification, and renewal fees, as well as any necessary administrative fees for each professional regulatory board administered by the office. Such fees shall be sufficient to produce estimated revenues up to 125 percent of the total operating expenses for the office, as determined by averaging the operating expenses for the office for the previous 2 fiscal years.

II. There is hereby established the office of professional licensure and certification fund into which the fees collected under paragraph I shall be deposited. The fund shall be a separate, dedicated, nonlapsing fund, continually appropriated to the office for the purpose of paying all costs and salaries associated with the office. Funds in excess of $5,000,000 shall lapse to the general fund at the close of each biennium.

III. There is hereby established a dedicated, nonlapsing fund to be known as the New Hampshire health professionals' program administration fund for the administration of the professionals' health program, including the professionals' health program in RSA 329:13-b, the alternative recovery monitoring program in RSA 326-B:36-a, and the impaired pharmacist program set forth in RSA 318:29-a, with a fee charged to licensees at the time of initial licensure, renewal licensure, or reinstatement of licensure, for the board of medicine, board of dental examiners, pharmacy board, board of nursing, board of veterinary medicine, board of psychologists, board of chiropractic examiners, board of mental health practice, midwifery council, board of registration in optometry, board of podiatry, board of licensed dietitians, and board of licensing for alcohol and other drug use professionals, not to exceed 125 percent of the actual cost of providing the services. Other health and technical professions boards may be added to program at the same annual fee per licensee. The moneys in this fund shall be continually appropriated to the office.

IV. The office of professional licensure and certification shall be responsible for the financing of any interstate compact joined by the state that affects a profession governed by a board listed in RSA 310:2. Such financing shall be from funds deposited in the office of professional licensure and certification fund.

310:6 Rulemaking Authority. The executive director of the office of professional licensure and certification shall adopt rules, relative to RSA 541-A, for the following:

I. All fees set forth in RSA 310:5, with the advice and recommendations of the respective board. Fees shall be reassessed, at a minimum, every five years.

II. Such organizational and procedural rules necessary to administer the boards in the office, including rules governing the administration of complaints and investigations, hearings, disciplinary and non-disciplinary proceedings, inspections, payment processing procedures, and application procedures.

III. The rate of per diem compensation and reimbursable expenses for all boards within the office.

IV. Rules governing the professionals' health program as set forth in RSA 310:5.

V. Temporary licenses to out-of-state health care professionals who present evidence of an active license in good standing from another jurisdiction. The temporary license shall be valid for 120 days, or until the office acts on an application for full licensure, whichever happens first, and shall not be renewed, except that a complete application for full licensure before the expiration of the temporary license shall continue the validity of the temporary license until the office has acted on the application. All individuals licensed under rules adopted pursuant to this subparagraph shall be subject to the jurisdiction of the state licensing body for that profession.

310:7 Telemedicine and Telehealth Services.

I. For this section:

(a) "Asynchronous interaction" means an exchange of information between a patient and a health care professional that does not occur in real time.

(b) "Synchronous interaction" means an exchange of information between a patient and a health care professional that occurs in real time.

(c) "Telemedicine" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

(d) "Telehealth" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

II. Individuals licensed, certified, or registered pursuant to RSA 137-F; RSA 151-A; RSA 315; RSA 316-A; RSA 317-A; RSA 326-B; RSA 326-D; RSA 326-H; RSA 327; RSA 328-E; RSA 328-F; RSA 328-G; RSA 329-B; RSA 330-A; RSA 330-C; RSA 327-A; RSA 329; RSA 326-B; RSA 318; RSA 328-I; RSA 328-J may provide services through telemedicine or telehealth, provided the services rendered are authorized by scope of practice. Nothing in this provision shall be construed to expand the scope of practice for individuals regulated under this chapter.

III. Unless otherwise prescribed by statute, an out-of-state healthcare professional providing services by means of telemedicine or telehealth shall be required to be licensed, certified, or registered by the appropriate New Hampshire licensing body if the patient is physically located in New Hampshire at the time of service. This paragraph shall not apply to out-of-state physicians who provide consultation services pursuant to RSA 329:21, II.

IV. An individual providing services by means of telemedicine or telehealth directly to a patient shall:

(a) Use the same standard of care as used in an in-person encounter;

(b) Maintain a medical record;

(c) Subject to the patient's consent, forward the medical record to the patient's primary care or treating provider, if appropriate; and

(d) Provide meaningful language access if the individual is practicing in a facility that is required to ensure meaningful language access to limited-English proficient speakers pursuant to 45 C.F.R. section 92.101 or RSA 354-A, or to deaf or hard of hearing individuals pursuant to 45 C.F.R. section 92.102, RSA 521-A, or RSA 354-A.

V. Under this section, Medicaid coverage for telehealth services shall comply with the provisions of 42 C.F.R. section 410.78 and RSA 167:4-d.

VI. Physicians and physician assistants, governed by RSA 329 and RSA 328-D; advanced practice nurses, governed by RSA 326-B and registered nurses under RSA 326-B employed by home health care providers under RSA 151:2-b; midwives, governed by RSA 326-D; psychologists, governed by RSA 329-B; allied health professionals, governed by RSA 328-F; dentists, governed by RSA 317-A; mental health practitioners governed by RSA 330-A; community mental health providers employed by community mental health programs pursuant to RSA 135-C:7; alcohol and other drug use professionals, governed by RSA 330-C; and dietitians, governed by RSA 326-H shall be authorized to provide consultation services or follow-up care via telehealth to a patient who previously received services from the provider in the state where the provider is licensed.

VII. Nothing in this section shall limit a provider's ability to diagnose, assess, or treat an individual patient.

310:8 License Renewals; Lapse.

I. The executive director of the office of professional licensure and certification shall issue licenses, as set forth in RSA 310:4, to applicants meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

II. Licenses shall be valid for 2 years from the date of issuance, except that timely and complete application for license renewal by eligible applicants shall continue the validity of the licenses being renewed until the office has acted on the renewal application.

III. Applicants shall submit completed applications for renewal, the renewal fee, and any supporting documents required for that renewal on or before the expiration of the license. Licenses shall lapse when completed renewal applications, renewal fee, and supporting documents have not been filed by the expiration of the license and the holders of a lapsed license are not authorized to practice until the licenses have been reinstated. Holders of lapsed licenses shall not be able to renew, but shall be eligible to reinstate licenses by submitting an application and meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

IV. The office of professional licensure and certification shall provide licensees, at least 2 months before the date of expiration of their license, with notice of the need to complete their renewal applications. Failure to receive notice shall not relieve any licensee of the obligation to renew their license, comply with the rules of the office, the rules of the board, or this section.

Timeliness of submission of renewal applications shall be evidenced by the date stamp of receipt, or for applications submitted electronically the electronic time stamp of submission.

V. Upon the request of a licensee who is a member of any reserve component of the armed forces of the United States or the national guard and is called to active duty, the office of professional licensure and certification shall place the person's license on inactive status. The license may be reactivated within one year of the licensee's release from active status by payment of the renewal fee and with proof of completion of the most current continuing education requirement unless still within the renewal period.

310:9 Complaints and Investigations.

I. Allegations of professional misconduct shall be brought in accordance with RSA 332-G.

II. Upon receipt of an allegation of professional misconduct, the office shall determine whether the allegation states a viable claim. If the office determines that the allegation is not viable, it shall make a recommendation to the board for dismissal. The board shall review the office's recommendation and dismiss the allegation if it determines that the allegation does not state a claim of professional misconduct.

III. Notwithstanding any other law to the contrary, the office shall investigate allegations of misconduct by licensees (a) upon its own initiative or (b) upon written complaint alleging misconduct of a licensed, or unlicensed, individual or entity of a profession regulated under the office.

IV. Allegations of misconduct received by the office, information and records acquired by the office during an investigation, and reports and records made by the office because of its investigation, shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A, unless such information subsequently becomes part of a public disciplinary hearing. However, the office may disclose information acquired in an investigation to law enforcement or licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

V. To carry out investigations, the executive director is authorized to:

(a) Retain qualified experts that have sufficient knowledge on appropriate statutes or professions and their practices.

(b) Conduct inspections of places of business of a profession regulated under the office.

(c) Issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(1) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(2) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(3) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(4) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. When an allegation of misconduct is determined to be unfounded after an investigation, the board shall dismiss the allegation and explain in writing to the complainant and the licensee its reason for dismissing the complaint. The office shall retain all information concerning investigations in accordance with the retention policy established by the office.

VII. Subject to the limitations of RSA 329-B:26 and RSA 330-A:32, the office shall obtain, handle, archive, and destroy mental health and psychological records as follows:

(a) If a client or patient owning a privilege is the person who has made a complaint against a licensee, the office may access the records of such client or patient. The complaint form provided by the office and initial follow-up correspondence shall clearly indicate that the submission of the complaint by the client or patient who is the owner of the privilege shall override the privacy of that record for the purposes of the office's confidential investigation and proceedings. The client or patient's identity shall not be disclosed to the public in any manner or in any proceeding of the board without his or her consent. If the client or patient named in the complaint is a child, the legitimate assertion of the privilege by one natural or adoptive parent or legal guardian is sufficient for this paragraph to apply. The office may act on that parent or guardian's initiation of complaint regardless of the objection of the other parent or guardian.

(b) If the person who has made the allegations against the licensee is not the owner of the privilege for the records of the client or patient named in the complaint whose treatment is under investigation by the office, the records for investigation shall be treated as follows:

(1) When the office reviews the initial complaint and upon all further reviews of the case by the office or the board, the identity of the named client or patient shall be redacted from the documents reviewed.

(2) The names of clients or patients may be made available only to office staff and consultants assigned to investigate or adjudicate the matter, and in instances where the board has decided to proceed with discipline, to board members for purposes of determining recusal issues as described in subparagraph (f).

(3) The record of a client or patient under this subparagraph that has been specifically named in a complaint may be obtained by office staff as specified:

(A) Office staff and consultants may request permission from the client or patient to obtain the record for the investigation, informing the client or patient about the bounds of confidentiality of such records and the nature of the investigative process. If the client or patient grants permission, office staff may obtain the copies of the record.

(B) If the client or patient denies permission for access to the record, the office may only obtain the record pursuant to a court order.

(4) Personally identifiable information pertaining to a client or patient under this subparagraph shall remain known only to staff and consultants assigned to the matter, which may include an employee of the office's investigations bureau, an employee of the office's prosecutions bureau, professional conduct investigator, the board administrator, and only those additional investigative assistants as the office's investigation team deems necessary to accomplish the investigation of the complaint.

(5) All communication beyond the office staff and consultants, or the board, pertaining to these clients or patients shall be conducted without the use of personally identifiable information.

(6) The identity of a client or patient shall not be disclosed to the public in any manner or in any proceeding of a board without his or her consent.

(c) Records of clients or patients who are not named in the initial complaint shall be treated as follows:

(1) If office staff and consultants assigned to the matter wish to obtain records of, or contact, clients or patients not named in the initial complaint, they shall make a request to the board with reasons for the request, specify the scope of cases and types of records requested, and state the name of the individual for whom authorization is requested to contact the client or patient.

(2) Upon board approval of a request pertaining to treatment of clients or patients defined in this subparagraph, the names of the clients or patients that fulfill the criteria of selection may be made available to office staff and consultants for purposes of determining whether recusal issues pertain to their selection for the investigation as described in subparagraph (f).

(3) If the board approves an investigation into client or patient cases who are not named in the original complaint, the board shall specify whether the clients or patients may be contacted directly.

(4) For records requested under this subparagraph, the keeper of the record shall be instructed to provide records that are redacted of personally identifiable information as defined in subparagraph (g). Each record shall be marked with an identifying code and the keeper of the record shall provide to the office's staff and consultants the contact information for corresponding clients or patients.

(5) The office shall store in a secure manner the list of these client or patient codes with corresponding contact information.

(6) If office staff and consultants have just cause to verify redacted copies against originals records of specified cases they shall request permission of the board, giving reason for the request. Upon board approval, office staff and consultants may have access to the identified unredacted records, which may be viewed at a time and location of their choosing. Office staff and

consultants may request a copy of the identified original records be sent to the office. Copies and corrections to the redacted records may be made by the office staff and consultants, after which any identified unredacted copies shall be destroyed and original records returned to the keeper of the records.

(7) Office staff and consultants contacting the clients or patients pursuant to subparagraph (c)(1) shall request permission from the clients or patients to conduct an interview, include an explanation that the individual(s) may grant or refuse permission for such interview, and explain there are no adverse personal consequences of any kind for refusal to grant permission or for withdrawing permission at any time during the interview. Office staff and consultants may inform the individual(s) that refusal to participate may prevent the investigation from proceeding or reaching a satisfactory conclusion.

(8) The identity of each client or patient shall be redacted from any documents reviewed by the board.

(9) The identity of a client or patient defined in this subparagraph shall not be disclosed to the public in any manner or in any proceeding of the board without the client or patient's consent.

(d) Mental health or psychological records obtained through subparagraphs (a)-(c) shall be archived or destroyed at the conclusion of the matter in accordance with a retention schedule established by the office. The identification and contact information collected during the investigation for clients or patients other than a client or patient complainant shall be destroyed.

(e) For the purposes of this paragraph:

(1) "Record" means health or psychological information collected from or about an individual that:

(A) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) Relates to the individual, the past, present, or future physical or mental health or psychological condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(2) "Personally identifiable information" means information which identifies an individual or which a reasonable person would believe could be used to identify an individual, including common and uncommon identifiers, including but not limited to, name, address, birth date, social security number, court docket number, insurance policy number, and any other identifiers of an individual and of the individual's known relatives, household members, and employers that a reasonable person would believe could identify the individual to whom the record pertains.

(f) In the process of determining recusal, the security of the client or patient's identity shall be preserved as follows:

(1) Before engaging in any matter as defined in subparagraph (a), board members, investigators, and others as specified in this paragraph with access to case files shall first review the name of the client/patient before proceeding. If a conflict of interest is identified, that person shall recuse himself or herself from the matter.

(2) Before engaging in any cases defined in subparagraph (b), office staff and consultants at the onset of the investigation, board members at the time of reviewing the findings of the investigation, and any others authorized to have access to the case prior to commencing review of such cases shall first determine if there is a need for recusal.

(3) If a client or patient as defined in subparagraph (b) or (c) testifies or intends to attend the hearing of the case involving his or her treatment and the board may see the client or patient inadvertently or directly, the client or patient's name shall be revealed to the board members so they may have the opportunity to recuse themselves prior to the proceeding. The client or patient shall be informed beforehand of such disclosure.

(4) For recusals pertaining to clients or patients under subparagraph (c) of this section, office staff and consultants shall review the names of the clients or patients who qualify for the scope of investigation as approved by the board, to determine if there is cause for recusal.

(5) When board members review any report of investigation that includes case information pertaining to clients or patients as defined in subparagraph (c), they shall review their names prior to reading such reports in the following manner:

(A) If there are 10 or fewer cases with individual clinical information presented, then the methods of testing for recusal shall follow the recusal procedures in subparagraph (f)(2).

(B) When the report includes clinical information pertaining to more than 10 cases, the recusal methods of subparagraph (f)(4) shall apply.

(C) When such client or patients' information is presented only in aggregate form, no recusal is required.

(g) A keeper of the record shall comply with board and the office's investigative team's requests for client or patient records and all redaction requirements specified under this section. The board may seek a court order to enforce valid requests for such records under this section.

VIII. Any board member who has had a personal relationship or has worked in a professional capacity with a complainant or with a licensee against whom a complaint has been filed or whose personal or professional views regarding the licensee or the complainant could prevent the board member from being impartial in considering the complaint shall recuse himself or herself from any investigation or disciplinary action against such licensee.

310:10 Disciplinary Proceedings; Non-Disciplinary Remedial Proceedings.

I. Disciplinary proceedings shall be open to the public in accordance with RSA 91-A. All non-disciplinary remedial proceedings shall be exempt from the provisions of RSA 91-A, except that the board shall disclose any final remedial action that affects the status of a license, including any

non-disciplinary restrictions imposed. The docket file for each such proceeding shall be retained in accordance with the retention policy established by the office of professional licensure and certification.

II. Boards shall conduct disciplinary and non-disciplinary remedial proceedings in accordance with procedural rules adopted by the executive director.

III. The office shall employ sufficient administrative prosecutors qualified by reason of education, competence, and relevant experience to serve as hearing counsel in all disciplinary proceedings before the boards.

IV. The office shall employ sufficient personnel qualified by reason of education, competence, and relevant experience to serve as presiding officer in all disciplinary or non-disciplinary remedial proceedings before the boards. The presiding officer shall have the authority to preside at such hearing and to issue oaths or affirmations to witnesses, rule on questions of law and other procedural matters, and issue final orders based on factual findings of the board.

V. The presiding officer in disciplinary and non-disciplinary remedial proceedings may issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(a) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(b) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(c) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(d) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. In carrying out disciplinary or non-disciplinary remedial proceedings, the presiding officer, as defined in RSA 541-A, shall have the authority to hold pre-hearing conferences, which shall be exempt from the provisions of RSA 91-A; to administer oaths and affirmations; and, to render legal opinions and make conclusions of law.

VII. Boards shall be the triers of fact in all disciplinary and non-disciplinary remedial proceedings, and shall determine sanctions, if any.

VIII. At any time before or during disciplinary or non-disciplinary remedial proceedings, complaints may be dismissed or disposed of, in whole or in part:

(a) By written settlement agreement approved by the board, provided that any complainant shall have the opportunity, before the settlement agreement has been approved by a board, to comment on the terms of the proposed settlement; or

(b) Through an order of dismissal for default, for want of jurisdiction, or failure to state a proper basis for disciplinary action.

IX. Disciplinary action taken by the board at any time, and any dispositive action taken after the issuance of a notice of public hearing, shall be reduced to writing and made available to the public. Such decisions shall not be public until they are served upon the parties, in accordance with rules adopted by the executive director.

X. Except as otherwise provided by RSA 541-A:30, the board shall furnish the respondent at least 15 days' written notice of the date, time and place of a hearing. Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party.

XI. Neither the office nor the boards shall have an obligation or authority to appoint attorneys or pay the fees of attorneys representing licensees or witnesses during investigations or disciplinary or non-disciplinary remedial proceedings.

XII. No civil action shall be maintained against the office or the board, or any member of the board, office, or its agents or employees, against any organization or its members, or against any other person for or by reason of any statement, report, communication, or testimony to the board or determination by the board or office in relation to proceedings under this chapter.

XIII. For matters involving individuals identified in mental health records, testimony by client or patients shall be handled with utmost regard for the privacy and protection of their identity from public disclosure.

(a) A noncomplainant client or patient shall not be compelled to testify at a hearing.

(b) If a noncomplainant client or patient testifies at a hearing, the identity of the individual shall be screened from the public view and knowledge, although the respondent and attorneys shall be within the view of the client patient. The board may view the client or patient. The public's access to view or information that would identify the client or patient shall be restricted. The hearing may be closed to the public for the duration of the client or patient's testimony, at the board's discretion.

(c) If a complainant client or patient requests the privacy safeguards in subparagraph (b), the presiding officer may make such accommodations.

310:11 Licensing Proceedings.

I. Boards shall conduct licensing proceedings in accordance with procedural rules adopted by the executive director.

II. If a board denies a license following a licensing proceeding, its final decision shall be issued in accordance with RSA 541-A:35.

III. In carrying out licensing proceedings, the board shall have the authority to:

(a) Hold pre-hearing conferences exempt from the provisions of RSA 91-A;

(b) Appoint a board member or other qualified person as presiding officer; and

(c) Administer, and authorize an appointed presiding officer to administer, oaths and affirmations.

IV. Neither the office nor the boards shall have an obligation or authority to appoint or pay the fees of attorneys representing licensees, certified individuals, or witnesses during investigations or adjudicatory proceedings.

V. Licensing proceedings shall be open to the public in accordance with RSA 91-A.

310:12 Sanctions.

I. Upon making an affirmative finding that a licensee has committed professional misconduct, boards may take disciplinary action in any one or more of the following ways:

(a) By reprimand.

(b) By suspension of a license for a period of time as determined reasonable by the board.

(c) By revocation of license.

(d) By placing the licensee on probationary status. The board may require the person to submit to any of the following:

(1) Regular reporting to the board concerning the matters which are the basis of the probation.

(2) Continuing professional education until a satisfactory degree of skill has been achieved in those areas which are the basis of probation.

(3) Submitting to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

(4) Practicing under the direct supervision of another licensee for a period of time specified by the board.

(e) By assessing administrative fines in amounts established by the board which shall not exceed $3,000 per offense, or, in the case of continuing offenses, $300 for each day that the violation continues, whichever is greater.

II. The board may issue a non-disciplinary confidential letter of concern to a licensee advising that while there is insufficient evidence to support disciplinary action, the board believes the licensee or certificate holder should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the board may result in action against the licensee's license. This letter shall not be released to the public or any other licensing authority, except that the letter may be used as evidence to establish a relevant pattern or course of conduct in subsequent adjudicatory proceedings by the board.

III. In the case of sanctions for discipline in another jurisdiction, the decision of the other jurisdiction's disciplinary authority may not be collaterally attacked and the board may impose any

of the sanctions set forth in this chapter, but shall provide notice and an opportunity to be heard prior to imposing any sanctions.

IV. In cases involving imminent danger to public health, safety, or welfare, a board may order immediate suspension of a license or certification pending an adjudicative proceeding before the board to determine if the suspension should remain in place pending final adjudication of the matter, and which shall commence not later than 10 working days after the date of the order suspending the license unless the licensee or certified individual agrees in writing to a longer period. In such cases of immediate danger, the board shall comply with RSA 541-A:30.

V. For any order issued in resolution of a disciplinary proceeding by the board, where the board has found misconduct sufficient to support disciplinary action, the board may require the licensee or certificate holder who is the subject of such finding to pay the office a sum not to exceed the reasonable cost of investigation and prosecution of the proceeding. This sum may be imposed in addition to any otherwise authorized administrative fines levied by the board as part of the penalty. The investigative and prosecution costs shall be assessed by the office and any sums recovered shall be credited to the office's fund and disbursed by the office for any future investigations of complaints and activities that violate this chapter or rules adopted under this chapter.

310:13 Unlicensed Practice. Whoever, not being licensed or otherwise authorized to practice according to the laws of this state, advertises oneself as engaging in a profession licensed or certified by the office of professional licensure and certification, engages in activity requiring professional licensure, or in any way holds oneself out as qualified to do so, or calls oneself a licensed professional, or whoever does such acts after receiving notice that such person's license to practice has been suspended or revoked, is engaged in unlawful practice. After providing notice and opportunity to be heard, and upon making an affirmative finding of unlawful practice, the board may impose a fine not to exceed the amount of any gain or economic benefit that the person derived from the violation, or up to $10,000 for each offense, whichever amount is greater. Each violation of unlicensed or unlawful practice shall be deemed a separate offense. The board, the state's attorney general, or a prosecuting attorney of any county or municipality where the act of unlawful practice takes place may maintain an action to enjoin any person or entity from continuing to do acts of unlawful practice. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to any board.

310:14 Rehearing; Appeals.

I. Any person who has been denied a license or certification by the office or a board shall have the right to a rehearing before the appropriate board. Requests for a rehearing shall be made in writing to the appropriate board within 30 days of receipt of the original final decision.

II. Any person who has been disciplined by a board shall have the right to petition in writing for a rehearing within 30 days of receipt of the original final decision.

III. Appeals from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541. No sanction shall be stayed by the board during an appeal.

310:15 Oversight Committee; Establishment; Purpose.

I. There shall be an oversight committee for the office of professional licensure and certification (OPLC) consisting of the following members:

(a) Three members of the house executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the speaker of the house of representatives.

(b) Two members of the senate executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the president of the senate.

II. Membership on the oversight committee shall be for the duration of the biennium and shall be coterminous with membership in the general court. The first meeting of the committee shall be called by the first-named house member. The committee shall elect a chair from among the members at the first meeting of each biennium. Meetings shall be called as needed, but at least quarterly. The members of the committee shall receive mileage at the legislative rate when performing the duties of the committee. Three members of the committee shall constitute a quorum.

III. The committee shall provide legislative oversight and informational meetings on the policies and rules of the office as brought to its attention by office personnel, legislators, members of the boards, councils, committees, and commissions overseen by OPLC, and members of the professions under the jurisdiction of OPLC. The committee's work shall include analyzing the division of duties between administration and the boards in order to promote more productive and efficient interactions.

IV. The oversight committee shall recommend legislation deemed necessary to correct issues it identifies.

310:16 Military Service Members and Spousal Temporary Licensure. The office of professional licensure and certification shall issue temporary licenses to a member of the armed forces or their spouse, if the applicant holds a current, valid unencumbered occupational or professional license in good standing issued by a state or territory of the United States, in accordance with rules adopted by executive director of the office of professional licensure and certification under RSA 541-A, provided that the applicant meets the requirements of this section, within 30 days of having received an application or, if the applicant is subject to a criminal records check, within 14 days of having received the results of a criminal records check. The rules shall contain the following provisions:

I. The applicant shall obtain a temporary license for a period of not less than 180 days while completing any requirements for licensure in New Hampshire so long as no cause for denial of a license exists under this title, or under any other law.

II. The license applicant must submit a notarized affidavit affirming, under penalty of law, that the applicant is the person described and identified in the application, that all statements made

on the application are true and correct and complete, that the applicant has read and understands the requirements for licensure and certifies that they meet those requirements, and that the applicant is in good standing in all jurisdictions in which the applicant holds or has held a license.

III. The applicant may request a one-time 180-day extension of the temporary license if necessary to complete the New Hampshire licensing requirements. The applicant must make this request within 15 days prior to the temporary license's expiration date.

IV. All individuals licensed under this section shall be subject to the jurisdiction of the state licensing body for that profession.

2 Dedicated Fund; Office of Professional Licensure and Certification. Amend 6:12, I(b)(340) to read as follows:

(340) Moneys deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

3 Transition; Administrative Rules; Recodification of Office of Professional Licensure and Certification. The rules adopted for any occupation or profession under the office of professional licensure and certification under former RSA 310-A:1-a in effect on the effective date of this act shall, to the extent practicable, continue and be effective and apply to such respective occupation or profession until they expire or are amended or repealed.

4 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:16-b, III to read as follows:

III. The mechanical licensing board with the approval of the executive director of the office of professional licensing and certification shall adopt rules, which shall not be subject to RSA 541-A, relative to the establishment of fees for voluntary certification under this section. After the first year of this program, such fees shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the previous fiscal year. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

5 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:28, II to read as follows:

II. Notwithstanding RSA 21-G:9, the board, with an affirmative vote of at least 4 of the appointed board members, in consultation with the office of professional licensure and certification and with the approval of the executive director of the office of professional licensure and certification, shall establish application fees for licensure, for renewal, for late renewal, and for reinstatement of licenses under this subdivision pursuant to RSA 541-A. Such licensing fees including any endorsements shall not exceed $500 per individual. The board shall also adopt fees for replacement licenses, for certified copies and reports, for inspections done pursuant to this subdivision, for letters of verification requested by individuals or jurisdictions relating to licensure and certification, and for transcribing and transferring records and other services. The fee for examination by third parties shall be separate from the fees established by the board. Fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the

direct operating expenses of the board budgeted for the biennium in which they will apply. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5.***

6 Reference Changed; Accountancy. Amend RSA 309-B:4, III to read as follows:

III. The office of professional licensure and certification shall establish fees for examination of applicants, for licenses, for certificates of authorization, for reissuance of licenses, for renewal and reinstatement of licenses and certificates to practice under this chapter, for late renewals, for verification of licensure or examination, and for transcribing and transferring records and other services. All moneys collected by the office of professional licensure and certification from fees authorized under this chapter shall be received and accounted for by the office of professional licensure and certification, shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5.*** Administration expenses shall be limited to the funds collected and may include, but shall not be limited to, the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the board or its committees; all legal proceedings taken under this chapter for the enforcement of this chapter; and educational programs for the benefit of the public or licensees and their employees.

7 Reference Changed; Architects. Amend RSA 310-A:32, II to read as follows:

II. In adopting any rule under this section, the board ***shall*** consult with the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310.***

8 Reference Changed; Body Art. Amend RSA 314-A:2, II to read as follows:

II. There shall be a fee for an initial license and a renewal license. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310.***

9 Reference Changed; Chiropractic. Amend RSA 316-A:14-a to read as follows:

316-A:14-a Licenses and Certificates. Each applicant who qualifies under this chapter and who attains a minimum grade of 70 percent upon the examination given under RSA 316-A:13, I shall receive a license from the board as a chiropractor permitted to practice in New Hampshire. Each applicant who qualifies under this chapter shall pay a fee for an initial license and a license renewal. The initial license and license renewals shall be valid for the terms established under RSA [~~310-A:1-h~~] ***310.***

10 Reference Changed; Dentists Professional Health. Amend RSA 317-A:16-a, VII to read as follows:

VII. Rules governing the professional health program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310.***

11 Reference Changed; Pharmacists. Amend RSA 318:1, XV-a to read as follows:

XV-a. "Practitioner-patient relationship" means a medical connection between a licensed practitioner and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the health care practitioner: (i) verifies the identity of the

patient receiving health care services through telemedicine; (ii) discloses to the patient the health care practitioner's name, contact information, and the type of health occupation license held by the health care practitioner; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A health care practitioner shall complete or review a history, a diagnosis, a treatment plan appropriate for the practitioner's scope of practice, and documentation of all prescription drugs including name and dosage. A practitioner may prescribe for a patient whom the practitioner does not have a practitioner-patient relationship under the following circumstances: for a patient of another practitioner for whom the prescriber is taking call; for a patient examined by another New Hampshire licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment. The definition of a practitioner-patient relationship shall not apply to a practitioner licensed in another state who is consulting to a New Hampshire licensed practitioner with whom the patient has a relationship.

12 Reference Changed; Nurse Practice Act. Amend RSA 326-B:36-a, VI-a, (c) to read as follows:

(c) Rules governing this program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

13 Reference Changed; Acupuncture. Amend RSA 328-G:9, IX to read as follows:

IX. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310***.

14 Reference Changed; Reflexologists. Amend RSA 328-H:2, IV-a to rad as follows:

IV-a. "Executive director" means the executive director of the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310***.

15 Reference Changed; Physicians. Amend RSA 329:1-c to read as follows:

329:1-c Physician-Patient Relationship. "Physician-patient relationship" means a medical connection between a licensed physician and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the physician: (i) verifies the identity of the patient receiving health care services through telemedicine; (ii) discloses to the patient the physician's name, contact information, and the type of health occupation license held by the physician; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A physician shall complete or review a history, a diagnosis, a treatment plan appropriate for the licensee's medical specialty, and documentation of all prescription drugs including name and dosage. A licensee may prescribe for a patient whom the licensee does not have a physician-patient relationship under the following circumstances: writing admission orders for a newly hospitalized patient; for a patient of another licensee for whom the prescriber is taking call; for a patient examined by a physician assistant, nurse practitioner, or other licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's

first appointment or when providing limited treatment to a family member in accordance with the American Medical Association Code of Medical Ethics. Prescribing drugs to individuals without a physician-patient relationship shall be unprofessional conduct subject to discipline under RSA 329:17, VI. The definition of a physician-patient relationship shall not apply to a physician licensed in another state who is consulting to a New Hampshire licensed physician with whom the patient has a relationship.

16 Reference Changed; Physicians. Amend RSA 329:1-d, I to read as follows:

I. "Telemedicine" means the use of audio, video, or other electronic media and technologies by a physician in one location to a patient in a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions as defined in RSA [~~310-A:1-g~~] *310*.

17 Reference Changed; Physicians Health. Amend RSA 329:13-b, VII to read as follows:

VII. Rules governing the program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] *310*.

18 Reference Changed; Administrative Procedures. Amend 541-A:29-a, I to read as follows:

I. If an agency fails to take any required action on an application, petition, or request within the time limits prescribed by RSA 541-A:29 or any other provisions of law, the application, petition, or request shall be deemed approved and any permit, approval or other item requested shall be deemed granted to or received by the applicant, petitioner, or requestor, except as provided in RSA [~~310-A:1-d, V~~] *310*.

19 Reference Changed; Planning Boards. Amend RSA 676:4-b, V to read as follows:

V. Any person who becomes aware of a failure by a third party inspector to report properly and promptly a construction defect or deviation from the terms of the approval or approved project plans, may file a written complaint to the [~~joint board established under RSA 310-A:1~~] ***office of professional licensure and certification under RSA 310*** for possible [~~peer review or~~] disciplinary action.

20 Effective Date. This act shall take effect July 1, 2023.

LBA
23-0606
Amended 4/12/23

HB 655-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2023-0807h)

AN ACT relative to the office of professional licensure and certification.

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	Indeterminable	Indeterminable
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General [ ] Education [ ] Highway [X] Other - Office of Professional Licensure and Certification Fund			

METHODOLOGY:

This bill redefines the roles and responsibilities of the Office of Professional Licensure and Certification (OPLC) for the boards and commissions. OPLC issues licenses, sets fees, provides legal and investigatory services, and presents administrative rules as advised by the boards and commissions. The bill consolidates administrative authority for OPLC in a new chapter and repeals redundant provisions of law. This bill establishes two new unclassified attorney positions. The bill also modifies the existing OPLC Fund further defining it to be a separate dedicated, nonlapsing fund. It also establishes any funds in excess of $5,000,000 shall lapse to the General Fund at the close of each biennium. Currently, any funds remaining in the OPLC fund at the end of the biennium lapse into the General Fund.

The OPLC states the majority of the language in the bill is currently in law under RSA 310-A: and should have a minimal impact. The OPLC states the cost of the newly established unclassified attorney positions is an indeterminable cost as it is up to the Department of Administrative Services and Department of Personnel to determine what labor grade the positions would be. However, the OPLC assumes the positions would be comparable to other agencies and would be between a labor grade FF and a labor grade GG which is between $137,644 ($68,822 x two positions) at the lowest and $221,364 ($110,682 x two positions) at the highest labor GG and the highest step per a year. The OPLC states the impact from changing the OPLC fund from lapsing at the end of the biennium to non-lapsing, to the extent the funds do not exceed $5,000,000, will not necessarily have a fiscal impact but will rather shift where the funds end up at the end of the biennium. This bill will reduce the amount lapsed to the General Fund at the end of the biennium, but it will increase the amount of funds in the OPLC

fund at the end of the biennium. OPLC indicates by not lapsing funds their office will be able to lower licensing and certification fees.

Lastly, OPLC states RSA 310-A:1 may need to be repealed as this bill is intended to remove and replace that language and they may contradict each other. Additionally, RSA 310:3, V, states the salaries of the executive director and other unclassified individuals shall be as specified in RSA 94:1-a, but the list of unclassified employees does not include the new unclassified attorney positions created under RSA 310:3, IV.

Since FY 2019, the OPLC has lapsed $3.3 million to $4.1 million back to the General Fund at the end of each fiscal year. the end of each fiscal year. Chapter 91, Laws of 2021, changed the laws to have the funds lapse at the end of the biennium starting with the FY 2022-2023 biennium. Based on the historical trends, the OPLC would be expected to lapse between $6.5 million to $8 million back to the General Fund at the end of this biennium. This bill would allow the OPLC to retain the funds up to $5,000,000, thus decreasing the amount to the General Fund.

AGENCIES CONTACTED:

Office of Professional Licensure and Certification

HB 655-FN - AS AMENDED BY THE HOUSE

16Mar2023... 0807h

2023 SESSION

23-0606
09/10

HOUSE BILL ***655-FN***

AN ACT relative to the office of professional licensure and certification.

SPONSORS: Rep. C. McGuire, Merr. 27; Rep. Goley, Hills. 21; Rep. Merchant, Sull. 6; Rep. Ulery, Hills. 13; Sen. Carson, Dist 14; Sen. Lang, Dist 2

COMMITTEE: Executive Departments and Administration : 20-0 CONSENT OTP/A
SENATE EDDA : OTP 3-2

AMENDED ANALYSIS

The bill consolidates administrative authority for the office of professional licensure and certification (OPLC) in a new chapter of law.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the office of professional licensure and certification.

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

1 New Chapter; Office of Professional Licensure and Certification. RSA 310 is repealed and reenacted to insert the following new chapter:

CHAPTER 310

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

310:1 Purpose. The purpose of the office of professional licensure and certification is to promote efficiency and economy in the administration of the business processing, record keeping, and other administrative and clerical operations of professional licensing and certification boards, including both professional healthcare licensing and professional technical licensing. The individual licensing and certification boards that are organized under the office of professional licensure and certification have specialized knowledge and experience and are separate and distinct for the purpose of regulating their various professions. Notwithstanding the unique regulatory role of each board, the legislature finds that there are opportunities for improving efficiency and customer service by providing for the joint administration of the boards' administrative, clerical, business processing, and record keeping functions. Except as provided in this section, the licensing and certification boards and entities organized under the office of professional licensure and certification shall exercise the powers, duties, functions, and responsibilities granted by statute.

310:2 Definitions; Establishment.

I. In this chapter, and as appropriate when used in any chapter listed in paragraph II:

(a) "Board" means a board, council, commission, committee, or other regulatory body with jurisdiction over professions listed in paragraph II.

(b) "Lapse" when referring to licenses shall mean expire.

(c) "License" shall include licenses, certifications or registrations required to practice a regulated profession.

(d) "Office" or "OPLC" shall mean the office of professional licensure and certification.

II. The office of professional licensure and certification shall consist of the division of licensing and board administration and the division of enforcement, under the executive director as the administrative head of the agency. The boards within the office of professional licensure and certification shall consist of:

(a) Advisory board of body art practitioners under RSA 314-A.

(b) Advisory board of court reporters under RSA 310-A:163.

(c) Advisory board of massage therapists under RSA 328-B.

(d) Advisory board of medical imaging and radiation therapy under RSA 328-J.

(e) Advisory board of recreational therapists established under RSA 326-J.

(f) Advisory board of respiratory care practitioners established under RSA 326-E.

(g) Advisory board of reflexology, structural integration, and Asian bodywork therapy under RSA 328-H.

(h) Board of accountancy under RSA 309-B.

(i) Board of acupuncture licensing under RSA 328-G.

(j) Board of architects under RSA 310-A:29.

(k) Board of barbering, cosmetology, and esthetics under RSA 313-A.

(l) Board of chiropractic examiners under RSA 316-A.

(m) Board of dental examiners under RSA 317-A.

(n) Board of directors, office of licensed allied health professionals under RSA 328-F.

(o) Board of examiners of nursing home administrators under RSA 151-A.

(p) Board of family mediator certification under RSA 328-C.

(q) Board of home inspectors under RSA 310-A:186.

(r) Board of land surveyors under RSA 310-A:55.

(s) Board of landscape architects under RSA 310-A:142.

(t) Board of licensed dietitians under RSA 326-H.

(u) Board of licensing for alcohol and other drug use professionals under RSA 330-C.

(v) Board of licensing for foresters under RSA 310-A:100.

(w) Board of manufactured housing under RSA 205-A:25.

(x) Board of medicine under RSA 329.

(y) Board of mental health practice under RSA 330-A.

(z) Board of natural scientists under RSA 310-A:81.

(aa) Board of nursing under RSA 326-B.

(bb) Board of pharmacy under RSA 318.

(cc) Board of podiatry under RSA 315.

(dd) Board of psychologists under RSA 329-B:3.

(ee) Board of professional engineers under RSA 310-A:3.

(ff) Board of professional geologists under RSA 310-A:120.

(gg) Board of psychologists under RSA 329-B.

(hh) Board of registration of funeral directors and embalmers under RSA 325.

(ii) Board of registration in optometry under RSA 327.

(jj) Board of registration of medical technicians under RSA 328-I.

(kk) Board of septic system evaluators under RSA 310-A:206.

(ll) Board of veterinary medicine under RSA 332-B.

(mm) Electricians' board under RSA 319-C.

(nn) Electrology advisory committee under RSA 314.

(oo) Genetic counselors governing board established under RSA 328-F and RSA 326-K.

(pp) Governing board of athletic trainers established under RSA 328-F and RSA 326-G.

(qq) Guardians ad litem board under RSA 490-C.

(rr) Installation standards board under RSA 205-D.

(ss) Mechanical licensing board under RSA 153:27-a.

(tt) Midwifery council under RSA 326-D.

(uu) Naturopathic board of examiners under RSA 328-E.

(vv) Occupational therapy governing board established under RSA 326-F; and RSA 326-C.

(ww) Physical therapy governing board established under RSA 328-F and 328-A.

(xx) Real estate appraiser board under RSA 310-B.

(yy) Real estate commission under RSA 331-A.

(zz) Registration of ophthalmic dispensers under RSA 327-A.

(aaa) Speech-language pathology and hearing care provider governing board established under RSA 328-F and 326-F.

(bbb) Assessing standards board under RSA 21-J:14-a.

310:3 Executive Director; Directors; Unclassified Personnel.

I. The executive director of the office of professional licensure and certification shall be an unclassified employee of the state. The executive director shall be appointed by the governor, with consent of the council, and shall serve for a term of 4 years. The executive director shall be qualified to hold that position by reason of professional competence, education, and experience. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

II. The executive director shall nominate for appointment by the governor and council the unclassified positions of director of the division of licensing and board administration and director of the division of enforcement. Each director shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director for a term of 4 years.

III. The executive director shall nominate for appointment by the governor and council the unclassified position of chief pharmacy compliance investigator and 2 unclassified pharmacy investigator positions. Each inspector shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

IV. The executive director shall nominate for appointment by the governor and council the unclassified positions of agency chief legal officer and board chief legal officer. Each officer shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

V. The salaries of the executive director, each division director, each legal officer, the chief pharmacy investigator, and each pharmacy investigator shall be as specified in RSA 94:1-a.

310:4 Duties of Executive Director.

I. The executive director, as the administrative head of the office of professional licensure and certification, may employ such clerical or other assistants as are necessary for the proper performance of the office's work and may make expenditures for any purpose which are reasonably necessary, according to the executive director, for the proper performance of the office's duties under this chapter. The office shall contract for the services of investigators, presiding officers, legal counsel, and industry experts as necessary and in consultation with the appropriate board.

II. The executive director of the office of professional licensure and certification shall be responsible for:

(a) Supervision of the division directors and chief legal officers.

(b) Employment of personnel needed to carry out the functions of the office and the boards.

(c) The examination, processing and approval or denial of an application for licensure, certification, or registration for all license types governed by the office or a board listed in RSA 310:2, based on set objective standards developed by the boards, and in accordance with RSA 541-A.

(d) The investigation of all complaints of professional misconduct in accordance with RSA 310:9.

(e) Maintenance of the official record of the office and the boards in accordance with the retention policy established by the office.

(f) Drafting and coordinating rulemaking for all boards within the office in accordance with RSA 541-A, with the advice and recommendations of the boards.

(g) Maintaining the confidentiality of information, documents, and files in accordance with RSA 91-A.

(h) Submitting, by November 1, to the speaker of the house of representatives, the president of the senate, the chairpersons of the house and senate executive departments and administration committees, and the governor, an annual report summarizing the transactions of the preceding fiscal year and a complete statement of the receipts and expenditures of the office of professional licensure and certification. The report shall be posted on the website of the office of professional licensure and certification immediately upon submission.

(i) Notwithstanding any other provisions of law to the contrary, for the performance of the administrative, clerical, and business processing responsibilities under paragraph II(b), the office and all boards shall accept electronic signatures and scans of signed documents in addition to original signatures.

310:5 Administration of the Office of Professional Licensure and Certification; Funding.

I. The executive director of the office of professional licensure and certification shall establish and collect all license, certification, and renewal fees, as well as any necessary administrative fees for each professional regulatory board administered by the office. Such fees shall be sufficient to produce estimated revenues up to 125 percent of the total operating expenses for the office, as determined by averaging the operating expenses for the office for the previous 2 fiscal years.

II. There is hereby established the office of professional licensure and certification fund into which the fees collected under paragraph I shall be deposited. The fund shall be a separate, dedicated, nonlapsing fund, continually appropriated to the office for the purpose of paying all costs and salaries associated with the office. Funds in excess of $5,000,000 shall lapse to the general fund at the close of each biennium.

III. There is hereby established a dedicated, nonlapsing fund to be known as the New Hampshire health professionals' program administration fund for the administration of the professionals' health program, including the professionals' health program in RSA 329:13-b, the alternative recovery monitoring program in RSA 326-B:36-a, and the impaired pharmacist program set forth in RSA 318:29-a, with a fee charged to licensees at the time of initial licensure, renewal licensure, or reinstatement of licensure, for the board of medicine, board of dental examiners, pharmacy board, board of nursing, board of veterinary medicine, board of psychologists, board of chiropractic examiners, board of mental health practice, midwifery council, board of registration in optometry, board of podiatry, board of licensed dietitians, and board of licensing for alcohol and other drug use professionals, not to exceed 125 percent of the actual cost of providing the services. Other health and technical professions boards may be added to program at the same annual fee per licensee. The moneys in this fund shall be continually appropriated to the office.

IV. The office of professional licensure and certification shall be responsible for the financing of any interstate compact joined by the state that affects a profession governed by a board listed in RSA 310:2. Such financing shall be from funds deposited in the office of professional licensure and certification fund.

310:6 Rulemaking Authority. The executive director of the office of professional licensure and certification shall adopt rules, relative to RSA 541-A, for the following:

I. All fees set forth in RSA 310:5, with the advice and recommendations of the respective board. Fees shall be reassessed, at a minimum, every five years.

II. Such organizational and procedural rules necessary to administer the boards in the office, including rules governing the administration of complaints and investigations, hearings, disciplinary and non-disciplinary proceedings, inspections, payment processing procedures, and application procedures.

III. The rate of per diem compensation and reimbursable expenses for all boards within the office.

IV. Rules governing the professionals' health program as set forth in RSA 310:5.

V. Temporary licenses to out-of-state health care professionals who present evidence of an active license in good standing from another jurisdiction. The temporary license shall be valid for 120 days, or until the office acts on an application for full licensure, whichever happens first, and shall not be renewed, except that a complete application for full licensure before the expiration of the temporary license shall continue the validity of the temporary license until the office has acted on the application. All individuals licensed under rules adopted pursuant to this subparagraph shall be subject to the jurisdiction of the state licensing body for that profession.

310:7 Telemedicine and Telehealth Services.

I. For this section:

(a) "Asynchronous interaction" means an exchange of information between a patient and a health care professional that does not occur in real time.

(b) "Synchronous interaction" means an exchange of information between a patient and a health care professional that occurs in real time.

(c) "Telemedicine" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

(d) "Telehealth" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

II. Individuals licensed, certified, or registered pursuant to RSA 137-F; RSA 151-A; RSA 315; RSA 316-A; RSA 317-A; RSA 326-B; RSA 326-D; RSA 326-H; RSA 327; RSA 328-E; RSA 328-F; RSA 328-G; RSA 329-B; RSA 330-A; RSA 330-C; RSA 327-A; RSA 329; RSA 326-B; RSA 318; RSA 328-I; RSA 328-J may provide services through telemedicine or telehealth, provided the services rendered are authorized by scope of practice. Nothing in this provision shall be construed to expand the scope of practice for individuals regulated under this chapter.

III. Unless otherwise prescribed by statute, an out-of-state healthcare professional providing services by means of telemedicine or telehealth shall be required to be licensed, certified, or registered by the appropriate New Hampshire licensing body if the patient is physically located in New Hampshire at the time of service. This paragraph shall not apply to out-of-state physicians who provide consultation services pursuant to RSA 329:21, II.

IV. An individual providing services by means of telemedicine or telehealth directly to a patient shall:

(a) Use the same standard of care as used in an in-person encounter;

(b) Maintain a medical record;

(c) Subject to the patient's consent, forward the medical record to the patient's primary care or treating provider, if appropriate; and

(d) Provide meaningful language access if the individual is practicing in a facility that is required to ensure meaningful language access to limited-English proficient speakers pursuant to 45 C.F.R. section 92.101 or RSA 354-A, or to deaf or hard of hearing individuals pursuant to 45 C.F.R. section 92.102, RSA 521-A, or RSA 354-A.

V. Under this section, Medicaid coverage for telehealth services shall comply with the provisions of 42 C.F.R. section 410.78 and RSA 167:4-d.

VI. Physicians and physician assistants, governed by RSA 329 and RSA 328-D; advanced practice nurses, governed by RSA 326-B and registered nurses under RSA 326-B employed by home health care providers under RSA 151:2-b; midwives, governed by RSA 326-D; psychologists, governed by RSA 329-B; allied health professionals, governed by RSA 328-F; dentists, governed by RSA 317-A; mental health practitioners governed by RSA 330-A; community mental health providers employed by community mental health programs pursuant to RSA 135-C:7; alcohol and other drug use professionals, governed by RSA 330-C; and dietitians, governed by RSA 326-H shall be authorized to provide consultation services or follow-up care via telehealth to a patient who previously received services from the provider in the state where the provider is licensed.

VII. Nothing in this section shall limit a provider's ability to diagnose, assess, or treat an individual patient.

310:8 License Renewals; Lapse.

I. The executive director of the office of professional licensure and certification shall issue licenses, as set forth in RSA 310:4, to applicants meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

II. Licenses shall be valid for 2 years from the date of issuance, except that timely and complete application for license renewal by eligible applicants shall continue the validity of the licenses being renewed until the office has acted on the renewal application.

III. Applicants shall submit completed applications for renewal, the renewal fee, and any supporting documents required for that renewal on or before the expiration of the license. Licenses shall lapse when completed renewal applications, renewal fee, and supporting documents have not been filed by the expiration of the license and the holders of a lapsed license are not authorized to practice until the licenses have been reinstated. Holders of lapsed licenses shall not be able to renew, but shall be eligible to reinstate licenses by submitting an application and meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

IV. The office of professional licensure and certification shall provide licensees, at least 2 months before the date of expiration of their license, with notice of the need to complete their renewal applications. Failure to receive notice shall not relieve any licensee of the obligation to renew their license, comply with the rules of the office, the rules of the board, or this section.

Timeliness of submission of renewal applications shall be evidenced by the date stamp of receipt, or for applications submitted electronically the electronic time stamp of submission.

V. Upon the request of a licensee who is a member of any reserve component of the armed forces of the United States or the national guard and is called to active duty, the office of professional licensure and certification shall place the person's license on inactive status. The license may be reactivated within one year of the licensee's release from active status by payment of the renewal fee and with proof of completion of the most current continuing education requirement unless still within the renewal period.

310:9 Complaints and Investigations.

I. Allegations of professional misconduct shall be brought in accordance with RSA 332-G.

II. Upon receipt of an allegation of professional misconduct, the office shall determine whether the allegation states a viable claim. If the office determines that the allegation is not viable, it shall make a recommendation to the board for dismissal. The board shall review the office's recommendation and dismiss the allegation if it determines that the allegation does not state a claim of professional misconduct.

III. Notwithstanding any other law to the contrary, the office shall investigate allegations of misconduct by licensees (a) upon its own initiative or (b) upon written complaint alleging misconduct of a licensed, or unlicensed, individual or entity of a profession regulated under the office.

IV. Allegations of misconduct received by the office, information and records acquired by the office during an investigation, and reports and records made by the office because of its investigation, shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A, unless such information subsequently becomes part of a public disciplinary hearing. However, the office may disclose information acquired in an investigation to law enforcement or licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

V. To carry out investigations, the executive director is authorized to:

(a) Retain qualified experts that have sufficient knowledge on appropriate statutes or professions and their practices.

(b) Conduct inspections of places of business of a profession regulated under the office.

(c) Issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(1) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(2) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(3) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(4) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. When an allegation of misconduct is determined to be unfounded after an investigation, the board shall dismiss the allegation and explain in writing to the complainant and the licensee its reason for dismissing the complaint. The office shall retain all information concerning investigations in accordance with the retention policy established by the office.

VII. Subject to the limitations of RSA 329-B:26 and RSA 330-A:32, the office shall obtain, handle, archive, and destroy mental health and psychological records as follows:

(a) If a client or patient owning a privilege is the person who has made a complaint against a licensee, the office may access the records of such client or patient. The complaint form provided by the office and initial follow-up correspondence shall clearly indicate that the submission of the complaint by the client or patient who is the owner of the privilege shall override the privacy of that record for the purposes of the office's confidential investigation and proceedings. The client or patient's identity shall not be disclosed to the public in any manner or in any proceeding of the board without his or her consent. If the client or patient named in the complaint is a child, the legitimate assertion of the privilege by one natural or adoptive parent or legal guardian is sufficient for this paragraph to apply. The office may act on that parent or guardian's initiation of complaint regardless of the objection of the other parent or guardian.

(b) If the person who has made the allegations against the licensee is not the owner of the privilege for the records of the client or patient named in the complaint whose treatment is under investigation by the office, the records for investigation shall be treated as follows:

(1) When the office reviews the initial complaint and upon all further reviews of the case by the office or the board, the identity of the named client or patient shall be redacted from the documents reviewed.

(2) The names of clients or patients may be made available only to office staff and consultants assigned to investigate or adjudicate the matter, and in instances where the board has decided to proceed with discipline, to board members for purposes of determining recusal issues as described in subparagraph (f).

(3) The record of a client or patient under this subparagraph that has been specifically named in a complaint may be obtained by office staff as specified:

(A) Office staff and consultants may request permission from the client or patient to obtain the record for the investigation, informing the client or patient about the bounds of confidentiality of such records and the nature of the investigative process. If the client or patient grants permission, office staff may obtain the copies of the record.

~~(B) If the client or patient denies permission for access to the record, the office~~ may only obtain the record pursuant to a court order.

(4) Personally identifiable information pertaining to a client or patient under this subparagraph shall remain known only to staff and consultants assigned to the matter, which may include an employee of the office's investigations bureau, an employee of the office's prosecutions bureau, professional conduct investigator, the board administrator, and only those additional investigative assistants as the office's investigation team deems necessary to accomplish the investigation of the complaint.

(5) All communication beyond the office staff and consultants, or the board, pertaining to these clients or patients shall be conducted without the use of personally identifiable information.

(6) The identity of a client or patient shall not be disclosed to the public in any manner or in any proceeding of a board without his or her consent.

(c) Records of clients or patients who are not named in the initial complaint shall be treated as follows:

(1) If office staff and consultants assigned to the matter wish to obtain records of, or contact, clients or patients not named in the initial complaint, they shall make a request to the board with reasons for the request, specify the scope of cases and types of records requested, and state the name of the individual for whom authorization is requested to contact the client or patient.

(2) Upon board approval of a request pertaining to treatment of clients or patients defined in this subparagraph, the names of the clients or patients that fulfill the criteria of selection may be made available to office staff and consultants for purposes of determining whether recusal issues pertain to their selection for the investigation as described in subparagraph (f).

(3) If the board approves an investigation into client or patient cases who are not named in the original complaint, the board shall specify whether the clients or patients may be contacted directly.

(4) For records requested under this subparagraph, the keeper of the record shall be instructed to provide records that are redacted of personally identifiable information as defined in subparagraph (g). Each record shall be marked with an identifying code and the keeper of the record shall provide to the office's staff and consultants the contact information for corresponding clients or patients.

(5) The office shall store in a secure manner the list of these client or patient codes with corresponding contact information.

(6) If office staff and consultants have just cause to verify redacted copies against originals records of specified cases they shall request permission of the board, giving reason for the request. Upon board approval, office staff and consultants may have access to the identified unredacted records, which may be viewed at a time and location of their choosing. Office staff and

consultants may request a copy of the identified original records be sent to the office. Copies and corrections to the redacted records may be made by the office staff and consultants, after which any identified unredacted copies shall be destroyed and original records returned to the keeper of the records.

(7) Office staff and consultants contacting the clients or patients pursuant to subparagraph (c)(1) shall request permission from the clients or patients to conduct an interview, include an explanation that the individual(s) may grant or refuse permission for such interview, and explain there are no adverse personal consequences of any kind for refusal to grant permission or for withdrawing permission at any time during the interview. Office staff and consultants may inform the individual(s) that refusal to participate may prevent the investigation from proceeding or reaching a satisfactory conclusion.

(8) The identity of each client or patient shall be redacted from any documents reviewed by the board.

(9) The identity of a client or patient defined in this subparagraph shall not be disclosed to the public in any manner or in any proceeding of the board without the client or patient's consent.

(d) Mental health or psychological records obtained through subparagraphs (a)-(c) shall be archived or destroyed at the conclusion of the matter in accordance with a retention schedule established by the office. The identification and contact information collected during the investigation for clients or patients other than a client or patient complainant shall be destroyed.

(e) For the purposes of this paragraph:

(1) "Record" means health or psychological information collected from or about an individual that:

(A) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) Relates to the individual, the past, present, or future physical or mental health or psychological condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(2) "Personally identifiable information" means information which identifies an individual or which a reasonable person would believe could be used to identify an individual, including common and uncommon identifiers, including but not limited to, name, address, birth date, social security number, court docket number, insurance policy number, and any other identifiers of an individual and of the individual's known relatives, household members, and employers that a reasonable person would believe could identify the individual to whom the record pertains.

(f) In the process of determining recusal, the security of the client or patient's identity shall be preserved as follows:

(1) Before engaging in any matter as defined in subparagraph (a), board members, investigators, and others as specified in this paragraph with access to case files shall first review the name of the client/patient before proceeding. If a conflict of interest is identified, that person shall recuse himself or herself from the matter.

(2) Before engaging in any cases defined in subparagraph (b), office staff and consultants at the onset of the investigation, board members at the time of reviewing the findings of the investigation, and any others authorized to have access to the case prior to commencing review of such cases shall first determine if there is a need for recusal.

(3) If a client or patient as defined in subparagraph (b) or (c) testifies or intends to attend the hearing of the case involving his or her treatment and the board may see the client or patient inadvertently or directly, the client or patient's name shall be revealed to the board members so they may have the opportunity to recuse themselves prior to the proceeding. The client or patient shall be informed beforehand of such disclosure.

(4) For recusals pertaining to clients or patients under subparagraph (c) of this section, office staff and consultants shall review the names of the clients or patients who qualify for the scope of investigation as approved by the board, to determine if there is cause for recusal.

(5) When board members review any report of investigation that includes case information pertaining to clients or patients as defined in subparagraph (c), they shall review their names prior to reading such reports in the following manner:

(A) If there are 10 or fewer cases with individual clinical information presented, then the methods of testing for recusal shall follow the recusal procedures in subparagraph (f)(2).

(B) When the report includes clinical information pertaining to more than 10 cases, the recusal methods of subparagraph (f)(4) shall apply.

(C) When such client or patients' information is presented only in aggregate form, no recusal is required.

(g) A keeper of the record shall comply with board and the office's investigative team's requests for client or patient records and all redaction requirements specified under this section. The board may seek a court order to enforce valid requests for such records under this section.

VIII. Any board member who has had a personal relationship or has worked in a professional capacity with a complainant or with a licensee against whom a complaint has been filed or whose personal or professional views regarding the licensee or the complainant could prevent the board member from being impartial in considering the complaint shall recuse himself or herself from any investigation or disciplinary action against such licensee.

310:10 Disciplinary Proceedings; Non-Disciplinary Remedial Proceedings.

I. Disciplinary proceedings shall be open to the public in accordance with RSA 91-A. All non-disciplinary remedial proceedings shall be exempt from the provisions of RSA 91-A, except that the board shall disclose any final remedial action that affects the status of a license, including any

non-disciplinary restrictions imposed. The docket file for each such proceeding shall be retained in accordance with the retention policy established by the office of professional licensure and certification.

II. Boards shall conduct disciplinary and non-disciplinary remedial proceedings in accordance with procedural rules adopted by the executive director.

III. The office shall employ sufficient administrative prosecutors qualified by reason of education, competence, and relevant experience to serve as hearing counsel in all disciplinary proceedings before the boards.

IV. The office shall employ sufficient personnel qualified by reason of education, competence, and relevant experience to serve as presiding officer in all disciplinary or non-disciplinary remedial proceedings before the boards. The presiding officer shall have the authority to preside at such hearing and to issue oaths or affirmations to witnesses, rule on questions of law and other procedural matters, and issue final orders based on factual findings of the board.

V. The presiding officer in disciplinary and non-disciplinary remedial proceedings may issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(a) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(b) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(c) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(d) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. In carrying out disciplinary or non-disciplinary remedial proceedings, the presiding officer, as defined in RSA 541-A, shall have the authority to hold pre-hearing conferences, which shall be exempt from the provisions of RSA 91-A; to administer oaths and affirmations; and, to render legal opinions and make conclusions of law.

VII. Boards shall be the triers of fact in all disciplinary and non-disciplinary remedial proceedings, and shall determine sanctions, if any.

VIII. At any time before or during disciplinary or non-disciplinary remedial proceedings, complaints may be dismissed or disposed of, in whole or in part:

(a) By written settlement agreement approved by the board, provided that any complainant shall have the opportunity, before the settlement agreement has been approved by a board, to comment on the terms of the proposed settlement; or

(b) Through an order of dismissal for default, for want of jurisdiction, or failure to state a proper basis for disciplinary action.

IX. Disciplinary action taken by the board at any time, and any dispositive action taken after the issuance of a notice of public hearing, shall be reduced to writing and made available to the public. Such decisions shall not be public until they are served upon the parties, in accordance with rules adopted by the executive director.

X. Except as otherwise provided by RSA 541-A:30, the board shall furnish the respondent at least 15 days' written notice of the date, time and place of a hearing. Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party.

XI. Neither the office nor the boards shall have an obligation or authority to appoint attorneys or pay the fees of attorneys representing licensees or witnesses during investigations or disciplinary or non-disciplinary remedial proceedings.

XII. No civil action shall be maintained against the office or the board, or any member of the board, office, or its agents or employees, against any organization or its members, or against any other person for or by reason of any statement, report, communication, or testimony to the board or determination by the board or office in relation to proceedings under this chapter.

XIII. For matters involving individuals identified in mental health records, testimony by client or patients shall be handled with utmost regard for the privacy and protection of their identity from public disclosure.

(a) A noncomplainant client or patient shall not be compelled to testify at a hearing.

(b) If a noncomplainant client or patient testifies at a hearing, the identity of the individual shall be screened from the public view and knowledge, although the respondent and attorneys shall be within the view of the client patient. The board may view the client or patient. The public's access to view or information that would identify the client or patient shall be restricted. The hearing may be closed to the public for the duration of the client or patient's testimony, at the board's discretion.

(c) If a complainant client or patient requests the privacy safeguards in subparagraph (b), the presiding officer may make such accommodations.

310:11 Licensing Proceedings.

I. Boards shall conduct licensing proceedings in accordance with procedural rules adopted by the executive director.

II. If a board denies a license following a licensing proceeding, its final decision shall be issued in accordance with RSA 541-A:35.

III. In carrying out licensing proceedings, the board shall have the authority to:

(a) Hold pre-hearing conferences exempt from the provisions of RSA 91-A;

(b) Appoint a board member or other qualified person as presiding officer; and

(c) Administer, and authorize an appointed presiding officer to administer, oaths and affirmations.

IV. Neither the office nor the boards shall have an obligation or authority to appoint or pay the fees of attorneys representing licensees, certified individuals, or witnesses during investigations or adjudicatory proceedings.

V. Licensing proceedings shall be open to the public in accordance with RSA 91-A.

310:12 Sanctions.

I. Upon making an affirmative finding that a licensee has committed professional misconduct, boards may take disciplinary action in any one or more of the following ways:

(a) By reprimand.

(b) By suspension of a license for a period of time as determined reasonable by the board.

(c) By revocation of license.

(d) By placing the licensee on probationary status. The board may require the person to submit to any of the following:

(1) Regular reporting to the board concerning the matters which are the basis of the probation.

(2) Continuing professional education until a satisfactory degree of skill has been achieved in those areas which are the basis of probation.

(3) Submitting to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

(4) Practicing under the direct supervision of another licensee for a period of time specified by the board.

(e) By assessing administrative fines in amounts established by the board which shall not exceed $3,000 per offense, or, in the case of continuing offenses, $300 for each day that the violation continues, whichever is greater.

II. The board may issue a non-disciplinary confidential letter of concern to a licensee advising that while there is insufficient evidence to support disciplinary action, the board believes the licensee or certificate holder should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the board may result in action against the licensee's license. This letter shall not be released to the public or any other licensing authority, except that the letter may be used as evidence to establish a relevant pattern or course of conduct in subsequent adjudicatory proceedings by the board.

III. In the case of sanctions for discipline in another jurisdiction, the decision of the other jurisdiction's disciplinary authority may not be collaterally attacked and the board may impose any

of the sanctions set forth in this chapter, but shall provide notice and an opportunity to be heard prior to imposing any sanctions.

IV. In cases involving imminent danger to public health, safety, or welfare, a board may order immediate suspension of a license or certification pending an adjudicative proceeding before the board to determine if the suspension should remain in place pending final adjudication of the matter, and which shall commence not later than 10 working days after the date of the order suspending the license unless the licensee or certified individual agrees in writing to a longer period. In such cases of immediate danger, the board shall comply with RSA 541-A:30.

V. For any order issued in resolution of a disciplinary proceeding by the board, where the board has found misconduct sufficient to support disciplinary action, the board may require the licensee or certificate holder who is the subject of such finding to pay the office a sum not to exceed the reasonable cost of investigation and prosecution of the proceeding. This sum may be imposed in addition to any otherwise authorized administrative fines levied by the board as part of the penalty. The investigative and prosecution costs shall be assessed by the office and any sums recovered shall be credited to the office's fund and disbursed by the office for any future investigations of complaints and activities that violate this chapter or rules adopted under this chapter.

310:13 Unlicensed Practice. Whoever, not being licensed or otherwise authorized to practice according to the laws of this state, advertises oneself as engaging in a profession licensed or certified by the office of professional licensure and certification, engages in activity requiring professional licensure, or in any way holds oneself out as qualified to do so, or calls oneself a licensed professional, or whoever does such acts after receiving notice that such person's license to practice has been suspended or revoked, is engaged in unlawful practice. After providing notice and opportunity to be heard, and upon making an affirmative finding of unlawful practice, the board may impose a fine not to exceed the amount of any gain or economic benefit that the person derived from the violation, or up to $10,000 for each offense, whichever amount is greater. Each violation of unlicensed or unlawful practice shall be deemed a separate offense. The board, the state's attorney general, or a prosecuting attorney of any county or municipality where the act of unlawful practice takes place may maintain an action to enjoin any person or entity from continuing to do acts of unlawful practice. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to any board.

310:14 Rehearing; Appeals.

I. Any person who has been denied a license or certification by the office or a board shall have the right to a rehearing before the appropriate board. Requests for a rehearing shall be made in writing to the appropriate board within 30 days of receipt of the original final decision.

II. Any person who has been disciplined by a board shall have the right to petition in writing for a rehearing within 30 days of receipt of the original final decision.

III. Appeals from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541. No sanction shall be stayed by the board during an appeal.

310:15 Oversight Committee; Establishment; Purpose.

I. There shall be an oversight committee for the office of professional licensure and certification (OPLC) consisting of the following members:

(a) Three members of the house executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the speaker of the house of representatives.

(b) Two members of the senate executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the president of the senate.

II. Membership on the oversight committee shall be for the duration of the biennium and shall be coterminous with membership in the general court. The first meeting of the committee shall be called by the first-named house member. The committee shall elect a chair from among the members at the first meeting of each biennium. Meetings shall be called as needed, but at least quarterly. The members of the committee shall receive mileage at the legislative rate when performing the duties of the committee. Three members of the committee shall constitute a quorum.

III. The committee shall provide legislative oversight and informational meetings on the policies and rules of the office as brought to its attention by office personnel, legislators, members of the boards, councils, committees, and commissions overseen by OPLC, and members of the professions under the jurisdiction of OPLC. The committee's work shall include analyzing the division of duties between administration and the boards in order to promote more productive and efficient interactions.

IV. The oversight committee shall recommend legislation deemed necessary to correct issues it identifies.

310:16 Military Service Members and Spousal Temporary Licensure. The office of professional licensure and certification shall issue temporary licenses to a member of the armed forces or their spouse, if the applicant holds a current, valid unencumbered occupational or professional license in good standing issued by a state or territory of the United States, in accordance with rules adopted by executive director of the office of professional licensure and certification under RSA 541-A, provided that the applicant meets the requirements of this section, within 30 days of having received an application or, if the applicant is subject to a criminal records check, within 14 days of having received the results of a criminal records check. The rules shall contain the following provisions:

I. The applicant shall obtain a temporary license for a period of not less than 180 days while completing any requirements for licensure in New Hampshire so long as no cause for denial of a license exists under this title, or under any other law.

II. The license applicant must submit a notarized affidavit affirming, under penalty of law, that the applicant is the person described and identified in the application, that all statements made

on the application are true and correct and complete, that the applicant has read and understands the requirements for licensure and certifies that they meet those requirements, and that the applicant is in good standing in all jurisdictions in which the applicant holds or has held a license.

III. The applicant may request a one-time 180-day extension of the temporary license if necessary to complete the New Hampshire licensing requirements. The applicant must make this request within 15 days prior to the temporary license's expiration date.

IV. All individuals licensed under this section shall be subject to the jurisdiction of the state licensing body for that profession.

2 Dedicated Fund; Office of Professional Licensure and Certification. Amend 6:12, I(b)(340) to read as follows:

(340) Moneys deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

3 Transition; Administrative Rules; Recodification of Office of Professional Licensure and Certification. The rules adopted for any occupation or profession under the office of professional licensure and certification under former RSA 310-A:1-a in effect on the effective date of this act shall, to the extent practicable, continue and be effective and apply to such respective occupation or profession until they expire or are amended or repealed.

4 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:16-b, III to read as follows:

III. The mechanical licensing board with the approval of the executive director of the office of professional licensing and certification shall adopt rules, which shall not be subject to RSA 541-A, relative to the establishment of fees for voluntary certification under this section. After the first year of this program, such fees shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the previous fiscal year. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

5 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:28, II to read as follows:

II. Notwithstanding RSA 21-G:9, the board, with an affirmative vote of at least 4 of the appointed board members, in consultation with the office of professional licensure and certification and with the approval of the executive director of the office of professional licensure and certification, shall establish application fees for licensure, for renewal, for late renewal, and for reinstatement of licenses under this subdivision pursuant to RSA 541-A. Such licensing fees including any endorsements shall not exceed $500 per individual. The board shall also adopt fees for replacement licenses, for certified copies and reports, for inspections done pursuant to this subdivision, for letters of verification requested by individuals or jurisdictions relating to licensure and certification, and for transcribing and transferring records and other services. The fee for examination by third parties shall be separate from the fees established by the board. Fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the

direct operating expenses of the board budgeted for the biennium in which they will apply. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

6 Reference Changed; Accountancy. Amend RSA 309-B:4, III to read as follows:

III. The office of professional licensure and certification shall establish fees for examination of applicants, for licenses, for certificates of authorization, for reissuance of licenses, for renewal and reinstatement of licenses and certificates to practice under this chapter, for late renewals, for verification of licensure or examination, and for transcribing and transferring records and other services. All moneys collected by the office of professional licensure and certification from fees authorized under this chapter shall be received and accounted for by the office of professional licensure and certification, shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***. Administration expenses shall be limited to the funds collected and may include, but shall not be limited to, the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the board or its committees; all legal proceedings taken under this chapter for the enforcement of this chapter; and educational programs for the benefit of the public or licensees and their employees.

7 Reference Changed; Architects. Amend RSA 310-A:32, II to read as follows:

II. In adopting any rule under this section, the board ***shall*** consult with the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310***.

8 Reference Changed; Body Art. Amend RSA 314-A:2, II to read as follows:

II. There shall be a fee for an initial license and a renewal license. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310***.

9 Reference Changed; Chiropractic. Amend RSA 316-A:14-a to read as follows:

316-A:14-a Licenses and Certificates. Each applicant who qualifies under this chapter and who attains a minimum grade of 70 percent upon the examination given under RSA 316-A:13, I shall receive a license from the board as a chiropractor permitted to practice in New Hampshire. Each applicant who qualifies under this chapter shall pay a fee for an initial license and a license renewal. The initial license and license renewals shall be valid for the terms established under RSA [~~310-A:1-h~~] ***310***.

10 Reference Changed; Dentists Professional Health. Amend RSA 317-A:16-a, VII to read as follows:

VII. Rules governing the professional health program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

11 Reference Changed; Pharmacists. Amend RSA 318:1, XV-a to read as follows:

XV-a. "Practitioner-patient relationship" means a medical connection between a licensed practitioner and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the health care practitioner: (i) verifies the identity of the

patient receiving health care services through telemedicine; (ii) discloses to the patient the health care practitioner's name, contact information, and the type of health occupation license held by the health care practitioner; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A health care practitioner shall complete or review a history, a diagnosis, a treatment plan appropriate for the practitioner's scope of practice, and documentation of all prescription drugs including name and dosage. A practitioner may prescribe for a patient whom the practitioner does not have a practitioner-patient relationship under the following circumstances: for a patient of another practitioner for whom the prescriber is taking call; for a patient examined by another New Hampshire licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment. The definition of a practitioner-patient relationship shall not apply to a practitioner licensed in another state who is consulting to a New Hampshire licensed practitioner with whom the patient has a relationship.

12 Reference Changed; Nurse Practice Act. Amend RSA 326-B:36-a, VI-a, (c) to read as follows:

(c) Rules governing this program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

13 Reference Changed; Acupuncture. Amend RSA 328-G:9, IX to read as follows:

IX. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310***.

14 Reference Changed; Reflexologists. Amend RSA 328-H:2, IV-a to rad as follows:

IV-a. "Executive director" means the executive director of the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310***.

15 Reference Changed; Physicians. Amend RSA 329:1-c to read as follows:

329:1-c Physician-Patient Relationship. "Physician-patient relationship" means a medical connection between a licensed physician and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the physician: (i) verifies the identity of the patient receiving health care services through telemedicine; (ii) discloses to the patient the physician's name, contact information, and the type of health occupation license held by the physician; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A physician shall complete or review a history, a diagnosis, a treatment plan appropriate for the licensee's medical specialty, and documentation of all prescription drugs including name and dosage. A licensee may prescribe for a patient whom the licensee does not have a physician-patient relationship under the following circumstances: writing admission orders for a newly hospitalized patient; for a patient of another licensee for whom the prescriber is taking call; for a patient examined by a physician assistant, nurse practitioner, or other licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's

first appointment or when providing limited treatment to a family member in accordance with the American Medical Association Code of Medical Ethics. Prescribing drugs to individuals without a physician-patient relationship shall be unprofessional conduct subject to discipline under RSA 329:17, VI. The definition of a physician-patient relationship shall not apply to a physician licensed in another state who is consulting to a New Hampshire licensed physician with whom the patient has a relationship.

16 Reference Changed; Physicians. Amend RSA 329:1-d, I to read as follows:

I. "Telemedicine" means the use of audio, video, or other electronic media and technologies by a physician in one location to a patient in a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions as defined in RSA [~~310-A:1-g~~] ***310***.

17 Reference Changed; Physicians Health. Amend RSA 329:13-b, VII to read as follows:

VII. Rules governing the program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

18 Reference Changed; Administrative Procedures. Amend 541-A:29-a, I to read as follows:

I. If an agency fails to take any required action on an application, petition, or request within the time limits prescribed by RSA 541-A:29 or any other provisions of law, the application, petition, or request shall be deemed approved and any permit, approval or other item requested shall be deemed granted to or received by the applicant, petitioner, or requestor, except as provided in RSA [~~310-A:1-d, V~~] ***310***.

19 Reference Changed; Planning Boards. Amend RSA 676:4-b, V to read as follows:

V. Any person who becomes aware of a failure by a third party inspector to report properly and promptly a construction defect or deviation from the terms of the approval or approved project plans, may file a written complaint to the [~~joint board established under RSA 310-A:1~~] ***office of professional licensure and certification under RSA 310*** for possible [~~peer review or~~] disciplinary action.

20 Effective Date. This act shall take effect July 1, 2023.

LBA
23-0606
Amended 4/12/23

HB 655-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2023-0807h)

AN ACT relative to the office of professional licensure and certification.

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	Indeterminable	Indeterminable
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General [ ] Education [ ] Highway [X] Other - Office of Professional Licensure and Certification Fund			

METHODOLOGY:

This bill redefines the roles and responsibilities of the Office of Professional Licensure and Certification (OPLC) for the boards and commissions. OPLC issues licenses, sets fees, provides legal and investigatory services, and presents administrative rules as advised by the boards and commissions. The bill consolidates administrative authority for OPLC in a new chapter and repeals redundant provisions of law. This bill establishes two new unclassified attorney positions. The bill also modifies the existing OPLC Fund further defining it to be a separate dedicated, nonlapsing fund. It also establishes any funds in excess of $5,000,000 shall lapse to the General Fund at the close of each biennium. Currently, any funds remaining in the OPLC fund at the end of the biennium lapse into the General Fund.

The OPLC states the majority of the language in the bill is currently in law under RSA 310-A: and should have a minimal impact. The OPLC states the cost of the newly established unclassified attorney positions is an indeterminable cost as it is up to the Department of Administrative Services and Department of Personnel to determine what labor grade the positions would be. However, the OPLC assumes the positions would be comparable to other agencies and would be between a labor grade FF and a labor grade GG which is between $137,644 ($68,822 x two positions) at the lowest and $221,364 ($110,682 x two positions) at the highest labor GG and the highest step per a year. The OPLC states the impact from changing the OPLC fund from lapsing at the end of the biennium to non-lapsing, to the extent the funds do not exceed $5,000,000, will not necessarily have a fiscal impact but will rather shift where the funds end up at the end of the biennium. This bill will reduce the amount lapsed to the General Fund at the end of the biennium, but it will increase the amount of funds in the OPLC

fund at the end of the biennium. OPLC indicates by not lapsing funds their office will be able to lower licensing and certification fees.

Lastly, OPLC states RSA 310-A:1 may need to be repealed as this bill is intended to remove and replace that language and they may contradict each other. Additionally, RSA 310:3, V, states the salaries of the executive director and other unclassified individuals shall be as specified in RSA 94:1-a, but the list of unclassified employees does not include the new unclassified attorney positions created under RSA 310:3, IV.

Since FY 2019, the OPLC has lapsed $3.3 million to $4.1 million back to the General Fund at the end of each fiscal year. the end of each fiscal year. Chapter 91, Laws of 2021, changed the laws to have the funds lapse at the end of the biennium starting with the FY 2022-2023 biennium. Based on the historical trends, the OPLC would be expected to lapse between $6.5 million to $8 million back to the General Fund at the end of this biennium. This bill would allow the OPLC to retain the funds up to $5,000,000, thus decreasing the amount to the General Fund.

AGENCIES CONTACTED:

Office of Professional Licensure and Certification

HB 655-FN - VERSION ADOPTED BY BOTH BODIES

16Mar2023... 0807h

2023 SESSION

23-0606
09/10

HOUSE BILL ***655-FN***

AN ACT relative to the office of professional licensure and certification.

SPONSORS: Rep. C. McGuire, Merr. 27; Rep. Goley, Hills. 21; Rep. Merchant, Sull. 6; Rep. Ulery, Hills. 13; Sen. Carson, Dist 14; Sen. Lang, Dist 2

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

The bill consolidates administrative authority for the office of professional licensure and certification (OPLC) in a new chapter of law.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the office of professional licensure and certification.

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

1 New Chapter; Office of Professional Licensure and Certification. RSA 310 is repealed and reenacted to insert the following new chapter:

CHAPTER 310

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

310:1 Purpose. The purpose of the office of professional licensure and certification is to promote efficiency and economy in the administration of the business processing, record keeping, and other administrative and clerical operations of professional licensing and certification boards, including both professional healthcare licensing and professional technical licensing. The individual licensing and certification boards that are organized under the office of professional licensure and certification have specialized knowledge and experience and are separate and distinct for the purpose of regulating their various professions. Notwithstanding the unique regulatory role of each board, the legislature finds that there are opportunities for improving efficiency and customer service by providing for the joint administration of the boards' administrative, clerical, business processing, and record keeping functions. Except as provided in this section, the licensing and certification boards and entities organized under the office of professional licensure and certification shall exercise the powers, duties, functions, and responsibilities granted by statute.

310:2 Definitions; Establishment.

I. In this chapter, and as appropriate when used in any chapter listed in paragraph II:

(a) "Board" means a board, council, commission, committee, or other regulatory body with jurisdiction over professions listed in paragraph II.

(b) "Lapse" when referring to licenses shall mean expire.

(c) "License" shall include licenses, certifications or registrations required to practice a regulated profession.

(d) "Office" or "OPLC" shall mean the office of professional licensure and certification.

II. The office of professional licensure and certification shall consist of the division of licensing and board administration and the division of enforcement, under the executive director as the administrative head of the agency. The boards within the office of professional licensure and certification shall consist of:

(a) Advisory board of body art practitioners under RSA 314-A.

(b) Advisory board of court reporters under RSA 310-A:163.

(c) Advisory board of massage therapists under RSA 328-B.

(d) Advisory board of medical imaging and radiation therapy under RSA 328-J.

(e) Advisory board of recreational therapists established under RSA 326-J.

(f) Advisory board of respiratory care practitioners established under RSA 326-E.

(g) Advisory board of reflexology, structural integration, and Asian bodywork therapy under RSA 328-H.

(h) Board of accountancy under RSA 309-B.

(i) Board of acupuncture licensing under RSA 328-G.

(j) Board of architects under RSA 310-A:29.

(k) Board of barbering, cosmetology, and esthetics under RSA 313-A.

(l) Board of chiropractic examiners under RSA 316-A.

(m) Board of dental examiners under RSA 317-A.

(n) Board of directors, office of licensed allied health professionals under RSA 328-F.

(o) Board of examiners of nursing home administrators under RSA 151-A.

(p) Board of family mediator certification under RSA 328-C.

(q) Board of home inspectors under RSA 310-A:186.

(r) Board of land surveyors under RSA 310-A:55.

(s) Board of landscape architects under RSA 310-A:142.

(t) Board of licensed dietitians under RSA 326-H.

(u) Board of licensing for alcohol and other drug use professionals under RSA 330-C.

(v) Board of licensing for foresters under RSA 310-A:100.

(w) Board of manufactured housing under RSA 205-A:25.

(x) Board of medicine under RSA 329.

(y) Board of mental health practice under RSA 330-A.

(z) Board of natural scientists under RSA 310-A:81.

(aa) Board of nursing under RSA 326-B.

(bb) Board of pharmacy under RSA 318.

(cc) Board of podiatry under RSA 315.

(dd) Board of psychologists under RSA 329-B:3.

(ee) Board of professional engineers under RSA 310-A:3.

(ff) Board of professional geologists under RSA 310-A:120.

(gg) Board of psychologists under RSA 329-B.

(hh) Board of registration of funeral directors and embalmers under RSA 325.

(ii) Board of registration in optometry under RSA 327.

(jj) Board of registration of medical technicians under RSA 328-I.

(kk) Board of septic system evaluators under RSA 310-A:206.

(ll) Board of veterinary medicine under RSA 332-B.

(mm) Electricians' board under RSA 319-C.

(nn) Electrology advisory committee under RSA 314.

(oo) Genetic counselors governing board established under RSA 328-F and RSA 326-K.

(pp) Governing board of athletic trainers established under RSA 328-F and RSA 326-G.

(qq) Guardians ad litem board under RSA 490-C.

(rr) Installation standards board under RSA 205-D.

(ss) Mechanical licensing board under RSA 153:27-a.

(tt) Midwifery council under RSA 326-D.

(uu) Naturopathic board of examiners under RSA 328-E.

(vv) Occupational therapy governing board established under RSA 326-F; and RSA 326-C.

(ww) Physical therapy governing board established under RSA 328-F and 328-A.

(xx) Real estate appraiser board under RSA 310-B.

(yy) Real estate commission under RSA 331-A.

(zz) Registration of ophthalmic dispensers under RSA 327-A.

(aaa) Speech-language pathology and hearing care provider governing board established under RSA 328-F and 326-F.

(bbb) Assessing standards board under RSA 21-J:14-a.

310:3 Executive Director; Directors; Unclassified Personnel.

I. The executive director of the office of professional licensure and certification shall be an unclassified employee of the state. The executive director shall be appointed by the governor, with consent of the council, and shall serve for a term of 4 years. The executive director shall be qualified to hold that position by reason of professional competence, education, and experience. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

II. The executive director shall nominate for appointment by the governor and council the unclassified positions of director of the division of licensing and board administration and director of the division of enforcement. Each director shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director for a term of 4 years.

III. The executive director shall nominate for appointment by the governor and council the unclassified position of chief pharmacy compliance investigator and 2 unclassified pharmacy investigator positions. Each inspector shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

IV. The executive director shall nominate for appointment by the governor and council the unclassified positions of agency chief legal officer and board chief legal officer. Each officer shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

V. The salaries of the executive director, each division director, each legal officer, the chief pharmacy investigator, and each pharmacy investigator shall be as specified in RSA 94:1-a.

310:4 Duties of Executive Director.

I. The executive director, as the administrative head of the office of professional licensure and certification, may employ such clerical or other assistants as are necessary for the proper performance of the office's work and may make expenditures for any purpose which are reasonably necessary, according to the executive director, for the proper performance of the office's duties under this chapter. The office shall contract for the services of investigators, presiding officers, legal counsel, and industry experts as necessary and in consultation with the appropriate board.

II. The executive director of the office of professional licensure and certification shall be responsible for:

(a) Supervision of the division directors and chief legal officers.

(b) Employment of personnel needed to carry out the functions of the office and the boards.

(c) The examination, processing and approval or denial of an application for licensure, certification, or registration for all license types governed by the office or a board listed in RSA 310:2, based on set objective standards developed by the boards, and in accordance with RSA 541-A.

(d) The investigation of all complaints of professional misconduct in accordance with RSA 310:9.

(e) Maintenance of the official record of the office and the boards in accordance with the retention policy established by the office.

(f) Drafting and coordinating rulemaking for all boards within the office in accordance with RSA 541-A, with the advice and recommendations of the boards.

(g) Maintaining the confidentiality of information, documents, and files in accordance with RSA 91-A.

(h) Submitting, by November 1, to the speaker of the house of representatives, the president of the senate, the chairpersons of the house and senate executive departments and administration committees, and the governor, an annual report summarizing the transactions of the preceding fiscal year and a complete statement of the receipts and expenditures of the office of professional licensure and certification. The report shall be posted on the website of the office of professional licensure and certification immediately upon submission.

(i) Notwithstanding any other provisions of law to the contrary, for the performance of the administrative, clerical, and business processing responsibilities under paragraph II(b), the office and all boards shall accept electronic signatures and scans of signed documents in addition to original signatures.

310:5 Administration of the Office of Professional Licensure and Certification; Funding.

I. The executive director of the office of professional licensure and certification shall establish and collect all license, certification, and renewal fees, as well as any necessary administrative fees for each professional regulatory board administered by the office. Such fees shall be sufficient to produce estimated revenues up to 125 percent of the total operating expenses for the office, as determined by averaging the operating expenses for the office for the previous 2 fiscal years.

II. There is hereby established the office of professional licensure and certification fund into which the fees collected under paragraph I shall be deposited. The fund shall be a separate, dedicated, nonlapsing fund, continually appropriated to the office for the purpose of paying all costs and salaries associated with the office. Funds in excess of $5,000,000 shall lapse to the general fund at the close of each biennium.

III. There is hereby established a dedicated, nonlapsing fund to be known as the New Hampshire health professionals' program administration fund for the administration of the professionals' health program, including the professionals' health program in RSA 329:13-b, the alternative recovery monitoring program in RSA 326-B:36-a, and the impaired pharmacist program set forth in RSA 318:29-a, with a fee charged to licensees at the time of initial licensure, renewal licensure, or reinstatement of licensure, for the board of medicine, board of dental examiners, pharmacy board, board of nursing, board of veterinary medicine, board of psychologists, board of chiropractic examiners, board of mental health practice, midwifery council, board of registration in optometry, board of podiatry, board of licensed dietitians, and board of licensing for alcohol and other drug use professionals, not to exceed 125 percent of the actual cost of providing the services. Other health and technical professions boards may be added to program at the same annual fee per licensee. The moneys in this fund shall be continually appropriated to the office.

IV. The office of professional licensure and certification shall be responsible for the financing of any interstate compact joined by the state that affects a profession governed by a board listed in RSA 310:2. Such financing shall be from funds deposited in the office of professional licensure and certification fund.

310:6 Rulemaking Authority. The executive director of the office of professional licensure and certification shall adopt rules, relative to RSA 541-A, for the following:

I. All fees set forth in RSA 310:5, with the advice and recommendations of the respective board. Fees shall be reassessed, at a minimum, every five years.

II. Such organizational and procedural rules necessary to administer the boards in the office, including rules governing the administration of complaints and investigations, hearings, disciplinary and non-disciplinary proceedings, inspections, payment processing procedures, and application procedures.

III. The rate of per diem compensation and reimbursable expenses for all boards within the office.

IV. Rules governing the professionals' health program as set forth in RSA 310:5.

V. Temporary licenses to out-of-state health care professionals who present evidence of an active license in good standing from another jurisdiction. The temporary license shall be valid for 120 days, or until the office acts on an application for full licensure, whichever happens first, and shall not be renewed, except that a complete application for full licensure before the expiration of the temporary license shall continue the validity of the temporary license until the office has acted on the application. All individuals licensed under rules adopted pursuant to this subparagraph shall be subject to the jurisdiction of the state licensing body for that profession.

310:7 Telemedicine and Telehealth Services.

I. For this section:

(a) "Asynchronous interaction" means an exchange of information between a patient and a health care professional that does not occur in real time.

(b) "Synchronous interaction" means an exchange of information between a patient and a health care professional that occurs in real time.

(c) "Telemedicine" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

(d) "Telehealth" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

II. Individuals licensed, certified, or registered pursuant to RSA 137-F; RSA 151-A; RSA 315; RSA 316-A; RSA 317-A; RSA 326-B; RSA 326-D; RSA 326-H; RSA 327; RSA 328-E; RSA 328-F; RSA 328-G; RSA 329-B; RSA 330-A; RSA 330-C; RSA 327-A; RSA 329; RSA 326-B; RSA 318; RSA 328-I; RSA 328-J may provide services through telemedicine or telehealth, provided the services rendered are authorized by scope of practice. Nothing in this provision shall be construed to expand the scope of practice for individuals regulated under this chapter.

III. Unless otherwise prescribed by statute, an out-of-state healthcare professional providing services by means of telemedicine or telehealth shall be required to be licensed, certified, or registered by the appropriate New Hampshire licensing body if the patient is physically located in New Hampshire at the time of service. This paragraph shall not apply to out-of-state physicians who provide consultation services pursuant to RSA 329:21, II.

IV. An individual providing services by means of telemedicine or telehealth directly to a patient shall:

(a) Use the same standard of care as used in an in-person encounter;

(b) Maintain a medical record;

(c) Subject to the patient's consent, forward the medical record to the patient's primary care or treating provider, if appropriate; and

(d) Provide meaningful language access if the individual is practicing in a facility that is required to ensure meaningful language access to limited-English proficient speakers pursuant to 45 C.F.R. section 92.101 or RSA 354-A, or to deaf or hard of hearing individuals pursuant to 45 C.F.R. section 92.102, RSA 521-A, or RSA 354-A.

V. Under this section, Medicaid coverage for telehealth services shall comply with the provisions of 42 C.F.R. section 410.78 and RSA 167:4-d.

VI. Physicians and physician assistants, governed by RSA 329 and RSA 328-D; advanced practice nurses, governed by RSA 326-B and registered nurses under RSA 326-B employed by home health care providers under RSA 151:2-b; midwives, governed by RSA 326-D; psychologists, governed by RSA 329-B; allied health professionals, governed by RSA 328-F; dentists, governed by RSA 317-A; mental health practitioners governed by RSA 330-A; community mental health providers employed by community mental health programs pursuant to RSA 135-C:7; alcohol and other drug use professionals, governed by RSA 330-C; and dietitians, governed by RSA 326-H shall be authorized to provide consultation services or follow-up care via telehealth to a patient who previously received services from the provider in the state where the provider is licensed.

VII. Nothing in this section shall limit a provider's ability to diagnose, assess, or treat an individual patient.

310:8 License Renewals; Lapse.

I. The executive director of the office of professional licensure and certification shall issue licenses, as set forth in RSA 310:4, to applicants meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

II. Licenses shall be valid for 2 years from the date of issuance, except that timely and complete application for license renewal by eligible applicants shall continue the validity of the licenses being renewed until the office has acted on the renewal application.

III. Applicants shall submit completed applications for renewal, the renewal fee, and any supporting documents required for that renewal on or before the expiration of the license. Licenses shall lapse when completed renewal applications, renewal fee, and supporting documents have not been filed by the expiration of the license and the holders of a lapsed license are not authorized to practice until the licenses have been reinstated. Holders of lapsed licenses shall not be able to renew, but shall be eligible to reinstate licenses by submitting an application and meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

IV. The office of professional licensure and certification shall provide licensees, at least 2 months before the date of expiration of their license, with notice of the need to complete their renewal applications. Failure to receive notice shall not relieve any licensee of the obligation to renew their license, comply with the rules of the office, the rules of the board, or this section.

Timeliness of submission of renewal applications shall be evidenced by the date stamp of receipt, or for applications submitted electronically the electronic time stamp of submission.

V. Upon the request of a licensee who is a member of any reserve component of the armed forces of the United States or the national guard and is called to active duty, the office of professional licensure and certification shall place the person's license on inactive status. The license may be reactivated within one year of the licensee's release from active status by payment of the renewal fee and with proof of completion of the most current continuing education requirement unless still within the renewal period.

310:9 Complaints and Investigations.

I. Allegations of professional misconduct shall be brought in accordance with RSA 332-G.

II. Upon receipt of an allegation of professional misconduct, the office shall determine whether the allegation states a viable claim. If the office determines that the allegation is not viable, it shall make a recommendation to the board for dismissal. The board shall review the office's recommendation and dismiss the allegation if it determines that the allegation does not state a claim of professional misconduct.

III. Notwithstanding any other law to the contrary, the office shall investigate allegations of misconduct by licensees (a) upon its own initiative or (b) upon written complaint alleging misconduct of a licensed, or unlicensed, individual or entity of a profession regulated under the office.

IV. Allegations of misconduct received by the office, information and records acquired by the office during an investigation, and reports and records made by the office because of its investigation, shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A, unless such information subsequently becomes part of a public disciplinary hearing. However, the office may disclose information acquired in an investigation to law enforcement or licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

V. To carry out investigations, the executive director is authorized to:

(a) Retain qualified experts that have sufficient knowledge on appropriate statutes or professions and their practices.

(b) Conduct inspections of places of business of a profession regulated under the office.

(c) Issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(1) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(2) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(3) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(4) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. When an allegation of misconduct is determined to be unfounded after an investigation, the board shall dismiss the allegation and explain in writing to the complainant and the licensee its reason for dismissing the complaint. The office shall retain all information concerning investigations in accordance with the retention policy established by the office.

VII. Subject to the limitations of RSA 329-B:26 and RSA 330-A:32, the office shall obtain, handle, archive, and destroy mental health and psychological records as follows:

(a) If a client or patient owning a privilege is the person who has made a complaint against a licensee, the office may access the records of such client or patient. The complaint form provided by the office and initial follow-up correspondence shall clearly indicate that the submission of the complaint by the client or patient who is the owner of the privilege shall override the privacy of that record for the purposes of the office's confidential investigation and proceedings. The client or patient's identity shall not be disclosed to the public in any manner or in any proceeding of the board without his or her consent. If the client or patient named in the complaint is a child, the legitimate assertion of the privilege by one natural or adoptive parent or legal guardian is sufficient for this paragraph to apply. The office may act on that parent or guardian's initiation of complaint regardless of the objection of the other parent or guardian.

(b) If the person who has made the allegations against the licensee is not the owner of the privilege for the records of the client or patient named in the complaint whose treatment is under investigation by the office, the records for investigation shall be treated as follows:

(1) When the office reviews the initial complaint and upon all further reviews of the case by the office or the board, the identity of the named client or patient shall be redacted from the documents reviewed.

(2) The names of clients or patients may be made available only to office staff and consultants assigned to investigate or adjudicate the matter, and in instances where the board has decided to proceed with discipline, to board members for purposes of determining recusal issues as described in subparagraph (f).

(3) The record of a client or patient under this subparagraph that has been specifically named in a complaint may be obtained by office staff as specified:

(A) Office staff and consultants may request permission from the client or patient to obtain the record for the investigation, informing the client or patient about the bounds of confidentiality of such records and the nature of the investigative process. If the client or patient grants permission, office staff may obtain the copies of the record.

(B) If the client or patient denies permission for access to the record, the office may only obtain the record pursuant to a court order.

(4) Personally identifiable information pertaining to a client or patient under this subparagraph shall remain known only to staff and consultants assigned to the matter, which may include an employee of the office's investigations bureau, an employee of the office's prosecutions bureau, professional conduct investigator, the board administrator, and only those additional investigative assistants as the office's investigation team deems necessary to accomplish the investigation of the complaint.

(5) All communication beyond the office staff and consultants, or the board, pertaining to these clients or patients shall be conducted without the use of personally identifiable information.

(6) The identity of a client or patient shall not be disclosed to the public in any manner or in any proceeding of a board without his or her consent.

(c) Records of clients or patients who are not named in the initial complaint shall be treated as follows:

(1) If office staff and consultants assigned to the matter wish to obtain records of, or contact, clients or patients not named in the initial complaint, they shall make a request to the board with reasons for the request, specify the scope of cases and types of records requested, and state the name of the individual for whom authorization is requested to contact the client or patient.

(2) Upon board approval of a request pertaining to treatment of clients or patients defined in this subparagraph, the names of the clients or patients that fulfill the criteria of selection may be made available to office staff and consultants for purposes of determining whether recusal issues pertain to their selection for the investigation as described in subparagraph (f).

(3) If the board approves an investigation into client or patient cases who are not named in the original complaint, the board shall specify whether the clients or patients may be contacted directly.

(4) For records requested under this subparagraph, the keeper of the record shall be instructed to provide records that are redacted of personally identifiable information as defined in subparagraph (g). Each record shall be marked with an identifying code and the keeper of the record shall provide to the office's staff and consultants the contact information for corresponding clients or patients.

(5) The office shall store in a secure manner the list of these client or patient codes with corresponding contact information.

(6) If office staff and consultants have just cause to verify redacted copies against originals records of specified cases they shall request permission of the board, giving reason for the request. Upon board approval, office staff and consultants may have access to the identified unredacted records, which may be viewed at a time and location of their choosing. Office staff and

consultants may request a copy of the identified original records be sent to the office. Copies and corrections to the redacted records may be made by the office staff and consultants, after which any identified unredacted copies shall be destroyed and original records returned to the keeper of the records.

(7) Office staff and consultants contacting the clients or patients pursuant to subparagraph (c)(1) shall request permission from the clients or patients to conduct an interview, include an explanation that the individual(s) may grant or refuse permission for such interview, and explain there are no adverse personal consequences of any kind for refusal to grant permission or for withdrawing permission at any time during the interview. Office staff and consultants may inform the individual(s) that refusal to participate may prevent the investigation from proceeding or reaching a satisfactory conclusion.

(8) The identity of each client or patient shall be redacted from any documents reviewed by the board.

(9) The identity of a client or patient defined in this subparagraph shall not be disclosed to the public in any manner or in any proceeding of the board without the client or patient's consent.

(d) Mental health or psychological records obtained through subparagraphs (a)-(c) shall be archived or destroyed at the conclusion of the matter in accordance with a retention schedule established by the office. The identification and contact information collected during the investigation for clients or patients other than a client or patient complainant shall be destroyed.

(e) For the purposes of this paragraph:

(1) "Record" means health or psychological information collected from or about an individual that:

(A) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) Relates to the individual, the past, present, or future physical or mental health or psychological condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(2) "Personally identifiable information" means information which identifies an individual or which a reasonable person would believe could be used to identify an individual, including common and uncommon identifiers, including but not limited to, name, address, birth date, social security number, court docket number, insurance policy number, and any other identifiers of an individual and of the individual's known relatives, household members, and employers that a reasonable person would believe could identify the individual to whom the record pertains.

(f) In the process of determining recusal, the security of the client or patient's identity shall be preserved as follows:

(1) Before engaging in any matter as defined in subparagraph (a), board members, investigators, and others as specified in this paragraph with access to case files shall first review the name of the client/patient before proceeding. If a conflict of interest is identified, that person shall recuse himself or herself from the matter.

(2) Before engaging in any cases defined in subparagraph (b), office staff and consultants at the onset of the investigation, board members at the time of reviewing the findings of the investigation, and any others authorized to have access to the case prior to commencing review of such cases shall first determine if there is a need for recusal.

(3) If a client or patient as defined in subparagraph (b) or (c) testifies or intends to attend the hearing of the case involving his or her treatment and the board may see the client or patient inadvertently or directly, the client or patient's name shall be revealed to the board members so they may have the opportunity to recuse themselves prior to the proceeding. The client or patient shall be informed beforehand of such disclosure.

(4) For recusals pertaining to clients or patients under subparagraph (c) of this section, office staff and consultants shall review the names of the clients or patients who qualify for the scope of investigation as approved by the board, to determine if there is cause for recusal.

(5) When board members review any report of investigation that includes case information pertaining to clients or patients as defined in subparagraph (c), they shall review their names prior to reading such reports in the following manner:

(A) If there are 10 or fewer cases with individual clinical information presented, then the methods of testing for recusal shall follow the recusal procedures in subparagraph (f)(2).

(B) When the report includes clinical information pertaining to more than 10 cases, the recusal methods of subparagraph (f)(4) shall apply.

(C) When such client or patients' information is presented only in aggregate form, no recusal is required.

(g) A keeper of the record shall comply with board and the office's investigative team's requests for client or patient records and all redaction requirements specified under this section. The board may seek a court order to enforce valid requests for such records under this section.

VIII. Any board member who has had a personal relationship or has worked in a professional capacity with a complainant or with a licensee against whom a complaint has been filed or whose personal or professional views regarding the licensee or the complainant could prevent the board member from being impartial in considering the complaint shall recuse himself or herself from any investigation or disciplinary action against such licensee.

310:10 Disciplinary Proceedings; Non-Disciplinary Remedial Proceedings.

I. Disciplinary proceedings shall be open to the public in accordance with RSA 91-A. All non-disciplinary remedial proceedings shall be exempt from the provisions of RSA 91-A, except that the board shall disclose any final remedial action that affects the status of a license, including any

non-disciplinary restrictions imposed. The docket file for each such proceeding shall be retained in accordance with the retention policy established by the office of professional licensure and certification.

II. Boards shall conduct disciplinary and non-disciplinary remedial proceedings in accordance with procedural rules adopted by the executive director.

III. The office shall employ sufficient administrative prosecutors qualified by reason of education, competence, and relevant experience to serve as hearing counsel in all disciplinary proceedings before the boards.

IV. The office shall employ sufficient personnel qualified by reason of education, competence, and relevant experience to serve as presiding officer in all disciplinary or non-disciplinary remedial proceedings before the boards. The presiding officer shall have the authority to preside at such hearing and to issue oaths or affirmations to witnesses, rule on questions of law and other procedural matters, and issue final orders based on factual findings of the board.

V. The presiding officer in disciplinary and non-disciplinary remedial proceedings may issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(a) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(b) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(c) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(d) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. In carrying out disciplinary or non-disciplinary remedial proceedings, the presiding officer, as defined in RSA 541-A, shall have the authority to hold pre-hearing conferences, which shall be exempt from the provisions of RSA 91-A; to administer oaths and affirmations; and, to render legal opinions and make conclusions of law.

VII. Boards shall be the triers of fact in all disciplinary and non-disciplinary remedial proceedings, and shall determine sanctions, if any.

VIII. At any time before or during disciplinary or non-disciplinary remedial proceedings, complaints may be dismissed or disposed of, in whole or in part:

(a) By written settlement agreement approved by the board, provided that any complainant shall have the opportunity, before the settlement agreement has been approved by a board, to comment on the terms of the proposed settlement; or

(b) Through an order of dismissal for default, for want of jurisdiction, or failure to state a proper basis for disciplinary action.

IX. Disciplinary action taken by the board at any time, and any dispositive action taken after the issuance of a notice of public hearing, shall be reduced to writing and made available to the public. Such decisions shall not be public until they are served upon the parties, in accordance with rules adopted by the executive director.

X. Except as otherwise provided by RSA 541-A:30, the board shall furnish the respondent at least 15 days' written notice of the date, time and place of a hearing. Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party.

XI. Neither the office nor the boards shall have an obligation or authority to appoint attorneys or pay the fees of attorneys representing licensees or witnesses during investigations or disciplinary or non-disciplinary remedial proceedings.

XII. No civil action shall be maintained against the office or the board, or any member of the board, office, or its agents or employees, against any organization or its members, or against any other person for or by reason of any statement, report, communication, or testimony to the board or determination by the board or office in relation to proceedings under this chapter.

XIII. For matters involving individuals identified in mental health records, testimony by client or patients shall be handled with utmost regard for the privacy and protection of their identity from public disclosure.

(a) A noncomplainant client or patient shall not be compelled to testify at a hearing.

(b) If a noncomplainant client or patient testifies at a hearing, the identity of the individual shall be screened from the public view and knowledge, although the respondent and attorneys shall be within the view of the client patient. The board may view the client or patient. The public's access to view or information that would identify the client or patient shall be restricted. The hearing may be closed to the public for the duration of the client or patient's testimony, at the board's discretion.

(c) If a complainant client or patient requests the privacy safeguards in subparagraph (b), the presiding officer may make such accommodations.

310:11 Licensing Proceedings.

I. Boards shall conduct licensing proceedings in accordance with procedural rules adopted by the executive director.

II. If a board denies a license following a licensing proceeding, its final decision shall be issued in accordance with RSA 541-A:35.

III. In carrying out licensing proceedings, the board shall have the authority to:

(a) Hold pre-hearing conferences exempt from the provisions of RSA 91-A;

(b) Appoint a board member or other qualified person as presiding officer; and

(c) Administer, and authorize an appointed presiding officer to administer, oaths and affirmations.

IV. Neither the office nor the boards shall have an obligation or authority to appoint or pay the fees of attorneys representing licensees, certified individuals, or witnesses during investigations or adjudicatory proceedings.

V. Licensing proceedings shall be open to the public in accordance with RSA 91-A.

310:12 Sanctions.

I. Upon making an affirmative finding that a licensee has committed professional misconduct, boards may take disciplinary action in any one or more of the following ways:

(a) By reprimand.

(b) By suspension of a license for a period of time as determined reasonable by the board.

(c) By revocation of license.

(d) By placing the licensee on probationary status. The board may require the person to submit to any of the following:

(1) Regular reporting to the board concerning the matters which are the basis of the probation.

(2) Continuing professional education until a satisfactory degree of skill has been achieved in those areas which are the basis of probation.

(3) Submitting to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

(4) Practicing under the direct supervision of another licensee for a period of time specified by the board.

(e) By assessing administrative fines in amounts established by the board which shall not exceed $3,000 per offense, or, in the case of continuing offenses, $300 for each day that the violation continues, whichever is greater.

II. The board may issue a non-disciplinary confidential letter of concern to a licensee advising that while there is insufficient evidence to support disciplinary action, the board believes the licensee or certificate holder should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the board may result in action against the licensee's license. This letter shall not be released to the public or any other licensing authority, except that the letter may be used as evidence to establish a relevant pattern or course of conduct in subsequent adjudicatory proceedings by the board.

III. In the case of sanctions for discipline in another jurisdiction, the decision of the other jurisdiction's disciplinary authority may not be collaterally attacked and the board may impose any

of the sanctions set forth in this chapter, but shall provide notice and an opportunity to be heard prior to imposing any sanctions.

IV. In cases involving imminent danger to public health, safety, or welfare, a board may order immediate suspension of a license or certification pending an adjudicative proceeding before the board to determine if the suspension should remain in place pending final adjudication of the matter, and which shall commence not later than 10 working days after the date of the order suspending the license unless the licensee or certified individual agrees in writing to a longer period. In such cases of immediate danger, the board shall comply with RSA 541-A:30.

V. For any order issued in resolution of a disciplinary proceeding by the board, where the board has found misconduct sufficient to support disciplinary action, the board may require the licensee or certificate holder who is the subject of such finding to pay the office a sum not to exceed the reasonable cost of investigation and prosecution of the proceeding. This sum may be imposed in addition to any otherwise authorized administrative fines levied by the board as part of the penalty. The investigative and prosecution costs shall be assessed by the office and any sums recovered shall be credited to the office's fund and disbursed by the office for any future investigations of complaints and activities that violate this chapter or rules adopted under this chapter.

310:13 Unlicensed Practice. Whoever, not being licensed or otherwise authorized to practice according to the laws of this state, advertises oneself as engaging in a profession licensed or certified by the office of professional licensure and certification, engages in activity requiring professional licensure, or in any way holds oneself out as qualified to do so, or calls oneself a licensed professional, or whoever does such acts after receiving notice that such person's license to practice has been suspended or revoked, is engaged in unlawful practice. After providing notice and opportunity to be heard, and upon making an affirmative finding of unlawful practice, the board may impose a fine not to exceed the amount of any gain or economic benefit that the person derived from the violation, or up to $10,000 for each offense, whichever amount is greater. Each violation of unlicensed or unlawful practice shall be deemed a separate offense. The board, the state's attorney general, or a prosecuting attorney of any county or municipality where the act of unlawful practice takes place may maintain an action to enjoin any person or entity from continuing to do acts of unlawful practice. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to any board.

310:14 Rehearing; Appeals.

I. Any person who has been denied a license or certification by the office or a board shall have the right to a rehearing before the appropriate board. Requests for a rehearing shall be made in writing to the appropriate board within 30 days of receipt of the original final decision.

II. Any person who has been disciplined by a board shall have the right to petition in writing for a rehearing within 30 days of receipt of the original final decision.

III. Appeals from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541. No sanction shall be stayed by the board during an appeal.

310:15 Oversight Committee; Establishment; Purpose.

I. There shall be an oversight committee for the office of professional licensure and certification (OPLC) consisting of the following members:

(a) Three members of the house executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the speaker of the house of representatives.

(b) Two members of the senate executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the president of the senate.

II. Membership on the oversight committee shall be for the duration of the biennium and shall be coterminous with membership in the general court. The first meeting of the committee shall be called by the first-named house member. The committee shall elect a chair from among the members at the first meeting of each biennium. Meetings shall be called as needed, but at least quarterly. The members of the committee shall receive mileage at the legislative rate when performing the duties of the committee. Three members of the committee shall constitute a quorum.

III. The committee shall provide legislative oversight and informational meetings on the policies and rules of the office as brought to its attention by office personnel, legislators, members of the boards, councils, committees, and commissions overseen by OPLC, and members of the professions under the jurisdiction of OPLC. The committee's work shall include analyzing the division of duties between administration and the boards in order to promote more productive and efficient interactions.

IV. The oversight committee shall recommend legislation deemed necessary to correct issues it identifies.

310:16 Military Service Members and Spousal Temporary Licensure. The office of professional licensure and certification shall issue temporary licenses to a member of the armed forces or their spouse, if the applicant holds a current, valid unencumbered occupational or professional license in good standing issued by a state or territory of the United States, in accordance with rules adopted by executive director of the office of professional licensure and certification under RSA 541-A, provided that the applicant meets the requirements of this section, within 30 days of having received an application or, if the applicant is subject to a criminal records check, within 14 days of having received the results of a criminal records check. The rules shall contain the following provisions:

I. The applicant shall obtain a temporary license for a period of not less than 180 days while completing any requirements for licensure in New Hampshire so long as no cause for denial of a license exists under this title, or under any other law.

II. The license applicant must submit a notarized affidavit affirming, under penalty of law, that the applicant is the person described and identified in the application, that all statements made

on the application are true and correct and complete, that the applicant has read and understands the requirements for licensure and certifies that they meet those requirements, and that the applicant is in good standing in all jurisdictions in which the applicant holds or has held a license.

III. The applicant may request a one-time 180-day extension of the temporary license if necessary to complete the New Hampshire licensing requirements. The applicant must make this request within 15 days prior to the temporary license's expiration date.

IV. All individuals licensed under this section shall be subject to the jurisdiction of the state licensing body for that profession.

2 Dedicated Fund; Office of Professional Licensure and Certification. Amend 6:12, I(b)(340) to read as follows:

(340) Moneys deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

3 Transition; Administrative Rules; Recodification of Office of Professional Licensure and Certification. The rules adopted for any occupation or profession under the office of professional licensure and certification under former RSA 310-A:1-a in effect on the effective date of this act shall, to the extent practicable, continue and be effective and apply to such respective occupation or profession until they expire or are amended or repealed.

4 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:16-b, III to read as follows:

III. The mechanical licensing board with the approval of the executive director of the office of professional licensing and certification shall adopt rules, which shall not be subject to RSA 541-A, relative to the establishment of fees for voluntary certification under this section. After the first year of this program, such fees shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the previous fiscal year. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

5 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:28, II to read as follows:

II. Notwithstanding RSA 21-G:9, the board, with an affirmative vote of at least 4 of the appointed board members, in consultation with the office of professional licensure and certification and with the approval of the executive director of the office of professional licensure and certification, shall establish application fees for licensure, for renewal, for late renewal, and for reinstatement of licenses under this subdivision pursuant to RSA 541-A. Such licensing fees including any endorsements shall not exceed $500 per individual. The board shall also adopt fees for replacement licenses, for certified copies and reports, for inspections done pursuant to this subdivision, for letters of verification requested by individuals or jurisdictions relating to licensure and certification, and for transcribing and transferring records and other services. The fee for examination by third parties shall be separate from the fees established by the board. Fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the

direct operating expenses of the board budgeted for the biennium in which they will apply. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

6 Reference Changed; Accountancy. Amend RSA 309-B:4, III to read as follows:

III. The office of professional licensure and certification shall establish fees for examination of applicants, for licenses, for certificates of authorization, for reissuance of licenses, for renewal and reinstatement of licenses and certificates to practice under this chapter, for late renewals, for verification of licensure or examination, and for transcribing and transferring records and other services. All moneys collected by the office of professional licensure and certification from fees authorized under this chapter shall be received and accounted for by the office of professional licensure and certification, shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***. Administration expenses shall be limited to the funds collected and may include, but shall not be limited to, the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the board or its committees; all legal proceedings taken under this chapter for the enforcement of this chapter; and educational programs for the benefit of the public or licensees and their employees.

7 Reference Changed; Architects. Amend RSA 310-A:32, II to read as follows:

II. In adopting any rule under this section, the board ***shall*** consult with the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310***.

8 Reference Changed; Body Art. Amend RSA 314-A:2, II to read as follows:

II. There shall be a fee for an initial license and a renewal license. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310***.

9 Reference Changed; Chiropractic. Amend RSA 316-A:14-a to read as follows:

316-A:14-a Licenses and Certificates. Each applicant who qualifies under this chapter and who attains a minimum grade of 70 percent upon the examination given under RSA 316-A:13, I shall receive a license from the board as a chiropractor permitted to practice in New Hampshire. Each applicant who qualifies under this chapter shall pay a fee for an initial license and a license renewal. The initial license and license renewals shall be valid for the terms established under RSA [~~310-A:1-h~~] ***310***.

10 Reference Changed; Dentists Professional Health. Amend RSA 317-A:16-a, VII to read as follows:

VII. Rules governing the professional health program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

11 Reference Changed; Pharmacists. Amend RSA 318:1, XV-a to read as follows:

XV-a. "Practitioner-patient relationship" means a medical connection between a licensed practitioner and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the health care practitioner: (i) verifies the identity of the

patient receiving health care services through telemedicine; (ii) discloses to the patient the health care practitioner's name, contact information, and the type of health occupation license held by the health care practitioner; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A health care practitioner shall complete or review a history, a diagnosis, a treatment plan appropriate for the practitioner's scope of practice, and documentation of all prescription drugs including name and dosage. A practitioner may prescribe for a patient whom the practitioner does not have a practitioner-patient relationship under the following circumstances: for a patient of another practitioner for whom the prescriber is taking call; for a patient examined by another New Hampshire licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment. The definition of a practitioner-patient relationship shall not apply to a practitioner licensed in another state who is consulting to a New Hampshire licensed practitioner with whom the patient has a relationship.

12 Reference Changed; Nurse Practice Act. Amend RSA 326-B:36-a, VI-a, (c) to read as follows:

(c) Rules governing this program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

13 Reference Changed; Acupuncture. Amend RSA 328-G:9, IX to read as follows:

IX. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310***.

14 Reference Changed; Reflexologists. Amend RSA 328-H:2, IV-a to rad as follows:

IV-a. "Executive director" means the executive director of the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310***.

15 Reference Changed; Physicians. Amend RSA 329:1-c to read as follows:

329:1-c Physician-Patient Relationship. "Physician-patient relationship" means a medical connection between a licensed physician and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the physician: (i) verifies the identity of the patient receiving health care services through telemedicine; (ii) discloses to the patient the physician's name, contact information, and the type of health occupation license held by the physician; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A physician shall complete or review a history, a diagnosis, a treatment plan appropriate for the licensee's medical specialty, and documentation of all prescription drugs including name and dosage. A licensee may prescribe for a patient whom the licensee does not have a physician-patient relationship under the following circumstances: writing admission orders for a newly hospitalized patient; for a patient of another licensee for whom the prescriber is taking call; for a patient examined by a physician assistant, nurse practitioner, or other licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's

first appointment or when providing limited treatment to a family member in accordance with the American Medical Association Code of Medical Ethics. Prescribing drugs to individuals without a physician-patient relationship shall be unprofessional conduct subject to discipline under RSA 329:17, VI. The definition of a physician-patient relationship shall not apply to a physician licensed in another state who is consulting to a New Hampshire licensed physician with whom the patient has a relationship.

16 Reference Changed; Physicians. Amend RSA 329:1-d, I to read as follows:

I. "Telemedicine" means the use of audio, video, or other electronic media and technologies by a physician in one location to a patient in a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions as defined in RSA [~~310-A:1-g~~] ***310***.

17 Reference Changed; Physicians Health. Amend RSA 329:13-b, VII to read as follows:

VII. Rules governing the program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(b)(4)~~] ***310***.

18 Reference Changed; Administrative Procedures. Amend 541-A:29-a, I to read as follows:

I. If an agency fails to take any required action on an application, petition, or request within the time limits prescribed by RSA 541-A:29 or any other provisions of law, the application, petition, or request shall be deemed approved and any permit, approval or other item requested shall be deemed granted to or received by the applicant, petitioner, or requestor, except as provided in RSA [~~310-A:1-d, V~~] ***310***.

19 Reference Changed; Planning Boards. Amend RSA 676:4-b, V to read as follows:

V. Any person who becomes aware of a failure by a third party inspector to report properly and promptly a construction defect or deviation from the terms of the approval or approved project plans, may file a written complaint to the [~~joint board established under RSA 310-A:1~~] ***office of professional licensure and certification under RSA 310*** for possible [~~peer review or~~] disciplinary action.

20 Effective Date. This act shall take effect July 1, 2023.

LBA
23-0606
Amended 4/12/23

HB 655-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2023-0807h)

AN ACT relative to the office of professional licensure and certification.

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	Indeterminable	Indeterminable
Expenditures	$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	[X] General [ ] Education [ ] Highway [X] Other - Office of Professional Licensure and Certification Fund			

METHODOLOGY:

This bill redefines the roles and responsibilities of the Office of Professional Licensure and Certification (OPLC) for the boards and commissions. OPLC issues licenses, sets fees, provides legal and investigatory services, and presents administrative rules as advised by the boards and commissions. The bill consolidates administrative authority for OPLC in a new chapter and repeals redundant provisions of law. This bill establishes two new unclassified attorney positions. The bill also modifies the existing OPLC Fund further defining it to be a separate dedicated, nonlapsing fund. It also establishes any funds in excess of $5,000,000 shall lapse to the General Fund at the close of each biennium. Currently, any funds remaining in the OPLC fund at the end of the biennium lapse into the General Fund.

The OPLC states the majority of the language in the bill is currently in law under RSA 310-A: and should have a minimal impact. The OPLC states the cost of the newly established unclassified attorney positions is an indeterminable cost as it is up to the Department of Administrative Services and Department of Personnel to determine what labor grade the positions would be. However, the OPLC assumes the positions would be comparable to other agencies and would be between a labor grade FF and a labor grade GG which is between $137,644 ($68,822 x two positions) at the lowest and $221,364 ($110,682 x two positions) at the highest labor GG and the highest step per a year. The OPLC states the impact from changing the OPLC fund from lapsing at the end of the biennium to non-lapsing, to the extent the funds do not exceed $5,000,000, will not necessarily have a fiscal impact but will rather shift where the funds end up at the end of the biennium. This bill will reduce the amount lapsed to the General Fund at the end of the biennium, but it will increase the amount of funds in the OPLC

fund at the end of the biennium. OPLC indicates by not lapsing funds their office will be able to lower licensing and certification fees.

Lastly, OPLC states RSA 310-A:1 may need to be repealed as this bill is intended to remove and replace that language and they may contradict each other. Additionally, RSA 310:3, V, states the salaries of the executive director and other unclassified individuals shall be as specified in RSA 94:1-a, but the list of unclassified employees does not include the new unclassified attorney positions created under RSA 310:3, IV.

Since FY 2019, the OPLC has lapsed $3.3 million to $4.1 million back to the General Fund at the end of each fiscal year. the end of each fiscal year. Chapter 91, Laws of 2021, changed the laws to have the funds lapse at the end of the biennium starting with the FY 2022-2023 biennium. Based on the historical trends, the OPLC would be expected to lapse between $6.5 million to $8 million back to the General Fund at the end of this biennium. This bill would allow the OPLC to retain the funds up to $5,000,000, thus decreasing the amount to the General Fund.

AGENCIES CONTACTED:

Office of Professional Licensure and Certification

CHAPTER 112
HB 655-FN - FINAL VERSION

16Mar2023... 0807h

2023 SESSION

23-0606
09/10

HOUSE BILL ***655-FN***

AN ACT relative to the office of professional licensure and certification.

SPONSORS: Rep. C. McGuire, Merr. 27; Rep. Goley, Hills. 21; Rep. Merchant, Sull. 6; Rep. Ulery, Hills. 13; Sen. Carson, Dist 14; Sen. Lang, Dist 2

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

The bill consolidates administrative authority for the office of professional licensure and certification (OPLC) in a new chapter of law.

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.

CHAPTER 112
HB 655-FN - FINAL VERSION

16Mar2023... 0807h

23-0606
09/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the office of professional licensure and certification.

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

112:1 New Chapter; Office of Professional Licensure and Certification. RSA 310 is repealed and reenacted to insert the following new chapter:

CHAPTER 310

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

310:1 Purpose. The purpose of the office of professional licensure and certification is to promote efficiency and economy in the administration of the business processing, record keeping, and other administrative and clerical operations of professional licensing and certification boards, including both professional healthcare licensing and professional technical licensing. The individual licensing and certification boards that are organized under the office of professional licensure and certification have specialized knowledge and experience and are separate and distinct for the purpose of regulating their various professions. Notwithstanding the unique regulatory role of each board, the legislature finds that there are opportunities for improving efficiency and customer service by providing for the joint administration of the boards' administrative, clerical, business processing, and record keeping functions. Except as provided in this section, the licensing and certification boards and entities organized under the office of professional licensure and certification shall exercise the powers, duties, functions, and responsibilities granted by statute.

310:2 Definitions; Establishment.

I. In this chapter, and as appropriate when used in any chapter listed in paragraph II:

(a) "Board" means a board, council, commission, committee, or other regulatory body with jurisdiction over professions listed in paragraph II.

(b) "Lapse" when referring to licenses shall mean expire.

(c) "License" shall include licenses, certifications or registrations required to practice a regulated profession.

(d) "Office" or "OPLC" shall mean the office of professional licensure and certification.

II. The office of professional licensure and certification shall consist of the division of licensing and board administration and the division of enforcement, under the executive director as the administrative head of the agency. The boards within the office of professional licensure and certification shall consist of:

(a) Advisory board of body art practitioners under RSA 314-A.

(b) Advisory board of court reporters under RSA 310-A:163.

(c) Advisory board of massage therapists under RSA 328-B.

(d) Advisory board of medical imaging and radiation therapy under RSA 328-J.

(e) Advisory board of recreational therapists established under RSA 326-J.

(f) Advisory board of respiratory care practitioners established under RSA 326-E.

(g) Advisory board of reflexology, structural integration, and Asian bodywork therapy under RSA 328-H.

(h) Board of accountancy under RSA 309-B.

(i) Board of acupuncture licensing under RSA 328-G.

(j) Board of architects under RSA 310-A:29.

(k) Board of barbering, cosmetology, and esthetics under RSA 313-A.

(l) Board of chiropractic examiners under RSA 316-A.

(m) Board of dental examiners under RSA 317-A.

(n) Board of directors, office of licensed allied health professionals under RSA 328-F.

(o) Board of examiners of nursing home administrators under RSA 151-A.

(p) Board of family mediator certification under RSA 328-C.

(q) Board of home inspectors under RSA 310-A:186.

(r) Board of land surveyors under RSA 310-A:55.

(s) Board of landscape architects under RSA 310-A:142.

(t) Board of licensed dietitians under RSA 326-H.

(u) Board of licensing for alcohol and other drug use professionals under RSA 330-C.

(v) Board of licensing for foresters under RSA 310-A:100.

(w) Board of manufactured housing under RSA 205-A:25.

(x) Board of medicine under RSA 329.

(y) Board of mental health practice under RSA 330-A.

(z) Board of natural scientists under RSA 310-A:81.

(aa) Board of nursing under RSA 326-B.

(bb) Board of pharmacy under RSA 318.

(cc) Board of podiatry under RSA 315.

(dd) Board of psychologists under RSA 329-B:3.

(ee) Board of professional engineers under RSA 310-A:3.

(ff) Board of professional geologists under RSA 310-A:120.

(gg) Board of psychologists under RSA 329-B.

(hh) Board of registration of funeral directors and embalmers under RSA 325.

(ii) Board of registration in optometry under RSA 327.

(jj) Board of registration of medical technicians under RSA 328-I.

(kk) Board of septic system evaluators under RSA 310-A:206.

(ll) Board of veterinary medicine under RSA 332-B.

(mm) Electricians' board under RSA 319-C.

(nn) Electrology advisory committee under RSA 314.

(oo) Genetic counselors governing board established under RSA 328-F and RSA 326-K.

(pp) Governing board of athletic trainers established under RSA 328-F and RSA 326-G.

(qq) Guardians ad litem board under RSA 490-C.

(rr) Installation standards board under RSA 205-D.

(ss) Mechanical licensing board under RSA 153:27-a.

(tt) Midwifery council under RSA 326-D.

(uu) Naturopathic board of examiners under RSA 328-E.

(vv) Occupational therapy governing board established under RSA 326-F; and RSA 326-C.

(ww) Physical therapy governing board established under RSA 328-F and 328-A.

(xx) Real estate appraiser board under RSA 310-B.

(yy) Real estate commission under RSA 331-A.

(zz) Registration of ophthalmic dispensers under RSA 327-A.

(aaa) Speech-language pathology and hearing care provider governing board established under RSA 328-F and 326-F.

(bbb) Assessing standards board under RSA 21-J:14-a.

310:3 Executive Director; Directors; Unclassified Personnel.

I. The executive director of the office of professional licensure and certification shall be an unclassified employee of the state. The executive director shall be appointed by the governor, with consent of the council, and shall serve for a term of 4 years. The executive director shall be qualified to hold that position by reason of professional competence, education, and experience. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

II. The executive director shall nominate for appointment by the governor and council the unclassified positions of director of the division of licensing and board administration and director of the division of enforcement. Each director shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director for a term of 4 years.

III. The executive director shall nominate for appointment by the governor and council the unclassified position of chief pharmacy compliance investigator and 2 unclassified pharmacy investigator positions. Each inspector shall be qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

IV. The executive director shall nominate for appointment by the governor and council the unclassified positions of agency chief legal officer and board chief legal officer. Each officer shall be

qualified for the position by reason of education, competence, and experience and shall serve at the pleasure of the executive director.

V. The salaries of the executive director, each division director, each legal officer, the chief pharmacy investigator, and each pharmacy investigator shall be as specified in RSA 94:1-a.

310:4 Duties of Executive Director.

I. The executive director, as the administrative head of the office of professional licensure and certification, may employ such clerical or other assistants as are necessary for the proper performance of the office's work and may make expenditures for any purpose which are reasonably necessary, according to the executive director, for the proper performance of the office's duties under this chapter. The office shall contract for the services of investigators, presiding officers, legal counsel, and industry experts as necessary and in consultation with the appropriate board.

II. The executive director of the office of professional licensure and certification shall be responsible for:

(a) Supervision of the division directors and chief legal officers.

(b) Employment of personnel needed to carry out the functions of the office and the boards.

(c) The examination, processing and approval or denial of an application for licensure, certification, or registration for all license types governed by the office or a board listed in RSA 310:2, based on set objective standards developed by the boards, and in accordance with RSA 541-A.

(d) The investigation of all complaints of professional misconduct in accordance with RSA 310:9.

(e) Maintenance of the official record of the office and the boards in accordance with the retention policy established by the office.

(f) Drafting and coordinating rulemaking for all boards within the office in accordance with RSA 541-A, with the advice and recommendations of the boards.

(g) Maintaining the confidentiality of information, documents, and files in accordance with RSA 91-A.

(h) Submitting, by November 1, to the speaker of the house of representatives, the president of the senate, the chairpersons of the house and senate executive departments and administration committees, and the governor, an annual report summarizing the transactions of the preceding fiscal year and a complete statement of the receipts and expenditures of the office of professional licensure and certification. The report shall be posted on the website of the office of professional licensure and certification immediately upon submission.

(i) Notwithstanding any other provisions of law to the contrary, for the performance of the administrative, clerical, and business processing responsibilities under paragraph II(b), the office and all boards shall accept electronic signatures and scans of signed documents in addition to original signatures.

310:5 Administration of the Office of Professional Licensure and Certification; Funding.

I. The executive director of the office of professional licensure and certification shall establish and collect all license, certification, and renewal fees, as well as any necessary administrative fees for each professional regulatory board administered by the office. Such fees shall be sufficient to produce estimated revenues up to 125 percent of the total operating expenses for the office, as determined by averaging the operating expenses for the office for the previous 2 fiscal years.

II. There is hereby established the office of professional licensure and certification fund into which the fees collected under paragraph I shall be deposited. The fund shall be a separate, dedicated, nonlapsing fund, continually appropriated to the office for the purpose of paying all costs and salaries associated with the office. Funds in excess of $5,000,000 shall lapse to the general fund at the close of each biennium.

III. There is hereby established a dedicated, nonlapsing fund to be known as the New Hampshire health professionals' program administration fund for the administration of the professionals' health program, including the professionals' health program in RSA 329:13-b, the alternative recovery monitoring program in RSA 326-B:36-a, and the impaired pharmacist program set forth in RSA 318:29-a, with a fee charged to licensees at the time of initial licensure, renewal licensure, or reinstatement of licensure, for the board of medicine, board of dental examiners, pharmacy board, board of nursing, board of veterinary medicine, board of psychologists, board of chiropractic examiners, board of mental health practice, midwifery council, board of registration in optometry, board of podiatry, board of licensed dietitians, and board of licensing for alcohol and other drug use professionals, not to exceed 125 percent of the actual cost of providing the services. Other health and technical professions boards may be added to program at the same annual fee per licensee. The moneys in this fund shall be continually appropriated to the office.

IV. The office of professional licensure and certification shall be responsible for the financing of any interstate compact joined by the state that affects a profession governed by a board listed in RSA 310:2. Such financing shall be from funds deposited in the office of professional licensure and certification fund.

310:6 Rulemaking Authority. The executive director of the office of professional licensure and certification shall adopt rules, relative to RSA 541-A, for the following:

I. All fees set forth in RSA 310:5, with the advice and recommendations of the respective board. Fees shall be reassessed, at a minimum, every five years.

II. Such organizational and procedural rules necessary to administer the boards in the office, including rules governing the administration of complaints and investigations, hearings, disciplinary and non-disciplinary proceedings, inspections, payment processing procedures, and application procedures.

III. The rate of per diem compensation and reimbursable expenses for all boards within the office.

IV. Rules governing the professionals' health program as set forth in RSA 310:5.

V. Temporary licenses to out-of-state health care professionals who present evidence of an active license in good standing from another jurisdiction. The temporary license shall be valid for 120 days, or until the office acts on an application for full licensure, whichever happens first, and shall not be renewed, except that a complete application for full licensure before the expiration of the temporary license shall continue the validity of the temporary license until the office has acted on the application. All individuals licensed under rules adopted pursuant to this subparagraph shall be subject to the jurisdiction of the state licensing body for that profession.

310:7 Telemedicine and Telehealth Services.

I. For this section:

(a) "Asynchronous interaction" means an exchange of information between a patient and a health care professional that does not occur in real time.

(b) "Synchronous interaction" means an exchange of information between a patient and a health care professional that occurs in real time.

(c) "Telemedicine" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

(d) "Telehealth" means the use of audio, video, or other electronic media and technologies by a health care professional in one location to a patient at a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions.

II. Individuals licensed, certified, or registered pursuant to RSA 137-F; RSA 151-A; RSA 315; RSA 316-A; RSA 317-A; RSA 326-B; RSA 326-D; RSA 326-H; RSA 327; RSA 328-E; RSA 328-F; RSA 328-G; RSA 329-B; RSA 330-A; RSA 330-C; RSA 327-A; RSA 329; RSA 326-B; RSA 318; RSA 328-I; RSA 328-J may provide services through telemedicine or telehealth, provided the services rendered are authorized by scope of practice. Nothing in this provision shall be construed to expand the scope of practice for individuals regulated under this chapter.

III. Unless otherwise prescribed by statute, an out-of-state healthcare professional providing services by means of telemedicine or telehealth shall be required to be licensed, certified, or registered by the appropriate New Hampshire licensing body if the patient is physically located in New Hampshire at the time of service. This paragraph shall not apply to out-of-state physicians who provide consultation services pursuant to RSA 329:21, II.

IV. An individual providing services by means of telemedicine or telehealth directly to a patient shall:

(a) Use the same standard of care as used in an in-person encounter;

(b) Maintain a medical record;

(c) Subject to the patient's consent, forward the medical record to the patient's primary care or treating provider, if appropriate; and

(d) Provide meaningful language access if the individual is practicing in a facility that is required to ensure meaningful language access to limited-English proficient speakers pursuant to 45 C.F.R. section 92.101 or RSA 354-A, or to deaf or hard of hearing individuals pursuant to 45 C.F.R. section 92.102, RSA 521-A, or RSA 354-A.

V. Under this section, Medicaid coverage for telehealth services shall comply with the provisions of 42 C.F.R. section 410.78 and RSA 167:4-d.

VI. Physicians and physician assistants, governed by RSA 329 and RSA 328-D; advanced practice nurses, governed by RSA 326-B and registered nurses under RSA 326-B employed by home health care providers under RSA 151:2-b; midwives, governed by RSA 326-D; psychologists, governed by RSA 329-B; allied health professionals, governed by RSA 328-F; dentists, governed by RSA 317-A; mental health practitioners governed by RSA 330-A; community mental health providers employed by community mental health programs pursuant to RSA 135-C:7; alcohol and other drug use professionals, governed by RSA 330-C; and dietitians, governed by RSA 326-H shall be authorized to provide consultation services or follow-up care via telehealth to a patient who previously received services from the provider in the state where the provider is licensed.

VII. Nothing in this section shall limit a provider's ability to diagnose, assess, or treat an individual patient.

310:8 License Renewals; Lapse.

I. The executive director of the office of professional licensure and certification shall issue licenses, as set forth in RSA 310:4, to applicants meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

II. Licenses shall be valid for 2 years from the date of issuance, except that timely and complete application for license renewal by eligible applicants shall continue the validity of the licenses being renewed until the office has acted on the renewal application.

III. Applicants shall submit completed applications for renewal, the renewal fee, and any supporting documents required for that renewal on or before the expiration of the license. Licenses shall lapse when completed renewal applications, renewal fee, and supporting documents have not been filed by the expiration of the license and the holders of a lapsed license are not authorized to practice until the licenses have been reinstated. Holders of lapsed licenses shall not be able to renew, but shall be eligible to reinstate licenses by submitting an application and meeting the eligibility requirements as defined in statute, and rules adopted by each individual board.

IV. The office of professional licensure and certification shall provide licensees, at least 2 months before the date of expiration of their license, with notice of the need to complete their

renewal applications. Failure to receive notice shall not relieve any licensee of the obligation to renew their license, comply with the rules of the office, the rules of the board, or this section. Timeliness of submission of renewal applications shall be evidenced by the date stamp of receipt, or for applications submitted electronically the electronic time stamp of submission.

V. Upon the request of a licensee who is a member of any reserve component of the armed forces of the United States or the national guard and is called to active duty, the office of professional licensure and certification shall place the person's license on inactive status. The license may be reactivated within one year of the licensee's release from active status by payment of the renewal fee and with proof of completion of the most current continuing education requirement unless still within the renewal period.

310:9 Complaints and Investigations.

I. Allegations of professional misconduct shall be brought in accordance with RSA 332-G.

II. Upon receipt of an allegation of professional misconduct, the office shall determine whether the allegation states a viable claim. If the office determines that the allegation is not viable, it shall make a recommendation to the board for dismissal. The board shall review the office's recommendation and dismiss the allegation if it determines that the allegation does not state a claim of professional misconduct.

III. Notwithstanding any other law to the contrary, the office shall investigate allegations of misconduct by licensees (a) upon its own initiative or (b) upon written complaint alleging misconduct of a licensed, or unlicensed, individual or entity of a profession regulated under the office.

IV. Allegations of misconduct received by the office, information and records acquired by the office during an investigation, and reports and records made by the office because of its investigation, shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A, unless such information subsequently becomes part of a public disciplinary hearing. However, the office may disclose information acquired in an investigation to law enforcement or licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

V. To carry out investigations, the executive director is authorized to:

(a) Retain qualified experts that have sufficient knowledge on appropriate statutes or professions and their practices.

(b) Conduct inspections of places of business of a profession regulated under the office.

(c) Issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(1) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(2) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(3) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(4) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. When an allegation of misconduct is determined to be unfounded after an investigation, the board shall dismiss the allegation and explain in writing to the complainant and the licensee its reason for dismissing the complaint. The office shall retain all information concerning investigations in accordance with the retention policy established by the office.

VII. Subject to the limitations of RSA 329-B:26 and RSA 330-A:32, the office shall obtain, handle, archive, and destroy mental health and psychological records as follows:

(a) If a client or patient owning a privilege is the person who has made a complaint against a licensee, the office may access the records of such client or patient. The complaint form provided by the office and initial follow-up correspondence shall clearly indicate that the submission of the complaint by the client or patient who is the owner of the privilege shall override the privacy of that record for the purposes of the office's confidential investigation and proceedings. The client or patient's identity shall not be disclosed to the public in any manner or in any proceeding of the board without his or her consent. If the client or patient named in the complaint is a child, the legitimate assertion of the privilege by one natural or adoptive parent or legal guardian is sufficient for this paragraph to apply. The office may act on that parent or guardian's initiation of complaint regardless of the objection of the other parent or guardian.

(b) If the person who has made the allegations against the licensee is not the owner of the privilege for the records of the client or patient named in the complaint whose treatment is under investigation by the office, the records for investigation shall be treated as follows:

(1) When the office reviews the initial complaint and upon all further reviews of the case by the office or the board, the identity of the named client or patient shall be redacted from the documents reviewed.

(2) The names of clients or patients may be made available only to office staff and consultants assigned to investigate or adjudicate the matter, and in instances where the board has decided to proceed with discipline, to board members for purposes of determining recusal issues as described in subparagraph (f).

(3) The record of a client or patient under this subparagraph that has been specifically named in a complaint may be obtained by office staff as specified:

(A) Office staff and consultants may request permission from the client or patient to obtain the record for the investigation, informing the client or patient about the bounds of

confidentiality of such records and the nature of the investigative process. If the client or patient grants permission, office staff may obtain the copies of the record.

(B) If the client or patient denies permission for access to the record, the office may only obtain the record pursuant to a court order.

(4) Personally identifiable information pertaining to a client or patient under this subparagraph shall remain known only to staff and consultants assigned to the matter, which may include an employee of the office's investigations bureau, an employee of the office's prosecutions bureau, professional conduct investigator, the board administrator, and only those additional investigative assistants as the office's investigation team deems necessary to accomplish the investigation of the complaint.

(5) All communication beyond the office staff and consultants, or the board, pertaining to these clients or patients shall be conducted without the use of personally identifiable information.

(6) The identity of a client or patient shall not be disclosed to the public in any manner or in any proceeding of a board without his or her consent.

(c) Records of clients or patients who are not named in the initial complaint shall be treated as follows:

(1) If office staff and consultants assigned to the matter wish to obtain records of, or contact, clients or patients not named in the initial complaint, they shall make a request to the board with reasons for the request, specify the scope of cases and types of records requested, and state the name of the individual for whom authorization is requested to contact the client or patient.

(2) Upon board approval of a request pertaining to treatment of clients or patients defined in this subparagraph, the names of the clients or patients that fulfill the criteria of selection may be made available to office staff and consultants for purposes of determining whether recusal issues pertain to their selection for the investigation as described in subparagraph (f).

(3) If the board approves an investigation into client or patient cases who are not named in the original complaint, the board shall specify whether the clients or patients may be contacted directly.

(4) For records requested under this subparagraph, the keeper of the record shall be instructed to provide records that are redacted of personally identifiable information as defined in subparagraph (g). Each record shall be marked with an identifying code and the keeper of the record shall provide to the office's staff and consultants the contact information for corresponding clients or patients.

(5) The office shall store in a secure manner the list of these client or patient codes with corresponding contact information.

(6) If office staff and consultants have just cause to verify redacted copies against originals records of specified cases they shall request permission of the board, giving reason for the

request. Upon board approval, office staff and consultants may have access to the identified unredacted records, which may be viewed at a time and location of their choosing. Office staff and consultants may request a copy of the identified original records be sent to the office. Copies and corrections to the redacted records may be made by the office staff and consultants, after which any identified unredacted copies shall be destroyed and original records returned to the keeper of the records.

(7) Office staff and consultants contacting the clients or patients pursuant to subparagraph (c)(1) shall request permission from the clients or patients to conduct an interview, include an explanation that the individual(s) may grant or refuse permission for such interview, and explain there are no adverse personal consequences of any kind for refusal to grant permission or for withdrawing permission at any time during the interview. Office staff and consultants may inform the individual(s) that refusal to participate may prevent the investigation from proceeding or reaching a satisfactory conclusion.

(8) The identity of each client or patient shall be redacted from any documents reviewed by the board.

(9) The identity of a client or patient defined in this subparagraph shall not be disclosed to the public in any manner or in any proceeding of the board without the client or patient's consent.

(d) Mental health or psychological records obtained through subparagraphs (a)-(c) shall be archived or destroyed at the conclusion of the matter in accordance with a retention schedule established by the office. The identification and contact information collected during the investigation for clients or patients other than a client or patient complainant shall be destroyed.

(e) For the purposes of this paragraph:

(1) "Record" means health or psychological information collected from or about an individual that:

(A) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) Relates to the individual, the past, present, or future physical or mental health or psychological condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(2) "Personally identifiable information" means information which identifies an individual or which a reasonable person would believe could be used to identify an individual, including common and uncommon identifiers, including but not limited to, name, address, birth date, social security number, court docket number, insurance policy number, and any other identifiers of an individual and of the individual's known relatives, household members, and employers that a reasonable person would believe could identify the individual to whom the record pertains.

(f) In the process of determining recusal, the security of the client or patient's identity shall be preserved as follows:

(1) Before engaging in any matter as defined in subparagraph (a), board members, investigators, and others as specified in this paragraph with access to case files shall first review the name of the client/patient before proceeding. If a conflict of interest is identified, that person shall recuse himself or herself from the matter.

(2) Before engaging in any cases defined in subparagraph (b), office staff and consultants at the onset of the investigation, board members at the time of reviewing the findings of the investigation, and any others authorized to have access to the case prior to commencing review of such cases shall first determine if there is a need for recusal.

(3) If a client or patient as defined in subparagraph (b) or (c) testifies or intends to attend the hearing of the case involving his or her treatment and the board may see the client or patient inadvertently or directly, the client or patient's name shall be revealed to the board members so they may have the opportunity to recuse themselves prior to the proceeding. The client or patient shall be informed beforehand of such disclosure.

(4) For recusals pertaining to clients or patients under subparagraph (c) of this section, office staff and consultants shall review the names of the clients or patients who qualify for the scope of investigation as approved by the board, to determine if there is cause for recusal.

(5) When board members review any report of investigation that includes case information pertaining to clients or patients as defined in subparagraph (c), they shall review their names prior to reading such reports in the following manner:

(A) If there are 10 or fewer cases with individual clinical information presented, then the methods of testing for recusal shall follow the recusal procedures in subparagraph (f)(2).

(B) When the report includes clinical information pertaining to more than 10 cases, the recusal methods of subparagraph (f)(4) shall apply.

(C) When such client or patients' information is presented only in aggregate form, no recusal is required.

(g) A keeper of the record shall comply with board and the office's investigative team's requests for client or patient records and all redaction requirements specified under this section. The board may seek a court order to enforce valid requests for such records under this section.

VIII. Any board member who has had a personal relationship or has worked in a professional capacity with a complainant or with a licensee against whom a complaint has been filed or whose personal or professional views regarding the licensee or the complainant could prevent the board member from being impartial in considering the complaint shall recuse himself or herself from any investigation or disciplinary action against such licensee.

310:10 Disciplinary Proceedings; Non-Disciplinary Remedial Proceedings.

I. Disciplinary proceedings shall be open to the public in accordance with RSA 91-A. All non-disciplinary remedial proceedings shall be exempt from the provisions of RSA 91-A, except that the board shall disclose any final remedial action that affects the status of a license, including any non-disciplinary restrictions imposed. The docket file for each such proceeding shall be retained in accordance with the retention policy established by the office of professional licensure and certification.

II. Boards shall conduct disciplinary and non-disciplinary remedial proceedings in accordance with procedural rules adopted by the executive director.

III. The office shall employ sufficient administrative prosecutors qualified by reason of education, competence, and relevant experience to serve as hearing counsel in all disciplinary proceedings before the boards.

IV. The office shall employ sufficient personnel qualified by reason of education, competence, and relevant experience to serve as presiding officer in all disciplinary or non-disciplinary remedial proceedings before the boards. The presiding officer shall have the authority to preside at such hearing and to issue oaths or affirmations to witnesses, rule on questions of law and other procedural matters, and issue final orders based on factual findings of the board.

V. The presiding officer in disciplinary and non-disciplinary remedial proceedings may issue subpoenas for persons, relevant documents and relevant materials in accordance with the following conditions:

(a) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(b) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(c) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(d) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

VI. In carrying out disciplinary or non-disciplinary remedial proceedings, the presiding officer, as defined in RSA 541-A, shall have the authority to hold pre-hearing conferences, which shall be exempt from the provisions of RSA 91-A; to administer oaths and affirmations; and, to render legal opinions and make conclusions of law.

VII. Boards shall be the triers of fact in all disciplinary and non-disciplinary remedial proceedings, and shall determine sanctions, if any.

VIII. At any time before or during disciplinary or non-disciplinary remedial proceedings, complaints may be dismissed or disposed of, in whole or in part:

(a) By written settlement agreement approved by the board, provided that any complainant shall have the opportunity, before the settlement agreement has been approved by a board, to comment on the terms of the proposed settlement; or

(b) Through an order of dismissal for default, for want of jurisdiction, or failure to state a proper basis for disciplinary action.

IX. Disciplinary action taken by the board at any time, and any dispositive action taken after the issuance of a notice of public hearing, shall be reduced to writing and made available to the public. Such decisions shall not be public until they are served upon the parties, in accordance with rules adopted by the executive director.

X. Except as otherwise provided by RSA 541-A:30, the board shall furnish the respondent at least 15 days' written notice of the date, time and place of a hearing. Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party.

XI. Neither the office nor the boards shall have an obligation or authority to appoint attorneys or pay the fees of attorneys representing licensees or witnesses during investigations or disciplinary or non-disciplinary remedial proceedings.

XII. No civil action shall be maintained against the office or the board, or any member of the board, office, or its agents or employees, against any organization or its members, or against any other person for or by reason of any statement, report, communication, or testimony to the board or determination by the board or office in relation to proceedings under this chapter.

XIII. For matters involving individuals identified in mental health records, testimony by client or patients shall be handled with utmost regard for the privacy and protection of their identity from public disclosure.

(a) A noncomplainant client or patient shall not be compelled to testify at a hearing.

(b) If a noncomplainant client or patient testifies at a hearing, the identity of the individual shall be screened from the public view and knowledge, although the respondent and attorneys shall be within the view of the client patient. The board may view the client or patient. The public's access to view or information that would identify the client or patient shall be restricted. The hearing may be closed to the public for the duration of the client or patient's testimony, at the board's discretion.

(c) If a complainant client or patient requests the privacy safeguards in subparagraph (b), the presiding officer may make such accommodations.

310:11 Licensing Proceedings.

I. Boards shall conduct licensing proceedings in accordance with procedural rules adopted by the executive director.

II. If a board denies a license following a licensing proceeding, its final decision shall be issued in accordance with RSA 541-A:35.

III. In carrying out licensing proceedings, the board shall have the authority to:

(a) Hold pre-hearing conferences exempt from the provisions of RSA 91-A;

(b) Appoint a board member or other qualified person as presiding officer; and

(c) Administer, and authorize an appointed presiding officer to administer, oaths and affirmations.

IV. Neither the office nor the boards shall have an obligation or authority to appoint or pay the fees of attorneys representing licensees, certified individuals, or witnesses during investigations or adjudicatory proceedings.

V. Licensing proceedings shall be open to the public in accordance with RSA 91-A.

310:12 Sanctions.

I. Upon making an affirmative finding that a licensee has committed professional misconduct, boards may take disciplinary action in any one or more of the following ways:

(a) By reprimand.

(b) By suspension of a license for a period of time as determined reasonable by the board.

(c) By revocation of license.

(d) By placing the licensee on probationary status. The board may require the person to submit to any of the following:

(1) Regular reporting to the board concerning the matters which are the basis of the probation.

(2) Continuing professional education until a satisfactory degree of skill has been achieved in those areas which are the basis of probation.

(3) Submitting to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

(4) Practicing under the direct supervision of another licensee for a period of time specified by the board.

(e) By assessing administrative fines in amounts established by the board which shall not exceed $3,000 per offense, or, in the case of continuing offenses, $300 for each day that the violation continues, whichever is greater.

II. The board may issue a non-disciplinary confidential letter of concern to a licensee advising that while there is insufficient evidence to support disciplinary action, the board believes the licensee or certificate holder should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the board may result in action against the licensee's license. This letter shall not be released to the public or any other licensing

authority, except that the letter may be used as evidence to establish a relevant pattern or course of conduct in subsequent adjudicatory proceedings by the board.

III. In the case of sanctions for discipline in another jurisdiction, the decision of the other jurisdiction's disciplinary authority may not be collaterally attacked and the board may impose any of the sanctions set forth in this chapter, but shall provide notice and an opportunity to be heard prior to imposing any sanctions.

IV. In cases involving imminent danger to public health, safety, or welfare, a board may order immediate suspension of a license or certification pending an adjudicative proceeding before the board to determine if the suspension should remain in place pending final adjudication of the matter, and which shall commence not later than 10 working days after the date of the order suspending the license unless the licensee or certified individual agrees in writing to a longer period. In such cases of immediate danger, the board shall comply with RSA 541-A:30.

V. For any order issued in resolution of a disciplinary proceeding by the board, where the board has found misconduct sufficient to support disciplinary action, the board may require the licensee or certificate holder who is the subject of such finding to pay the office a sum not to exceed the reasonable cost of investigation and prosecution of the proceeding. This sum may be imposed in addition to any otherwise authorized administrative fines levied by the board as part of the penalty. The investigative and prosecution costs shall be assessed by the office and any sums recovered shall be credited to the office's fund and disbursed by the office for any future investigations of complaints and activities that violate this chapter or rules adopted under this chapter.

310:13 Unlicensed Practice. Whoever, not being licensed or otherwise authorized to practice according to the laws of this state, advertises oneself as engaging in a profession licensed or certified by the office of professional licensure and certification, engages in activity requiring professional licensure, or in any way holds oneself out as qualified to do so, or calls oneself a licensed professional, or whoever does such acts after receiving notice that such person's license to practice has been suspended or revoked, is engaged in unlawful practice. After providing notice and opportunity to be heard, and upon making an affirmative finding of unlawful practice, the board may impose a fine not to exceed the amount of any gain or economic benefit that the person derived from the violation, or up to $10,000 for each offense, whichever amount is greater. Each violation of unlicensed or unlawful practice shall be deemed a separate offense. The board, the state's attorney general, or a prosecuting attorney of any county or municipality where the act of unlawful practice takes place may maintain an action to enjoin any person or entity from continuing to do acts of unlawful practice. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to any board.

310:14 Rehearing; Appeals.

I. Any person who has been denied a license or certification by the office or a board shall have the right to a rehearing before the appropriate board. Requests for a rehearing shall be made in writing to the appropriate board within 30 days of receipt of the original final decision.

II. Any person who has been disciplined by a board shall have the right to petition in writing for a rehearing within 30 days of receipt of the original final decision.

III. Appeals from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541. No sanction shall be stayed by the board during an appeal.

310:15 Oversight Committee; Establishment; Purpose.

I. There shall be an oversight committee for the office of professional licensure and certification (OPLC) consisting of the following members:

(a) Three members of the house executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the speaker of the house of representatives.

(b) Two members of the senate executive departments and administration committee, one of whom shall be a minority member of that committee, appointed by the president of the senate.

II. Membership on the oversight committee shall be for the duration of the biennium and shall be coterminous with membership in the general court. The first meeting of the committee shall be called by the first-named house member. The committee shall elect a chair from among the members at the first meeting of each biennium. Meetings shall be called as needed, but at least quarterly. The members of the committee shall receive mileage at the legislative rate when performing the duties of the committee. Three members of the committee shall constitute a quorum.

III. The committee shall provide legislative oversight and informational meetings on the policies and rules of the office as brought to its attention by office personnel, legislators, members of the boards, councils, committees, and commissions overseen by OPLC, and members of the professions under the jurisdiction of OPLC. The committee's work shall include analyzing the division of duties between administration and the boards in order to promote more productive and efficient interactions.

IV. The oversight committee shall recommend legislation deemed necessary to correct issues it identifies.

310:16 Military Service Members and Spousal Temporary Licensure. The office of professional licensure and certification shall issue temporary licenses to a member of the armed forces or their spouse, if the applicant holds a current, valid unencumbered occupational or professional license in good standing issued by a state or territory of the United States, in accordance with rules adopted by executive director of the office of professional licensure and certification under RSA 541-A, provided that the applicant meets the requirements of this section, within 30 days of having received an application or, if the applicant is subject to a criminal records check, within 14 days of having received the results of a criminal records check. The rules shall contain the following provisions:

I. The applicant shall obtain a temporary license for a period of not less than 180 days while completing any requirements for licensure in New Hampshire so long as no cause for denial of a license exists under this title, or under any other law.

II. The license applicant must submit a notarized affidavit affirming, under penalty of law, that the applicant is the person described and identified in the application, that all statements made on the application are true and correct and complete, that the applicant has read and understands the requirements for licensure and certifies that they meet those requirements, and that the applicant is in good standing in all jurisdictions in which the applicant holds or has held a license.

III. The applicant may request a one-time 180-day extension of the temporary license if necessary to complete the New Hampshire licensing requirements. The applicant must make this request within 15 days prior to the temporary license's expiration date.

IV. All individuals licensed under this section shall be subject to the jurisdiction of the state licensing body for that profession.

112:2 Dedicated Fund; Office of Professional Licensure and Certification. Amend 6:12, I(b)(340) to read as follows:

(340) Moneys deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

112:3 Transition; Administrative Rules; Recodification of Office of Professional Licensure and Certification. The rules adopted for any occupation or profession under the office of professional licensure and certification under former RSA 310-A:1-a in effect on the effective date of this act shall, to the extent practicable, continue and be effective and apply to such respective occupation or profession until they expire or are amended or repealed.

112:4 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:16-b, III to read as follows:

III. The mechanical licensing board with the approval of the executive director of the office of professional licensing and certification shall adopt rules, which shall not be subject to RSA 541-A, relative to the establishment of fees for voluntary certification under this section. After the first year of this program, such fees shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the previous fiscal year. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

112:5 Reference Changed; Mechanical Licensing; OPLC. Amend RSA 153:28, II to read as follows:

II. Notwithstanding RSA 21-G:9, the board, with an affirmative vote of at least 4 of the appointed board members, in consultation with the office of professional licensure and certification and with the approval of the executive director of the office of professional licensure and certification, shall establish application fees for licensure, for renewal, for late renewal, and for reinstatement of licenses under this subdivision pursuant to RSA 541-A. Such licensing fees

including any endorsements shall not exceed $500 per individual. The board shall also adopt fees for replacement licenses, for certified copies and reports, for inspections done pursuant to this subdivision, for letters of verification requested by individuals or jurisdictions relating to licensure and certification, and for transcribing and transferring records and other services. The fee for examination by third parties shall be separate from the fees established by the board. Fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board budgeted for the biennium in which they will apply. Fees collected shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***.

112:6 Reference Changed; Accountancy. Amend RSA 309-B:4, III to read as follows:

III. The office of professional licensure and certification shall establish fees for examination of applicants, for licenses, for certificates of authorization, for reissuance of licenses, for renewal and reinstatement of licenses and certificates to practice under this chapter, for late renewals, for verification of licensure or examination, and for transcribing and transferring records and other services. All moneys collected by the office of professional licensure and certification from fees authorized under this chapter shall be received and accounted for by the office of professional licensure and certification, shall be deposited in the office of professional licensure and certification fund established in RSA [~~310-A:1-e~~] ***310:5***. Administration expenses shall be limited to the funds collected and may include, but shall not be limited to, the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the board or its committees; all legal proceedings taken under this chapter for the enforcement of this chapter; and educational programs for the benefit of the public or licensees and their employees.

112:7 Reference Changed; Architects. Amend RSA 310-A:32, II to read as follows:

II. In adopting any rule under this section, the board ***shall*** consult with the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310***.

112:8 Reference Changed; Body Art. Amend RSA 314-A:2, II to read as follows:

II. There shall be a fee for an initial license and a renewal license. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310***.

112:9 Reference Changed; Chiropractic. Amend RSA 316-A:14-a to read as follows:

316-A:14-a Licenses and Certificates. Each applicant who qualifies under this chapter and who attains a minimum grade of 70 percent upon the examination given under RSA 316-A:13, I shall receive a license from the board as a chiropractor permitted to practice in New Hampshire. Each applicant who qualifies under this chapter shall pay a fee for an initial license and a license renewal. The initial license and license renewals shall be valid for the terms established under RSA [~~310-A:1-h~~] ***310***.

112:10 Reference Changed; Dentists Professional Health. Amend RSA 317-A:16-a, VII to read as follows:

VII. Rules governing the professional health program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

112:11 Reference Changed; Pharmacists. Amend RSA 318:1, XV-a to read as follows:

XV-a. "Practitioner-patient relationship" means a medical connection between a licensed practitioner and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the health care practitioner: (i) verifies the identity of the patient receiving health care services through telemedicine; (ii) discloses to the patient the health care practitioner's name, contact information, and the type of health occupation license held by the health care practitioner; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A health care practitioner shall complete or review a history, a diagnosis, a treatment plan appropriate for the practitioner's scope of practice, and documentation of all prescription drugs including name and dosage. A practitioner may prescribe for a patient whom the practitioner does not have a practitioner-patient relationship under the following circumstances: for a patient of another practitioner for whom the prescriber is taking call; for a patient examined by another New Hampshire licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment. The definition of a practitioner-patient relationship shall not apply to a practitioner licensed in another state who is consulting to a New Hampshire licensed practitioner with whom the patient has a relationship.

112:12 Reference Changed; Nurse Practice Act. Amend RSA 326-B:36-a, VI(c) to read as follows:

(c) Rules governing this program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

112:13 Reference Changed; Acupuncture. Amend RSA 328-G:9, IX to read as follows:

IX. The procedure and timeframe for license renewals shall be as described in RSA [~~310-A:1-h~~] ***310***.

112:14 Reference Changed; Reflexologists. Amend RSA 328-H:2, IV-a to rad as follows:

IV-a. "Executive director" means the executive director of the office of professional licensure and certification established under RSA [~~310-A:1 through RSA 310-A:1-e~~] ***310***.

112:15 Reference Changed; Physicians. Amend RSA 329:1-c to read as follows:

329:1-c Physician-Patient Relationship. "Physician-patient relationship" means a medical connection between a licensed physician and a patient that includes an in-person exam or an exam using telemedicine, as defined in RSA [~~310-A:1-g, I-b~~] ***310***, provided the physician: (i) verifies the identity of the patient receiving health care services through telemedicine; (ii) discloses to the patient the physician's name, contact information, and the type of health occupation license held by the physician; (iii) obtains oral or written consent from the patient or from the patient's parent or guardian, if state law requires the consent of a parent or guardian for use of telemedicine services; and (iv) meets the standard of care. A physician shall complete or review a history, a diagnosis, a

treatment plan appropriate for the licensee's medical specialty, and documentation of all prescription drugs including name and dosage. A licensee may prescribe for a patient whom the licensee does not have a physician-patient relationship under the following circumstances: writing admission orders for a newly hospitalized patient; for a patient of another licensee for whom the prescriber is taking call; for a patient examined by a physician assistant, nurse practitioner, or other licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment or when providing limited treatment to a family member in accordance with the American Medical Association Code of Medical Ethics. Prescribing drugs to individuals without a physician-patient relationship shall be unprofessional conduct subject to discipline under RSA 329:17, VI. The definition of a physician-patient relationship shall not apply to a physician licensed in another state who is consulting to a New Hampshire licensed physician with whom the patient has a relationship.

112:16 Reference Changed; Physicians. Amend RSA 329:1-d, I to read as follows:

I. "Telemedicine" means the use of audio, video, or other electronic media and technologies by a physician in one location to a patient in a different location for the purpose of diagnosis, consultation, or treatment, including the use of synchronous or asynchronous interactions as defined in RSA [~~310-A:1-g~~] ***310***.

112:17 Reference Changed; Physicians Health. Amend RSA 329:13-b, VII to read as follows:

VII. Rules governing the program shall be implemented through the office of professional licensure and certification pursuant to RSA [~~310-A:1-d, II(h)(4)~~] ***310***.

112:18 Reference Changed; Administrative Procedures. Amend 541-A:29-a, I to read as follows:

I. If an agency fails to take any required action on an application, petition, or request within the time limits prescribed by RSA 541-A:29 or any other provisions of law, the application, petition, or request shall be deemed approved and any permit, approval or other item requested shall be deemed granted to or received by the applicant, petitioner, or requestor, except as provided in RSA [~~310-A:1-d, V~~] ***310***.

112:19 Reference Changed; Planning Boards. Amend RSA 676:4-b, V to read as follows:

V. Any person who becomes aware of a failure by a third party inspector to report properly and promptly a construction defect or deviation from the terms of the approval or approved project plans, may file a written complaint to the [~~joint board established under RSA 310-A:1~~] ***office of professional licensure and certification under RSA 310*** for possible [~~peer review or~~] disciplinary action.

112:20 Effective Date. This act shall take effect July 1, 2023.

Approved: June 28, 2023
Effective Date: July 01, 2023

Committee Minutes

SENATE CALENDAR NOTICE
Executive Departments and Administration

Sen Howard Pearl, Chair
Sen Sharon Carson, Vice Chair
Sen Carrie Gendreau, Member
Sen Rebecca Perkins Kwoka, Member
Sen Debra Altschiller, Member

Date: March 22, 2023

HEARINGS

Wednesday	03/29/2023
(Day)	(Date)

Executive Departments and Administration	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m. **HB 655-FN** relative to the office of professional licensure and certification.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:
HB 655-FN
Rep. C. McGuire
Sen. Carson
Rep. Goley
Sen. Lang
Rep. Merchant
Rep. Ulery

Phil Jasak 271-1403

Howard Pearl
Chairman

Senate Executive Departments and Administration Committee

Phil Jasak 271-1403

HB 655-FN, relative to the office of professional licensure and certification.

Hearing Date: March 29, 2023

Members of the Committee Present: Senators Pearl, Gendreau, Perkins Kwoka and Altschiller

Members of the Committee Absent : Senator Carson

Bill Analysis: The bill consolidates administrative authority for the office of professional licensure and certification (OPLC) in a new chapter of law.

Sponsors:

Rep. C. McGuire	Rep. Goley	Rep. Merchant
Rep. Ulery	Sen. Carson	Sen. Lang

Who supports the bill: In total 39 individuals signed in, for SB 655-FN. The full sign in sheet is available upon request to the Legislative Aide, Phillip Jasak.

Who opposes the bill: In total 39 individuals signed in, for SB 655-FN. The full sign in sheet is available upon request to the Legislative Aide, Phillip Jasak.

Who is neutral on the bill: In total 39 individuals signed in, for SB 655-FN. The full sign in sheet is available upon request to the Legislative Aide, Phillip Jasak.

Summary of testimony presented:

Representative Carol McGuire

- Representative McGuire testified that HB 655 came out of a study committee from last summer. This study committee recommended that the responsibilities and duties of the office of professional licensure and certification be more clarified and standardized in order to address problems when interacting with various boards, in ambiguity about statutory authority.
- Rep. McGuire stated that HB 655-FN gives OPLC its duties and responsibilities and noted that no board is specifically mentioned except as being attached to the OPLC.
- Rep. McGuire stated that the amendment from the house eliminates half the bill and expanded areas of the bill that were acknowledged to be ambiguous through

prior testimony. The expanded areas include investigative and disciplinary sections.

- Rep. McGuire stated the consolidation's purpose is to lessen the work for the boards and that in that they will only need to approve licenses if they have some non-quantifiable requirements. She furthered that the goal of OPLC is to promote efficiency in administrative work and that this bill would run more smoothly with these changes to a more standardized system.
- Sen. Altschiller addressed concern with page 16, 310:13 unlicensed practice, who is defined in this language of not being licensed or authorized.
    - Rep. McGuire responded that this is a consolidation of unlicensed professions as some professions have different licensing requirements. Rep. McGuire used the example of accountants, as accountants don't need to be licensed unless they are a CPA certified. Yet, an accountant is perfectly legitimate to practice and to advertise themselves, this applies to engineers as well.
    - Sen. Altschiller followed up and brought up Rep. McGuire's testimony stating that she was troubled that OPLC would have to hire independent evaluators in cases of investigating complaints.
    - Rep. McGuire clarified that these would not be evaluators they would be investigators, and that the board would remain as the jury of evaluating facts of the case and decide whether what has occurred in the case is a violation of professional practice or law.
    - Sen Altschiller further asked who would be responsible for the cost.
    - Rep. McGuire responded that OPLC is funded through licensing revenues, and the surplus flows to the general fund, but there is enough funding in OPLC to investigate any cases deemed necessary.
- Rep. McGuire noted that licensing boards were traditionally asked to provide 125% of their costs. The 25% was intended to cover overhead costs when funding might not follow the same calculation every year, or if major investigations, hiring lawyers, or hiring an outside investigator brought up funding concerns. Rep. McGuire noted that there are currently two bills, one in the house and one in the senate that address the funding in the general fund.

Representative Hope Damon

- Rep. Damon provided her experience in her 43 year career of being a licensed dietician and working in hospitals, nursing homes, substance treatment facilities and private practice.
- Rep. Damon added her concerns about HB 655 and HB 2 section 108, but acknowledges the merit behind consolidating the administration of healthcare professional licensure under one agency. Her concerns are; both bills provide the same line addressing changes to professional licensure boards and that this section could disrupt basic protective functions of the board of dieticians.
- The additional concerns regarded medical boards and public safety issues, licensing dietician's vs non-licensed nutritionists, ambiguous language in retaining membership boards under OPLC, protecting the licensure of health care professionals and its effect on health care providers.

- Rep. Damon concluded that medical nutrition therapy is very cost-effective care and that by not protecting the licensing of these medical professions would create health care provider issues and insurance payment issues.

Representative Jaci Grote

- Rep. Grote acknowledged that in the House ED&A committee a lot of testimony highlighted disciplinary actions that was included in both HB 455 and HB 2. Stated that this is how the amendment from the house came. She also noted that portions of HB 465 in HB 2 were removed but that there are some portions that remain, which the representative can provide to the committee.
- Rep. Grote proposed that the investigation and adjudication should be separate in HB 655.
- Rep. Grote concluded that one of the issues the boards have had is the lack of a quorum. Provided that House ED&A passed a bill allowing virtual attendance at meetings in order attain quorums.
- Senator Perkins Kwoka asked about the version amended by the house and whether it reflects consensus in the committee.
    - Rep. Grote responded saying yes and it also includes comments made by the boards concerning professionals in rec and retention and telemedicine which are two chapters included in HB 465.
    - Sen Perkins Kwoka asked whether all parts of HB 655 have been removed from HB 2 pursuant to your amendment.
    - Rep. Grote responded yes, except for a few sections which she will provide to the committee.
    - Sen Perkins Kwoka asked about the issue of endorsement and interstate compacts and whether that was particularly relevant to HB 655.
    - Rep. Grote answered, that, that issue was left in committee but is part of the expansion of availability of services. Provided that each board has compacts, and that the goal was not to conflict with existing agreements, which is why the rep stated that this is a board-by-board consideration.

Rep. Carol McGuire

- Rep. McGuire approached the table and mentioned that although there are sections of HB 2 that address licensing, there is no section that is included in HB 2 and HB 655. Furthered that these two bills do not amend the same statute.

Lindsey Courtney

- Ms. Courtney reiterated that HB 655 is a result from a study committee and the recommendations set forth from a bipartisan effort last session to clarify roles and responsibilities relating to the office and the boards.
- Clarified that this bill, regarding licensing, OPLC can license individuals in between board meetings without having to have an MOU with the board. Noted that many boards have already delegated that role to OPLC because the licensing criteria is objective for most boards, then provided the example of nursing licensing, and that this bill would be granting that statutory authority

as the Legislative Brach Audit division has mentioned to Ms. Courtney that it does not believe boards can delegate that authority under current statute.

- Regarding investigations, Ms. Courtney stated that this bill creates one mechanism for OPLC handling investigations. Further provided that most boards have very similar language regarding investigations, but OPLC has to request permission from the board to initiate an investigation, HB 655 would change this so OPLC can initiate an investigation prior to board approval.
- Ms. Courtney added that all decisions being made on an investigation and the findings of fact are all under the jurisdiction of the boards, but an OPLC hearings officer can make rulings of law on evidentiary motions or on legal questions.
- Ms. Courtney clarified that there are no proposed changes to the structure, composition, or membership of any of the boards, referred to as proposed 310-2:C.
- Ms. Courtney concluded that what the study committee observed is that having to bring applications to board meetings which occurred every occurred on a monthly or every other month basis slowed down the licensing process of individuals. Highlighted that this change, if HB 655 is adopted, would speed up the process and allow for New Hampshire to compete with other states with licensing qualified individuals efficiently.
- Sen Perkins Kwoka asked about whether the hearing officers in investigations are normally licensed attorneys.
    - Ms. Courtney responded and said yes and that is part of their job description.

Betsy Patten

- Ms. Patton referred to the powers of the ASB in RSA 21-J:14-b, in the boards requirement to recommend standards for the administration of the property tax and the assessment of real property and stated that the Department of Revenue Administration has the authority to enforce those standards.
- Ms. Patton noted on page 3 line 18, the ASB has been moved over to be under the OPLC, and provided the ASB's intent to want a certifications board specific to certifying assessors in the state. She stated that ASB does not support the inclusion of them under OPLC.
- Ms. Patton urged the committee to look at this change and to find out whether the ASB should be the Assessing Standards Certifications Board.

Celia Oliver

- Dr. Oliver began that she is a psychologist, has been on the board of directors of the New Hampshire Psychological Association for at least 15 years, and has been a chair for the ethics committee for NHPA for around 15 years.
- Dr. Oliver stated that the NHPA is overall happy with promoting anything that improves efficiency and that they are not entirely opposed to HB 655.
- Dr. Oliver asserted that the NHPA is concerned with the implementation of specific sections of HB 655. The areas of concern as noted by Dr. Oliver surround misconduct and allegations. Specified that the terms allegation, complaint, and

investigation have very distinct meanings in the psychology profession. Provided that psychologists have to be retest every three months and within those tests are questions regarding the standing of psychologists,

- Dr. Oliver noted some follow along the lines of "have you ever been investigated or founded" and "are you under current investigation", if the individual is not or under an allegation the response from the licensed individual would be no, but if the licensed individual has to say yes, then the licensed individuals credentialing will be suspended or revoked. Dr. Oliver stated if suspended or revoked than the individual cannot provide services for whatever entity that is.
- Dr. Oliver provided a hypothetical example of the issue above; if a licensed individual is planning to work with an insurance company and they answer that they are currently under investigation then that individual cannot work with any clients under that health insurance company.
- Dr. Oliver requests that these terms be clearly defined in the statute so there is little room for confusion in its ambiguity.
- Dr. Oliver asserted that the NHPA also has concerns over the section regarding investigations, and stated that despite her expertise in psychology there are subspecialties within the field of psychology that she does not feel qualified to investigate matters of misconduct. Provided the current practice in the board of psychology, where an allegation is made and is going forward to be investigated the board then aligns the investigators to be experts within the subspecialty to make appropriate investigations.
- Dr. Oliver requests that the criteria for investigators and how they are paired with professionals being under investigation be clearly defined.
- Dr. Oliver concluded that if an investigation results in founded misconduct the language states that the person being founded can be charged for the costs of the investigation. Dr. Oliver referred to current statute where there is a $10,000 cap and requests that this provision be added to HB 655.

Bob Quinn

- Mr. Quinn referred to a previous statement on the intent of the bill to separate and identify the functions of the various boards and OPLC. Further stated that these functions deal with areas of administration, licensing, and investigatory processes.
- Mr. Quinn stated that the NHAR had concerns over has been the approval of continuing education courses. This concern is due to confusion over whether the real estate commission or OPLC is responsible for approving continued education.
- Mr. Quinn noted that he submitted a potential amendment that would not mandate the requirement on either OPLC or the real estate commission but would grant them both greater latitude in working together to approve continued education.
- There is currently a five-month backlog in approval of continuing education courses and real estate licensees are require taking 15 hours before renewal. Mr. Quinn urged the committee to consider this amendment to help amend this inefficiency.

- Sen Perkins-Kwoka clarified that what Mr. Quinn was proposing would be to just add this section of RSA 331-A on to the end of HB 655 that primarily deals with RSA 310-A. And furthered questioned whether what Mr. Quinn was proposing whether it would alleviate issues for getting approval for courses that would qualify towards practitioners' hours or whether once the hours are completed it would fix issues of not receiving validation for those hours.
    - Mr. Quinn responded that this amendment would rectify the approval of new continuing education courses. The process used to be a staff function originally under the real estate commission, then it became a function of the OPLC, but stated there was a reinterpretation last fall regarding the statute which put this requirement under the function of the real estate commission. Furthered that this bill would provide more flexibility in determining and allowing for staff assistance, and provided that real estate commissioners turn over frequently, which provides a need for a strong staff.

Steve Rancourt

- Mr. Rancourt provided the structure of the electrician's board and the process in how the board positions are elected. He emphasized that these are appointed positions and that the board has been under the jurisdiction of the department of safety and now OPLC. Provided that the board has a concern over a possible re-structuring of the positions on the electricians' board with this administration change, and would ask for the board to have more input in both the appointment and administration of fees, which was noted in section 310:6-I.
- Mr. Rancourt brought up that the language in this amendment sounds like consultation and advisory language, and therefore the boards have little voice in matters. He provided a revision to the wording in his written testimony to amend that language.
- Testified that OPLC's purpose is to improve the efficiency of these boards but that OPLC now seems to be taking over the boards. Asserted that this could lead to abuse of the new system, not due to the current administration and executive but because of an agency with more centralized jurisdiction and statutory authority.
- Recommended that the committee add on the proposed revision in his written testimony to section 310:6-I. Asserted that this would create a balance between OPLC's rulemaking authority and the various boards' voice in administrative matters.
- Mr. Rancourt addressed another concern in section 310:9-V, on carrying out investigations. He proposed to an addition to line 29 which would include "non-residentially zoned." Provided that his office is located in his house and that OPLC should not have the authority to enter his house. Further noted that this could lead down a slippery slope of precedence.
- Mr. Rancourt addressed a concern in section 310:8-II, on license renewals. Stated that the board of electricians currently has a 3-year renewal and that this section changes this to a 2-year renewal. Emphasized that the fee would remain the same per year, but the overall fee would not be their current three-

year fee for a two-year renewal. Provided that there has been confusion in communicating the fee of the changes in the license renewals, and asked the committee to make sure that this language is further clarified.

- Mr. Rancourt addressed another concern regarding apprentices and hoped that what is currently under statute, apprentices are certified/registered not licensed and are certified yearly because they must show proof of schooling to renew their certification, would remain. Stated that if HB 655 increased the certification to a two year, it might de-incentivize apprentices to go back to school.
- Mr. Rancourt brought up another concern on 310:14 III. Stated that this section he recommends be under the appeals and provided a revision to this section in his written testimony. Distinguished between professional and occupational boards under OPLC and that under RSA 674 the electrician's board is allowed appeal to the state building code review board in some cases. Provided this is a better step in some cases than to go to the Supreme Court and asked the committee to add on this section.
- Mr. Rancourt addressed the reciprocity acknowledged between HB 2 and HB 655 and that the electrician's board has reciprocity with 23 other states and stated that he hopes it will remain or that an equivalent section will be in one of these two bills to maintain the equivalent standards for schooling and experience hours.
- Further stated another concern over corporate licensing which has been included in both HB 2 and HB 655, and that the language points to removing corporate licensing. Provided that if this section is repealed on corporate licensing, then electricians will stop operating in many businesses in New Hampshire because businesses are required to get a corporate license. Noted that repealing the section on corporate licenses would result in a loss revenue to the state.
- Sen. Perkins-Kwoka brought up Mr. Rancourt's concerns on apprentices being in section 310:8, furthered that she does not believe that this section would apply to them, but asked for clarification if Mr. Rancourt sees an area where they would be included.
    - Mr. Rancourt responded that apprentices are renewed through OPLC, mechanical board or electrician board as well but that he wanted to make sure that this section does not apply to apprentices and that one year renewals should remain the standard for apprentices.
    - Sen. Perkins-Kwoka noted that there is just an issue of finding the section on apprentices.
    - Mr. Rancourt agreed but noted that depending on how apprentices are referred to in being registered versus being licensed, that could mean that section 310:8 applies to them.
- Sen. Pearl asked for clarification on how apprentices are licensed.
    - Mr. Rancourt stated that they are not licensed they are registered or certified deepening on the profession. Further provided the process of apprentices going through education and renewing their registration or certification annually.

- Sen. Perkins-Kwoka addressed Mr. Rancourts concerns on 310:14-III on appeals, and stated that their seems to be a clear distinction between appeals to the supreme court for licensure and appeals to the state building code review board for application and interpretation of the code. The Senator asked for any clarification on her analysis of understanding that section.
    - Mr. Rancourt responded saying that the state building code review board can implement disciplinary actions for code violations and that this can result in licensure suspension or other disciplinary measures, which ties in together with section 310:14-III.
    - Sen. Perkins Kwoka stated that she was having issues finding RSA 319 on corporate licensing, and opened for clarification.
    - Mr. Rancourt responded saying that he has not had the chance to review the amended version and that he was addressing concerns with their being language in both HB 2 and HB 655.
- Mr. Rancourt provided a final comment, stated that the language regarding the two year license renewal, section 310:8-II, on the valid from date of issue line and stated that what is being proposed would create loophole in the system which would result in a loss of income. Proposed that what is currently in statute should remain.
- Sen. Altschiller asked on page 3 of Mr. Rancourt's written testimony about reciprocity and the appropriateness of it. Stated that she agrees with Mr. Rancourt on substantial equivalent requirements, and asked where that section on reciprocity is in the amended version.
    - Mr. Rancourt answered that he is not sure if that section has been repealed between HB 665 and HB 2 but suggested that the Senator can find more on RSA 332:G-14.

Bill Trombly

- Mr. Trombly addressed a concern on page 16 section 310:12-V. Asserted that the majority of his board's members are small business members, and agreed with Celia Oliver on capping the amount an individual may be charged for an investigation at $10,000.
- Reiterated another concern addressed by Mr. Rancourt in section 310:14-III on appeals. Emphasized that with his board many of the hearings have to do with code interpretations and an appeal to the Supreme Court is very expensive for a small business owner. Asks to have that changed to anything that has to do with a code violation to go to the building code and review board.
- Mr. Trombly voiced concern over 310:16 6-III, regarding OPLC establishing fees for examinations of applicants for licenses, certificates, and authorizations. He questioned how this process would work as his board uses private company to administer exams and that those fees are set by that private company.
- Addressed another concern over late renewals and recommended that late renewals should be set by the board. Referred to Mr. Rancourt's testimony that an individual can find a loophole in the system and not renew their license for multiple month which could result in loss in revenue. Recommended that the renewal expiration date should remain at what is currently standard.

- Provided that his board has no issue with administrative fees and having OPLC set those, but stated that areas of licensing, examinations, and late fees should be set by the board, in consultation with the board, or with approval of the board.
- Concluded that OPLC should also be required to report to the various boards or to his board on a monthly or quarterly basis, on fees collected and expenses incurred. Noted that HB 2 is currently removing that section from current statute.
- Sen. Altschiller referred to Mr. Trombly's testimony on 310:16 6-III and questioned whether Mr. Trombly could elaborate on the fees set by the board that come in conflict with lines 5 and 6.
    - Mr. Trombly responded that currently the examination fee is set by the private company that administers the exam for the licensing of different professions under his board, specifically Mr. Trombly referred to the journeyman's plumbing license. Furthered that this fee does not go to the state or to the board and that the board has no say over the fee.
    - Sen. Altschiller followed up and asked with this amended section as written, would that result in members of his board paying a fee to take their exam and then having to pay a separate fee to the appropriate board under OPLC's umbrella?
    - Mr. Trombly responded that in his understanding of this language, the individual would have to pay a fee to the OPLC and a fee for their licensing, or the OPLC would contract out that private company and OPLC charges $100 (current fee for examination in Mr. Trombly's board) or charge $125 for convenience. Currently, payments go directly to the provider not through the boar or OPLC.

Kimberly Kirkland

- Ms. Kirkland provided her experience in civil procedure.
- Ms. Kirkland stated that the most important aspect of HB 655, in what it is trying to achieve, is the amendment of the process of investigation, prosecution and adjudication of complaints made about professionals within any profession. Noted that in the court system it is well understood that the investigatory function and the prosecutorial function has to be separated from the adjudicative function. Provided an example that in the court you don't want your jurors investigating and prosecuting a claim, and this bill looks to put the investigatory and prosecutorial functions in the hands of the OPLC.
- Ms. Kirkland asserted that the OPLC has the experience and skill and is empowered to hire experts in appropriate subject areas to thoroughly review complaints in an objective manner from the public. Noted that this is essential in order to protect the public.
- Acknowledged that the New Hampshire Supreme Court recognized the importance of this separation of investigative and prosecution from adjudication with attorney discipline in 2003. Result of this event in 2003, the court system set up the attorney discipline office.

- Provided her belief that HB 655 would create a system where independent and objective investigations and prosecutions can occur. Noted that the fact-finding would remain in the boards power, so that the board can determine whether a professional has done what the complaint alleges. However, it will be the power of the OPLC to investigate and prosecute.
- Addressed prior comments on appeals and emphasized that making sure there is somebody qualified to make rulings of law instead of just findings of fact.

Chris Mulleavy

- Mr. Mulleavy pointed to Page 4, Lines 15-19, relative to examinations for licensure and investigation of complaints as it relates to the Board of Professional Engineers (BPE).
- Mr. Mulleavy explained that he and his fellow board members volunteer their time to review applications for those trying to take the Professional Engineer exam and professionals from out of state who wish to become licensed in New Hampshire.
- Mr. Mulleavy explained that the expertise of the Board is critical in determining whether to investigate and adjudicate claims.
- He stated that HB 655-FN transfers the authority to issue licenses from the BPE to the executive director of the OPLC. He asserted that this power and the authority to investigate and adjudicate should be left in the hands of the board, whose members have the necessary qualifications and experience in the subject matter.
- Mr. Mulleavy stated that by allowing the transfer of authority to the OPLC, the health and welfare of the public could be jeopardized.
- Mr. Mulleavy stated that he is supportive of removing unnecessary barriers for professional licensure and being more accessible to applicants. However, with the statute that created the BPE, there is already a proven and effective framework for licensing engineers in New Hampshire.

Dr. Deborah Warner

- Dr. Deborah Warner is a psychologist and member of the Board of Psychologists.
- Dr. Warner stated that the Board has not met since the new version of HB 655-FN came over to the Senate, but that the Board had issues with the original version.
- Dr. Warner said that one of the Board's concerns over medical records has been fixed in the new version of the bill.
- Dr. Warner stated that RSA 329-B:22 Section IX, provides a summary of findings of evidence from an investigation if the Board wishes to go forward with discipline. Dr. Warner asserted that without similar language in HB 655-FN, then professionals can be encouraged to take a settlement agreement and accept

punishment even though they have not seen the evidence against them. She explained licensees need to be able to see what evidence is against them.

- RSA 329-B:22 Section VIII provides for the immediate notification of an allegation and allow the individual to make a voluntary response. This was not included in the bill.
- RSE 329-B:22 Section X loses the language creating the distinction between allegation and complaint. Dr. Warner explained that allegations can come in about anything, and if the allegations are dismissed then the licensee still has it marked down that they have something to answer for. Dr. Warner stated that currently, in statute, a licensee does not need to disclose the presence of an allegation. She explained that, currently, the Board takes the allegation and examines whether it is a violation of statute or law. If so, the Board would elevate the allegation to a complaint, which would be investigated formally.
- Senator Perkins Kwoka raised the concern that none of the sections of RSA 329-B:22 that are mentioned in the Board of Psychologists letter are repealed by HB 655-FN as amended. Sen. Perkins Kwoka asked if Dr. Warner's concern is to clarify in the procedures followed by RSA 310 to mirror RSA 329 more closely.
    - Dr. Warner referred the committee members to the written testimony she submitted.
- Dr. Warner stated that HB 655-FN would create a foundational statute for OPLC and will replace portions of all the board chapters.
- She stated that OPLC has indicated that they would knock out pieces of other legislation and statute. She said she is not against standardization across different boards but that it is important that OPLC's new procedures cover all due process issues that are currently in statute but would be lost.
- Dr. Warner stressed the importance for a psychologist to know if they have a patient, who they see every week who has issues of the magnitude that they would communicate them to the board. She said that sometimes these complaints can be symptoms of a greater psychological problem which are important to know for treatment.
- Dr. Warner directed the committee to her submitted testimony and explained that all the processes and steps mentioned in her testimony are only about two inches of text in HB 655-FN. Her written testimony contained suggested language to be inserted to fill out this section. She stated that her suggested changes would help to separate investigation and prosecution from adjudication functions.
- Dr. Warner raised the concern that, as written, HB 655-FN does not provide a structure to investigations and allows for OPLC to investigate on its own initiative.
- Senator Perkins Kwoka asked if Dr. Warner had worked with anyone when drafting the recommended changes.
    - Dr. Warner stated that she spoke with many board members about the recommended changes.

- Dr. Warner mentioned that the issue from Mr. Rancourt's testimony, regarding licensees found guilty having to pay for the cost of the investigation, is addressed in another statute, RSA 332-G:11.

Omer Ahern Jr.

- Mr. Omer stated that he is a Grafton County commissioner.
- Mr. Omer explained that the nursing shortage has negatively affected Grafton County.
- Mr. Omer asserted that New Hampshire must continue to try to improve making nursing staffs available to different medical facilities.
- He explained that he frequently receives calls from constituents to get elderly citizens into nursing homes.
- Mr. Omer stated that he does not want to hurt practitioners.
- He said that he agrees with the statements and materials presented by Dr. Warner.

Tara Reardon

- Ms. Reardon says that she supports the house amended version of the bill and agrees with most of the previous testimony given in support.

Dave Cuzzi

- Mr. Cuzzi asked if the committee could amendment in the inclusion of physician's assistants on page 6 line 24 including RSA 328:D.
- Sen. Perkins Kwoka asked if there is any opposition to adding the physicians assistants.
    - Mr. Cuzzi said that this was a legitimate oversight that they were not included.
    - Sen. Perkins Kwoka then asked if this needs to be changed in HB2
    - Mr. Cuzzi answered that he is unsure, but it definitely needs to be changed in this bill.

Michelle Moreau

- Ms. Moreau stated that as a dietician, she knows that there is great insurance coverage for dieticians. She said this is because the licensure is so strict.
- Ms. Moreau said that no one should want to bring in just anyone and water down the quality of services. She said that would affect the cost of the permit. She also stated that temporary licenses must have the same standard as regular licenses.
- Ms. Moreau stated that she does not want to give OPLC incentive to investigate, as HB 655-FN does.

Richard Silverman

- Mr. Silverman voiced the concern that too much of the board's role is being slowly transferred to OPLC. He said this would undermine the underlying reason for the existence of the board. He asserted that the collective knowledge of what works best in accounting will be lost.
- Mr. Silverman said that the Board of Accountancy should be able to override OPLC's decisions based on their expertise and protecting the public interest. He stated that efficiency and expediency should not undermine the board.
- Mr. Silverman explained that the Board of Accountancy uses their own investigators, so there is no charge to the state.
- He noted that on Monday, the House had removed language in HB 2 which would have had similar effects what HB 655-FN would do.
- Senator Perkins Kwoka asked Mr. Silverman to clarify if the Uniform Accountancy Act has some procedures for investigation that govern what the board does.
    - Mr. Silverman confirmed that is correct.
    - Sen. Perkins Kwoka noted that the Board of Accountancy has more statutory framework than most professions. Sen. Perkins Kwoka asked if New Hampshire has adapted the Uniform Accountancy Act or if it is a model policy.
    - Mr. Silverman responded that it is a model policy and that it has been adopted. He highlighted that this gives the board mobility, in that if a professional from another state moves into New Hampshire, then the board is assured that they follow the Uniform Accountancy Act.
- Sen. Perkins Kwoka and Mr. Silverman agreed that the term limits for the executive director of the OPLC have been adopted in the amended version of HB 655-FN.

Joseph Wichert

- Mr. Wichert stated that his board fully supports removing any obstacles to licensure and that they have been working to do so since at least 2015.
- Mr. Wichert said that there is a shortage of people in the land surveying field and that they have been trying to engage younger people into the profession. He explained that the Board of Land Surveyors and the Board of Engineers were strongly opposed to the original wording of the bill. He stated that the revisions are moving in the right direction.
- Mr. Wichert voiced the concern that the current structure of the board of licensure for surveyors works well and the wording of HB 655 would remove the boards from the process.
- Mr. Wichert echoed the concerns of Mr. Mulleavy regarding Page 4, Lines 15-19. He stated that there is no education requirement in their case so the ability to

evaluate experience is more important. This means that expertise in the profession is important when evaluating potential licensees.

- Mr. Wichert explained that under the current system, the board decides whether to initiate and investigation into allegations.

Brad Holt

- Mr. Holt voiced the concern that the initiation of the OPLC was designed to enhance efficiencies and reduce redundancies but seems to be moving into a consolidation of discretion to members of the OPLC and away from the boards, specifically the Board of Medicine.

PJ
Date Hearing Report completed: April 4, 2023

Speakers

SENATE EXECUTIVE DEPARTMENTS & ADMINISTRATION COMMITTEE

Date 03/29/23 Time 9:00 A.M. Public Hearing on **HB 655**

relative to the office of professional licensure and certification.

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☐	☑	☐	Senator Carson	SD-14
☑	☐	☐	Betsey Patten	Assessing Standards
☐	☐	☐	Celia Oliver	NH Psychological Assoc'n
☐	☐	☐	Bob Quinn	NH REALTORS
☐	☐	☐	Steven Ransom	ME
☐	☐	☐	Bill Trombly	PE & HVAC.
☐	☐	☑	Chris Mulleavey	PE Board
☐	☐	☑	Paul Mullin	PE Board
☐	☐	☑ Needs Revision	Dr Deborah Warner	Psych Board
☐	☐	☑ Revision	Dr Deborah Warner	Bright Day Psychology
☐	☐	☑ Revision	Omer C. Ahern, Jr., Esq	Self
☐	☐	☐	Kimberly Kirkland	NHAJ
☐	☐	☐	Lindsey Courtney	OPLC
☐	☐	☐	Shane Gorlet	OPLC
☐	☐	☐	Rep Hope Damon	Solomon & deGoosh
☐	☐	☐	Jane Ahern	EDA
☐	☐	☐	Tara Reardon	NH Comm. Loan Fund
☐	☐	☐	Carol McGuire	Merr 27
☐	☐	☐	David Cuzzi	NH Soc. of Physician Assistants
☐	☐	☐		

SENATE EXECUTIVE DEPARTMENTS & ADMINISTRATION COMMITTEE

Date 03/29/23 Time 9:00 A.M. Public Hearing on **HB 655**

relative to the office of professional licensure and certification.

Please check box(es) that apply.

SPEAKING	*FAVOR*	*OPPOSED*	*NAME(Please print)*	*REPRESENTING*
☑	☐	☑	Michelle Mason	NHAND
☐	☐	☑	Elise Bolster	NHAND
☐	☐	☑	Erika Behrmann	NHAND
☑	☐	☑	Richard S. Iverson	NH Board of Accountancy
☑	☐	☑	JOSEPH WICHERT	NH BOARD OF LICENSURE FOR LAND SURVEYORS
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Senate Remote Testify

Executive Departments and Administration Committee Testify List for Bill HB655 on 2

Support: 1 Oppose: 13

Name	Title	Representing	Position
Lang, Senator Tim	An Elected Official	Senate District 2	Support
Behrmann, Erika	A Member of the Public	Myself	Oppose
Bolster, Elise	A Member of the Public	Myself	Oppose
Al-Nimr, Rima	A Member of the Public	myself	Oppose
Menger, Karla	A Member of the Public	Myself	Oppose
Maraio, LMAC Chair, Jared	A Member of the Public	Lakes Management Advisory Committee	Neutral
Burke, Joanne	A Member of the Public	Myself	Oppose
Cote, Lois	A Member of the Public	Myself	Oppose
aubertin, amy	A Member of the Public	Myself	Oppose
Patel MS RDN LD, Gita	A Member of the Public	Myself	Oppose
Cuzzi, David	A Lobbyist	NH Society of Physician Assistants	Neutral
Anderson, Violet	A Member of the Public	Myself	Oppose
Greer-Carney, Jan	A Member of the Public	Myself	Oppose
Wooldridge, Therese	A Member of the Public	Myself	Oppose
Normandin, Denise	A Member of the Public	Myself	Oppose
Laufersweiler, Lauren	A Member of the Public	Myself	Oppose

Testimony

From: John Johnson jjohnson@nasba.org
Subject: HB 655 - Written Testimony
Date: March 24, 2023 at 10:58 AM
To: Rebecca.PerkinsKwoka@leg.state.nh.us
Cc: rssmgb@gmail.com, cpowell@devinemillimet.com

Dear Senator Perkins Kwoka:

The New Hampshire Board of Accountancy appreciates the opportunity to offer written testimony in advance of HB 655 being heard before the Senate Executive Departments and Administration Committee, next Wednesday, March 29, 2023. The Board applauds the State of New Hampshire's efforts to make professional licensure less burdensome and more accessible to applicants without cumbersome regulations. However, as outlined in the attached letter, we are concerned that board members who have the technical and institutional knowledge – in particular, the technical professions – are not making the final decisions when it comes to regulatory oversight. Nor would the Board have recourse to override or challenge a decision made by the final arbitrator, the Executive Director.

While we applaud the legislature's efforts to streamline professional licensure, we encourage the committee to consider amendments that would provide the opportunity for the OPLC to rely upon the expertise of the professional licensing boards. If at all possible, we would like to schedule a meeting (in-person or via Zoom) with you and your staff to discuss our suggestions and answer any questions you may have.

Thank you again for the opportunity to submit the attached written testimony on HB 655 and to answer question you might have.

All the best, Richard Silverman, CPA, Board Chair

Richard Silverman, CPA, Chair
New Hampshire Board of Accountancy
- - - - - - - - - -
Mobile Phone: 603.918.8133
Email: rssmgb@gmail.com

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NH BOA Letter Senate...02).pdf

New Hampshire Board of Accountancy

7 Eagle Square ♦ Concord, NH, 03301 ♦ Tel 603.271.2152 ♦ Web www.oplc.nh.gov/board-accountancy

March 21, 2023

New Hampshire Senate Executive Departments and Administration Committee
Room 103
Legislative Office Building
33 North State Street
Concord, NH 03301

Dear Committee Chair and Senate Executive Departments and Administration Committee Members:

This letter memorializes the concerns of the New Hampshire Board of Accountancy (Board) with regard to House Bill 655 (HB 655). We appreciate the opportunity to offer written testimony in advance of HB 655 being heard before the Senate Executive Departments and Administration Committee. The Board applauds the State of New Hampshire's efforts to make professional licensure less burdensome and more accessible to applicants without cumbersome regulations. However, our main concern with this legislation is that board members who have the technical and institutional knowledge – in particular, the technical professions (Certified Public Accountancy, along with the Engineering and Architectural discipline boards) -- are not making the final decisions when it comes to regulatory oversight. Nor would the Board have recourse to override or challenge a decision made by the final arbitrator, the Executive Director of the OPLC, in a number of critical areas, such as: the examination, processing and approval or denial of an application for licensure; rulemaking; and reinstatement matters. Similarly, under this legislation, the Board would not be conducting investigations into professional misconduct-thus removing it from that aspect of its legacy work and the vital perspective that being so involved has provided.

When it comes to the Accounting Profession, legislatures in all 50 state, 4 territories and the District of Columbia, recognize a public need for independent and objective public accountants to regulate the practice of public accounting to assure the minimum competence of practitioners, as well as the accuracy of audit statements upon which the public relies, and which protects them from dishonest practitioners. Given the fact that the Board's mission is to protect the public by setting the requirements for obtaining a license to practice public accountancy, one critical way we accomplish this is by ensuring that education, examination, and experience requirements are met by all candidates before a license is awarded in New Hampshire. Such work takes place in tandem with the standards established by Uniform Accountancy Act (UAA), the chief benefit of which is to establish uniformity in how the profession is regulated in all 55 State Boards of Accountancy across the United States, thereby allowing not only a high standard of professional practice and public protection, but also an ease of mobility across all jurisdictions.

As part of our work, the Board will also renew an individual licensee's permit to practice public accountancy after determining that individual has completed the required hours of continuing professional education that proves his or her knowledge remains current in a rapidly changing field. For a certified public accountant (CPA) firm to maintain its permit to practice, it must undergo a peer review to determine compliance with technical standards, submit to a review of its system of quality control over its attest practice, and provide a report testifying to successfully passing such a review to the Board. Alongside these protective measures, should there ever be a complaint about the performance of an individual CPA or a firm, be it technical or ethical, we will investigate, and hold a formal hearing or negotiate a settlement that may result in suspension, censure, and even revocation—with civil penalties as set forth by Statutes. The Board also has the authority to impose remediation as a means to correct a problem.

Only State Boards of Accountancy can revoke an individual's right to practice public accountancy. This regulatory authority is reserved to the states. On the federal level, the Sarbanes-Oxley Act of 2002 created the Public Company Accounting Oversight Board (PCAOB) to monitor auditors of companies that register with the Securities and Exchange Commission. But what of those many private companies that make up the larger percentage of the American economy and New Hampshire's? They especially depend on the Board (of New Hampshire) to effectively regulate CPAs in this State. In fact, even if the SEC were to ban a CPA from practice before the Commission, it would remain up to the Board to revoke that CPA's ability to practice public accountancy.

Over the years, other Boards of Accountancy have encountered a wide variety of changes to their operations, including reorganization. In December 2010, the State of Washington considered merging its Accountancy Board within a larger department, but first sought an independent consultant's study. The consulting firm released its report which stated: "Our analysis indicates that, as to efficacy and economy of operating the Washington Board of Accountancy (WBOA), there are no significant reasons to warrant a merger of the WBOA into the Washington State Department of Licensing... Given that the stated reason for the creation and existence of the WBOA is to promote the dependability of financial information and to protect the public interest, a reduction in the accountability of WBOA to the public and the profession would be a failure of WBOA's statutory purpose."[1]

A similar finding is discussed in the "Report of the Advisory Committee on the Auditing Profession," issued in October 2008 by the U.S. Department of Treasury (ACAP Report). It ***"urged the states to create greater financial and operational independence of their state boards of accountancy."*** The report cited a concern ***"about the financial and operational independence of state boards of accountancy from outside influences, such as other state agencies, and the possible effect on the regulation and oversight of the accounting profession."*** It addressed the merging of boards by warning that "a number of state boards are under-funded and lack the wherewithal to incur the cost of investigations leading to enforcement. In addition, some state boards fall under the centralized administrative 'umbrella' of other state

[1] See "Merger Report," December 2010, Zwillinger Greek Zwillinger & Knecht, www.cpaboard.wa.gov/Home/Wboa_News/RFP_No1_alert.shtml

agencies and lack control of financial resources and/or operational independence necessary to carry out their mandate of public protection."[2]

In coming to a decision in New Hampshire, it is important to keep in mind that the accountancy profession is unique in its ***accountability to third parties***. Because individuals, businesses, and governments (federal, state, and local) all depend upon rigorous and reliable audited financial information in order to make sound investing, financial planning, and lending decisions, in compliance with applicable federal, state and local laws—and because the body of knowledge used by CPAs is so highly technical and comprehensive, as are the accountancy statutes and regulations that govern them—enforcement cases require Board staff and members who possess a significant level of education, up-to-date professional knowledge, and experience. In practice then, the impartial, professional, and technical knowledge possessed by the present members of the Board have contributed to the protection of the citizens of New Hampshire which we submit could not be afforded through any other combined agency.

The Board recognizes and applauds your goal of finding the proper balance between public protection and governmental efficiency. Procompetitive benefits and efficiencies are key factors when regulating any profession. The 55 state boards of accountancy around the nation have worked diligently with the National Association of State Boards of Accountancy (NASBA) to reduce barriers to trade in accountancy services. Beginning in 1997, the state boards, NASBA, and the American Institute of CPAs (AICPA) embarked upon a national legislative effort to remove impediments to interstate practice, ease restrictions on firm ownership, lift anticompetitive limits on fee arrangements, and permit the use of trade names. Concurrently, NASBA and the AICPA developed and promoted these changes through the Uniform Accountancy Act ("UAA"), an evergreen model law developed to provide a comprehensive, uniform approach to regulation of the accounting profession. As stated in the "Introductory Comments" to the UAA 8th Edition: "these changes achieve the goals of enhancing public protection, facilitating consumer choice, and supporting the efficient operation of the capital markets." In the past two decades, these procompetitive changes have been adopted in almost all U.S. jurisdictions where accountancy is regulated and has led to CPA Mobility. In a 2018 policy paper released by the Federal Trade Commission (FTC), *Options to Enhance Occupational License Portability*, the FTC recognized the accounting profession for utilizing model laws to achieve an interstate practice system. These laws gave the state granting practice privileges *and* the state granting the original license oversight over the licensee. At NASBA's 111th Annual Meeting, Tara Isa Koslov, chief of staff to the Chairman of the FTC stated, "We recognize accountancy as having done mobility and accountability right." Koslov also noted: "Importantly, you are providing disciplinary support beyond state lines." The UAA serves as a model for states and professional licensing so long as Boards operate within their statutory authorization.

As a result of these efforts, the regulation of accountancy among the states is

[2] See "ACAP Report," October 2008, U.S. Department of Treasury, www.treasury.gov/about/organizational-structure/offices/Documents/final-report.pdf (see pages VII:7-VII:8 of that report)

uniquely efficient and procompetitive. Other examples, under the UAA, as implemented by state laws, include:

• CPAs only need to be licensed in the state of their principal place of business. UAA §§ 3(p), 23.
• CPAs can practice in another jurisdiction without having to obtain a license or provide notice or pay a fee. UAA § 23.
• CPAs are subject to substantially equivalent licensing requirements. UAA § 6(c)(2).
• All 55 U.S. Jurisdictions have adopted "Substantial Equivalency" as set forth in UAA § 3 and 23. As a result, because the initial licensure requirements are identical in all 55 jurisdictions (Education, Examination and Experience), when a CPA licensee moves his or her principal place of business to a new jurisdiction, the licensing process has been streamlined. This has all transpired over the years as a direct result of the 55 Boards of Accountancy working directly with NASBA and the AICPA. A particular benefit of this symbiotic relationship among the Board, NASBA and AICPA is that the institutional knowledge and expertise of the New Hampshire Board of Accountancy, as part and parcel of the UAA process (and other NASBA Committees), ensures that accurate licensing and disciplinary information for individual CPAs and firms is not only maintained in New Hampshire databases, but also in NASBAs national Accountancy Licensee Database (ALD). The ALD is a central repository of current licensee and firm information, along with disciplinary information, that allows each of the 55 Boards of Accountancy to have access to one database to ensure that the licensee in one jurisdiction is in good standing before being licensed by another jurisdiction. As you can imagine, having timely and accurate data in these databases is imperative to the integrity of the licensing process – as well as the mobility of licensee's when working in multiple jurisdictions. We believe that the integrity and reliability of this relationship and the information database that arises from it can only be maintained with the ongoing insight of the Board and the hands-on participation of its members.
• Holders of substantially equivalent foreign credentials are allowed to provide certain services in the states. UAA § 14(j).
• For those CPAs who hold licensure in multiple jurisdictions, the reporting of Continuing Education is only required to be reported in the licensee's principal place of business (home jurisdiction) – as determined by the licensee. UAA Model Rule § 6-4(a) and 6-5(c).
• Non-licensees are allowed to render many accounting services to the public. UAA § 14(a).

At a time when New Hampshire is taking steps to have a leaner, more effective government, it must be stated that a central part of effectiveness is trustworthiness and reliability. Confidence in professional financial services positively impacts the economy and is in the public interest. The New Hampshire State Board of Accountancy is committed to the protection of the public and its direct accountability to the public should be preserved so both the perception *and* reality of independent, professional oversight remains.

We are all united in our desire to make professional licensure less burdensome and more accessible to applicants without cumbersome regulations. However, through the statutes

establishing the Board, there already exists an efficient and effective framework for the regulation of CPAs in the State of New Hampshire.

We respectfully encourage the committee to reconsider the following aspects of the bill:

- Transferring the authority to issue licenses from the Board to the New Hampshire Office of Professional Licensure and Certification (OPLC) ***(Sections 310:4 II (c)(d)(f); 310:6; 310:8):***

    - Licensing boards are comprised of subject matter experts who have the knowledge and experience required to manage and provide licenses for qualified CPAs and applicants. Transferring this authority to the OPLC, where decisions will not be made by individuals with the technical and institutional knowledge within the profession, can jeopardize the safety and welfare of the public.

- The creation of the mechanisms for the administration of the accountancy profession through OPLC is a significant undertaking that will undoubtedly lead to increased costs to all licensees funding the OPLC (through license and other fees). ***(Section 310:5; 310:6).***

    - The legislation provides much detail on the administration of the profession through OPLC but lacks substance when it comes to the methodology on how each occupational and professional board will be charged to pay for these services. It seems likely that this undertaking will end up being a "mandate" on services OPLC provides funded by those occupations and professions, such as accountancy, which are able to pay (in place of those which cannot).

- Transferring the authority to conduct investigations and enforce decisions from the Board ***(Section 310:4(d); 310:9 III):***

    - The subject matter experts that sit on the Board work closely with investigators in the case of an investigation of a complaint or misconduct within the profession. The decision to investigate and adjudicate in these cases should reside with individuals who have the most experience in the profession. Close involvement with such investigation also provides context for the Board's consideration and, we believe, improved outcomes.

- Establishing term limits for the Executive Director of the OPLC ***(Section 310:3)***:

    - The role of Executive Director of the OPLC is a comprehensive responsibility, as they assume the leadership of many professions within the state. By limiting the position to a four-year term there is a risk of losing the consistency and knowledge necessary to effectively carry out the responsibilities needed in this role.

- Furthermore, the extent to which these responsibilities are needed would require an individual with adequate experience. It may be difficult to regularly appoint such an individual for a limited position in frequent intervals.

While we applaud the legislature's efforts to streamline professional licensure, we encourage the committee to consider amendments that would provide the opportunity for the OPLC to rely upon the expertise of the professional licensing boards.

Thank you again for the opportunity to submit written testimony on HB 655. We are pleased to assist you and your staff in any plausible manner. If you have any questions or comments, please do not hesitate to contact Charles Powell Chair, New Hampshire Board of Accountancy Legislative Committee. Charles can be reached at cpowell@devinemillimet.com or 603.494.8628.

Sincerely,



Richard S. Silverman, CPA, Chair
New Hampshire Board of Accountancy

cc: New Hampshire Board of Accountancy
New Hampshire Society of CPAs
Charles Powell, Member, Board of Accountancy

Dear Senator Kwoka,

Sincere thanks for your work on behalf of New Hampshire's residents.

My name is Joanne Burke. I am a licensed dietitian (LD) under the NH Board of Licensed Dietitians. I am also a registered dietitian nutritionist (RDN) of the New Hampshire Academy of Nutrition and Dietetics, an affiliate of the National Academy of Nutrition and Dietetics.

I am writing to day to voice my strong opposition to HB 655, and HB 2 section 108.

The proposed legislation has the potential to critically weakening oversight and public protection from numerous licensing boards in New Hampshire, including that of dietetics professionals. Both of these bills provide the same concerning language addressing changes to professional licensing boards. Passage of either of these bills will disrupt the basic, protective functions of our board which we value and believe are necessary. The structure of the current licensure oversight serves as an informed, professionally informed way to protect the public's safety and well-being; passing these bills will do neither, and likely lead to less accountability by practitioners, thus putting the health and safety of the public at risk.

As Registered and Licensed Dietitians, some of our professionals provide Medical Nutrition Therapy (MNT) to you, your families, friends and neighbors. Passage of these bills puts access to covered healthcare services at risk as Health Insurance plans provide more robust care in States where practitioners are licensed. We have seen this occur in other states that weaken and then rescinded licensure laws. Weakening licensure will weaken consumer protection, reduce access to affordable health and will limit the number of visits fully covered by insurance plans. The ripple effects of this bill will be vast and uncertain as no one can imagine how Health Insurance Plans and Medicare will respond. Other registered dietitians/nutritionists work in our public health settings and teach in our Universities, or work in the anti-hunger arena.

As RDNs we are awarded that designation only after completing in-depth educational training, internships and successful demonstration of mastery as verified though the national registration (RDN) process. We have continuing educational requirements and both the national level and as part of our state licensed dietitian (LD) renewal.

If you have any questions, please feel free to contact me at 603 566-5913 . Thanks, in advance, for your opposition to **HB655 and HB2, section 108** to protect the citizens of New Hampshire and promote best practices and informed oversight among numerous practicing professionals.

Joanne Burke, PhD, RDN, LD
UNH Clinical Professor, Emerita
249 Bay Rd.
Newmarket, NH 03857
603 566-5913

STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
BOARD OF PROFESSIONAL ENGINEERS
7 EAGLE SQUARE, CONCORD, NH 03301-2412
Telephone: 603-271-2152
TDD Access: Relay NH 1-800-735-2964
www.oplc.nh.gov

March 24, 2023

Chairman Howard Pearl & Committee Members
Executive Departments and Administration Committee
State House Room 103
Concord, NH 0330 1

Re: HB655 and HB2

New Hampshire State Senators:

I am writing this letter to strongly encourage you to vote against certain aspects of NH HB655, specifically page 4, lines 15-19, relative to examinations for licensure and investigation of complaints and NH HB2, specifically as it relates to the Board of Professional Engineers.

I have been honored to serve on the Professional Engineers Board since September, 2014 and have been the Chair for the past five (5) years. My board members and I volunteer their time to review engineering applications for those individuals that wish to take the PE exam and those applicants that are current Professional Engineers seeking comity to be licensed in New Hampshire. We also serve as subject matter experts that work closely with investigators for complaints or misconduct within the profession and assist in determining whether to investigate and adjudicate these cases. Our Board consists of five (5) members appointed by the Governor and Council, four (4) of which are professional engineers and one public member. Together we bring 132 years of engineering experience to the board. We take these responsibilities very seriously in order to safeguard the health, safety, and welfare of the public in our state.

HB 655, in its current form, transfers the authority to issue licenses from the Board of Professional Engineers to the Executive Director of the OPLC. Our Board, consisting of subject matter experts, use our knowledge and experience to objectively determine if the applicants have the required experience to sit for the exam and/or to be licensed in the State of New Hampshire. This proposed transfer of authority will also affect investigations and enforcement of complaints and misconduct within the profession. The decision to investigate and adjudicate in these cases should lie with the Board members who have the most qualifications and experience in the subject matter. By allowing this transfer of authority to the OPLC, the health, safety and welfare of the public could be jeopardized.

STATE OF NEW HAMPSHIRE

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

BOARD OF PROFESSIONAL ENGINEERS

7 EAGLE SQUARE, CONCORD, NH 03301-2412
Telephone: 603-271-2152
TDD Access: Relay NH 1-800-735-2964
www.oplc.nh.gov

HB 2 seeks to promote efficiency and economy, eliminating redundancies in licensure requirements and reduce administrative cost by combining the professional engineers and land surveyors into one board with five (5) members; two (2) professional engineers, two (2) land surveyors and one (1) public member. With due respect, this is akin to combining apples and oranges. These members would be from two distinctly different professions. I am intimately familiar with how the Professional Engineer Board functions and in my opinion this proposal is counterproductive as it will not save money, reduce impediments to licensure or promote efficiency and economy or safeguard the public in any way.

In closing, as a practicing professional engineer, licensed in several states, and in my capacity as Chair of the Board of Professional Engineers, I am supportive of removing unnecessary barriers for professional licensure and to be more accessible to applicants without cumbersome regulations; however, through the statues establishing the New Hampshire Board of Professional Engineers, there already exists a proven and effective framework for licensing engineers in our state, ensuring rigor is met to protect the public's health, safety and welfare.

Sincerely,

C R Mulleavey

Christopher Mulleavey, PE
Chair, Board of Professional Engineers
New Hampshire Office of Professional Licensure and Certification

NHPA
NEW HAMPSHIRE
PSYCHOLOGICAL
ASSOCIATION

March 29, 2023

Dear Chairman Pearl and Members of the Executive Departments and Administration Committee,

Our names are Celia Oliver, PhD, PsyD, Julie Wolter, PsyD, Jessica Leonard, PhD, and James Bomersbach PhD. We are all licensed psychologists in New Hampshire and are representing the New Hampshire Psychological Association (NHPA) as members of its board of directors. We are pleased to submit this testimony on behalf of NHPA. NHPA supports the intent of HB655, however we have a number of concerns and want to make sure they are addressed.

Our understanding of HB655 is that it will reduce the administrative burden on the licensing boards, standardize the process for investigations, increase efficiency and consistency, and generally improve due process. NHPA supports these intentions as they align with our priorities of easier accessibility for licensure and due process protection of professionals during the investigative process. However, we have specific concerns about the implementation of this bill, especially as it relates to the functioning of the Board of Psychology and its role in protecting both the public and the professional practice of psychology.

1) Investigations of misconduct
    a. We request that the Executive Director of the OPLC continues to use the current process of investigation of psychologists implemented by the Board of Psychology whereby it assigns specialty training and experience to different cases and increases accountability and consistency by reviewing cases together on a regular basis. We believe that the current process has been effective in protecting the public and appropriately overseeing psychologists in their profession.

2) Identifying the allegation process
    a. We request clear definitions of the distinct phases of the investigative process. Terms such as "allegation", "complaint" and "investigation" have crucial distinctions for the purposes of credentialing, re-credentialing, and insurance provider contracts. It is important that they be clearly defined in statute for consistency of application. Healthcare credentialing and contracting are used to verify and assess psychologists' training and continued ethical practice with re-attestations being required by each entity every 3 months. This allows psychologists to participate in health insurance programs which increases accessibility of services for clients. However, if psychologists have to check that they are under investigation, even though it is only an allegation, it is highly likely that their contract will not be renewed and their services will not be covered by that insurance company. Without clear and consistent language on this issue,

insured patients will lose access to care provided by psychologists, further restricting mental health resources that are already sorely needed.

3) Assigning the investigators of alleged misconduct
    a. As written, the office of Executive Director of the OPLC may contract the services of investigators and retain qualified experts. Psychology includes various distinct domains (e.g., child development, neuropsychology, school psychology, forensic psychology, etc.) and consequently would require an investigator with expertise in the sub-specialty area to undertake a valid investigation. Therefore, we are requesting rules to distinguish criteria on identifying appropriate subject matter experts for investigations of psychologists.

4) Identifying a financial cap for investigations
    a. We are requesting that the current financial cap of $10,000 for investigations remains the same. HB655 removes this cap, introducing financial uncertainty into the investigative process.

NHPA appreciates your time and effort as all of us work together to assist the process of increasing competent licensed psychologists for the citizens in New Hampshire, while also protecting the working psychologists and clients of our state.

Respectfully submitted,

Celia G. Oliver, PhD, PsyD
NHPA Past-President
NHPA Ethics Chair
NHPA Liaison to the Board of Psychologists

Julie Wolter, PsyD
NHPA Chair, Behavioral Healthcare Advocacy Committee
NHPA Director of Professional Affairs

Jessica Leonard, PhD
NHPA President
NHPA Liaison to the Board of Psychologists

James Bomersbach, PhD
NHPA Chair of Legislative Committee

HB 655 Concerns

March 29, 2023

To the Senate ED& A Committee

Attention: Senator Pearl and Committee Members
RE: HB 655

Section: 310:6 I
Page 5, line 33

Add the bold wording end of the first sentence add

I. All fees set forth in RSA 310:5, with the advice and recommendation of the respective board, **and not withstanding RSA (XXX), shall require an affirmative vote of 51% of all of the Boards within the OPLC.** Fees shall be reassessed at a minimum, every five years.

*****

This would help protect the licensees, and to keep the agency balanced and not political, as administrations and appointed personal, change over the years to come. Allowing for a fair process for fees and rule changes. Considering there are over 54 boards, 157,000 licensees and they will have a $14,000,000- $17,000,000 budget. (see attached)

Section : 310:9 V (b)
Page 8, line 6

Add the bold section

(b) Conduct Inspections of **non-residentially zoned,** places of business of a profession regulated under the office

*****

This would prevent the OPLC from entering a home office located in a personal residence with out the proper warrants or subpoenas.

Section 310:08 II
Page 7, line 1 - 3

Looking for clarification on 2 year renewals

- Apprentices are registered - Not licensed and have to stay on a 1 year renewal.
- Valid from date of issuance – Are the effects of this wording understood ???
- Also could the committee or OPLC confirm the when changing from other that a 2 year license, that the profession may have right now, that there will not be a Fee increase to do this?

Example: Electrical licenses are renewed on a 3-year basis right now.
Journeyman -$50.00 per year x 3 = $150.00
Master - $90.00 per year x 3 = $270.00

If renewed on a 2-year basis we have been told that it would be as follows:
Journeyman -$50.00 per year x 2 = $100.00
Master - $90.00 per year x 2 = $180.00

Section 310:14 III
Page 12, line 11

Add the bold section

III. Appeals from a decision on a rehearing shall be by appeal to the Supreme Court, pursuant too RSA 541, **except as allowed under RSA 674:34**. No sanction shall be stayed by the board during an appeal.

*****

This has been a long standing procedure and a very helpful one. It is not always financial feasible for a small business to take an appeal to the Supreme Court, especially when it becomes a matter of the application and interpretation of the State building code or State Fire codes.

This step allows some relief for the Licensee to appeal to a different board of professionals, in the building industry, with regards to application and interpretation, before having to go to the Supreme Court. This procedure has been used in the past with great success and fairness.

RECIPROCITY (this is in place for public safety)

Very important for the professional licenses, that it includes substantial equivalent, requirements.

We already reciprocate with 22-23 other states, (through NERA) and this could jeopardize that if not done properly.

CORPORATE LICENSE

RSA 319-C:10 This Should NOT be repealed. We are told that this is being repealed because the RSA uses the word "May" and that this makes it voluntary so there is no need for it. (see attached)

This will cause a loss of revenue to the state ($125.00 per licensee per year) and also put many Companies out of business, such as large renewable companies or national corporations that want to do business in NH.

Examples of using the wording "**MAY**" and it not being considered voluntary

- Page 11, Line 9
  - The Board "**May** " issue a non disciplinary confidential letter of concern

- Page 12, Line 3
  - The Board "**May**" impose a fine...

Office of Professional Licensure and Certification
Agency Overview

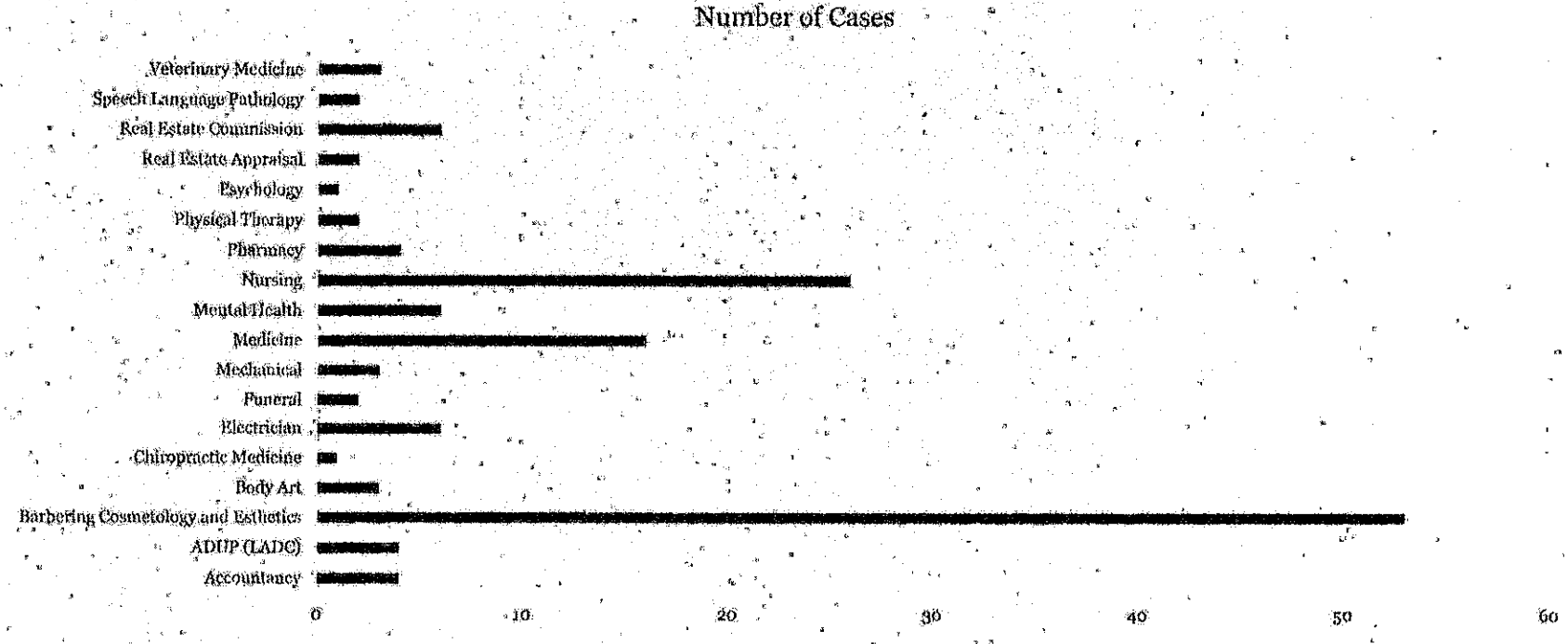
- 48 occupational licensing boards with independent regulatory authority
  - 8 advisory
  - 1 complaint-only board
- 243 license types
- 157,075 licensees subject to renewal requirements
- Approximately 40,000 additional registrations, apprentice licenses, certifications and endorsements that fall under OPLC
- Total OPLC workforce: 106 authorized positions
  - Approximately 350 members of boards, commissions, councils, and committees
- Budget: approximately $14,500,000 in FY22
  - Funded solely through licensure fees (administrative fines deposited into general fund); excess lapses at the close of the biennium

Office of Professional Licensure and Certification
Enforcement Statistics—1097 Complaints Received FY22

Board	Total
Accountancy	20
Alcohol and Drug Use Professionals	15
Allied Health Professionals	21
Architects	8
Barbering, Cosmetology, and Esthetics	229
Body Art Practitioners	9
Chiropractic Examiners	5
Dental Examiners	54
Electricians	39
Foresters	4
Funeral Directors & Embalmers	11
Guardian Ad Litem	12
Home Inspectors	8
Land Architects	1
Land Surveyors	5
Manufactured Housing and Installation	3

Board	Total
Massage Therapists	8
Mechanical	21
Medical Technicians	5
Medicine	147
Mental Health Practice	53
Midwifery Council	7
Natural Scientists	1
Nursing	213
Nursing Home Administrators	2
Opthalmic Dispensers	2
Optometry	2
Pharmacy	40
Podiatry	1
Professional Engineers	8
Psychologists	15
Real Estate Appraisers	8
Real Estate Commission	83
Veterinary Medicine	37

Office of Professional Licensure and Certification
Enforcement Statistics—Cases Sent for Adjudication FY 22



TITLE LXIV
PLANNING AND ZONING

CHAPTER 674
LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning Board of Adjustment and Building Code Board of Appeals

Section 674:34

674:34 Powers of Building Code Board of Appeals. –
I. The building code board of appeals shall hear and decide appeals of orders, decisions, or determinations made by the building official or fire official relative to the application and interpretation of the state building code or state fire code as defined in RSA 155-A:1. An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of the state building code or the state fire code.
II. Appeals of decisions of any local building code board of appeals shall be made within 30 days of the board's decision to the state building code review board as outlined under RSA 155-A:10, IV(c).

Source. 1983, 447:1. 2012, 242:17, eff. June 18, 2012. 2019, 219:5, eff. Aug. 11, 2019.

TITLE XXX
OCCUPATIONS AND PROFESSIONS

CHAPTER 319-C
ELECTRICIANS

Section 319-C:10

319-C:10 Corporations and Partnerships. –

I. The board may issue a license to corporations and partnerships engaged in the business of making electrical installations, provided that one or more officers or employees of any such corporation directly in charge of the business affairs of such corporation, or a member of such partnership directly in charge of its business affairs, is a licensed master electrician.

II. The board may issue a license to corporations or partnerships engaged in the business of making electrical installations on high or medium voltage distribution systems operating over 600 volts, provided that one or more officers or employees of any such corporation directly in charge of the electrical business affairs of such corporation, or a member of a partnership directly in charge of its business affairs, is a licensed master electrician or a licensed high/medium voltage electrician.

Source. 1975, 485:1. 1981, 356:12. 2001, 266:5, eff. July 1, 2001.

331-A:20 Programs of Study; Preparatory Education; Continuing Education. –

I. An individual, institution, or organization seeking accreditation or renewal of accreditation to offer a preparatory or continuing education program of study shall meet criteria and submit documentation as required by the commission prior to approval. The commission shall require any individual, institution, or organization seeking accreditation or renewal of accreditation of a real estate course to submit documents, statements, and forms prior to approval.

II. In reviewing and approving an application for a continuing education course, the commission **or the Office of Professional Licensing and Certification** shall assess the content with the primary purpose of assuring that real estate licensees possess the knowledge, skills, and competence necessary to perform the licensee's duties in the real estate business. The subject matter of the course must be directly related to real estate practice in New Hampshire. Continuing education courses shall consist of the following:

Letter to oppose HB 655 and HB 2, section 108:

Thank you, Mr. Chair, and thank you committee members. I am Representative Hope Damon, Sullivan District 8, the beautiful towns of Acworth, Langdon, Lempster, Goshen, Washington, Springfield, Sunapee, my hometown of Croydon and the rising city of Claremont. I serve on the very busy house education committee. I am a licensed dietitian under the NH Board of Licensed Dietitians, recently retired from a 43 year career that included hospital, nursing home, substance treatment and private practice with an emphasis on diabetes care and eating disorders treatment. I am a member of the New Hampshire Academy of Nutrition and Dietetics, an affiliate of the National Academy of Nutrition and Dietetics. I was President of NH Dietetic Association when licensure of dietitians was being established in NH.

I have significant concerns about HB 655 and HB2, section 108, although I will also acknowledge that there is some potential merit to consolidating administration of health care professional licensure under one agency. Both bills provide the same concerning language addressing changes to professional licensing boards. Passage of either of these bills could disrupt the basic, protective functions of our board which I value and believe are necessary to protect the public's safety and well-being.

Registered and Licensed Dietitians provide Medical Nutrition Therapy (MNT) to you, your families, friends, and neighbors. We are extensively educated and experienced health care professionals with unique abilities to not only educate about nutrition related to various diseases and conditions but also skilled in motivational interviewing and behavior change. That combination of nutrition knowledge with the skills to support patients applying what they have learned is the essence of our work. It is much more than just suggesting how to eat – it is helping patients make practical, sustainable, enjoyable food choices become their routine.

The services of a licensed dietitian are of no merit if the public is unable to obtain them. Licensure helps the public determine who is a qualified provider of scientifically accurate nutrition care. It is not unusual for people to be unaware of the difference between dietitians and nutritionists. Per RSA 326-H:12 "A licensed dietitian shall: .....see attached –

Whereas, there actually is no legal definition of a nutritionist. There are many people who offer nutrition advice without the education and expertise of a

dietitian. Literally everyone in this room could decide they are a nutritionist. Licensure helps people recognize the credentialed nutrition experts.

It is not clear to me in the language of hb655 whether existing licensure boards will function under the umbrella of the expanded OPLC while maintaining the same board membership and responsibilities OR is the intent to create a single generalized board of licensure such that people with little or no knowledge of dietitian practice will compose the licensing board. Clarity on this is essential.

The other aspect of access to care is affordability. Passage of these bills puts access to covered healthcare services at risk as health insurers generally provide more robust care in states where practitioners are licensed. Weakening licensure will limit consumer protection. It will limit access to affordable healthcare by reducing the number of visits fully covered by insurance plans. Medical nutrition therapy is very cost-effective care – for example, when people with diabetes receive thorough, contemporary nutrition care, they have far fewer complications that are expensive to treat.

Therefore, I request you ~~VOTE NO on~~ declare inexpedient HB655 and HB2, section 108 to protect the citizens of New Hampshire unless it is clearly stated that the Board of Licensing Dietitians will remain intact in composition and function as it presently functions.

Thank you for your attention. I'm happy to respond to any questions.

Rep Hope Damon, RD,LD
Sullivan District 8
603-848-4257
Hope.Damon@ leg.state.nh.us
hoperdnh@gmail.com

Dr Deborah Warner, Littleton

2023 03 10 HB 655 ~~Subcommittee~~ Senate (& Exec) Testimony

If provisions from HB 655 were to pass, there are **many rights that are in current law <u>that are entirely missing in HB 655. Rights for</u>**:

- **Practitioner to see an allegation made against them**
  - ~ for the **safety of their patients** especially in event of psychotic fixations that require intervention
  - for **due process**
- Licensee to **submit a voluntary response to the allegation**
- Allegation and response to be **considered together by a board of professional peers and public members** in considering its initial action upon it
- **Investigations to be defined in scope with charges that are known to the licensee** in order to prepare for their own defense
- State attorney investigations to be limited to the charges and **not be free range fishing expeditions, <u>or</u> upon its own initiative**, which God forbid, could be twisted in purpose or even become political tools
- **Licensee's work to be reviewed by like professionals at all stages** in the board's regulation: initial, investigation, and adjudication
- Licensee to **see the evidence from the investigation against them before receiving punishment**
- for the **protection of the lessor status allegations from being used against them** in professional membership, insurance panels, hospital membership, and premium ratings, etc
- for **limitations of fines of the costs of investigations**

I hope that you will support the ~~study~~ Suggested revision of these issues and bring forward the best practices in regulation across the boards with input from the boards that utilize the best advances that the boards can share with the legislature and improve regulation across all boards.

As you may know, I do work in detail on these matters and will help in the work to collaborate among boards and with OPLC and the committee to make this a strong bill that honors the rights of the public and professionals, and supports the efficient administration of the office.

proposed wording by OPLC:

310:9 Complaints and Investigations.

I. Allegations of professional misconduct shall be brought in accordance with RSA 332-G.

II. Upon receipt of an allegation of professional misconduct, the office shall determine whether the allegation states a viable claim. If the office determines that the allegation is not viable, it shall make a recommendation to the board for dismissal. The board shall review the office's recommendation and dismiss the allegation if it determines that the allegation does not state a claim of professional misconduct.

III. Notwithstanding any other law to the contrary, the office shall investigate allegations of misconduct by licensees (a) upon its own initiative or (b) upon written complaint alleging misconduct of a licensed, or unlicensed, individual or entity of a profession regulated under the office.

Suggested wording:

310:9 Allegations, Complaints and Investigations.

I. Allegations of professional misconduct shall be brought in accordance with RSA 332-G.

II. Upon receipt of an allegation of professional misconduct, ~~the office shall determine whether the allegation states a viable claim. If the office determines that the allegation is not viable, it shall make a recommendation to the board for dismissal. The board shall review the office's recommendation and dismiss the allegation if it determines that the allegation does not state a claim of professional misconduct.~~ a professional of the respective license jointly designated by the board and the office shall review the incoming allegations for the board when received by the office, to determine if the matter presents an urgent or dangerous situation that would warrant an emergency action pursuant to RSA 310:11 and RSA 310:12 and/or if there is good cause to withhold the allegation from the licensee. The office or board may, with just cause, conduct investigations on an ex parte basis only if there is an imminent danger to life or health of a client or patient. The allegation shall be initially processed by the office.

III. A copy of the Allegation shall be sent to the licensee by the office immediately notifying the licensee of the opportunity for voluntary response, noting that client/patient materials may be shared with the board and office in accordance with RSA 310:9 as applicable, and records and privacy statutes and rules for that profession. A 60 day time period for voluntary reply shall be allowed for the response before the matter is reviewed by the board, or until the response is received, whichever is first.

IV. When the office provides the allegation and licensee response materials to the board for their review, the office shall advise whether the matter falls under the jurisdiction of the board.

V. The board shall review the allegation together with the response if provided and shall determine whether the allegation should be dismissed. An allegation that is dismissed shall be protected information that shall not be required to be disclosed by the licensee to any person or entity pursuant to RSA 310:9-a.

VI. If the allegation is not dismissed, the board shall elevate the matter to a complaint, with an order of complaint and formal investigation, specifying the violations that are the subject of inquiry, the scope of the investigation, and the parties specifically or generally to be included in the inquiry. The board may request an expedited investigation. The order of complaint and formal investigation shall be provided to the licensee with copies of the allegations, and notice that compliance with the formal investigation is mandatory.

VII. The office shall utilize professional(s) of the discipline of the licensee in cooperation with the investigation team in accordance with board statutes and rules, or as needed in the investigation if not specified in the board's statutes and rules.

VIII. During the investigation if the investigation team finds cause to expand the scope of the investigation or requires board guidance on a matter of the investigation, it shall seek such guidance from the board. If the board broadens the scope of an investigation or adds violations to be investigated, such order shall be noticed to the licensee. The board shall also have the ability to request an update of the investigation's progress and status.

IX. Upon completion of the investigation, the office shall communicate its findings to the board. The board shall review the report for its deliberation on the matter. The board may request additional information from the investigation team if such is needed.

X. If the board determines that it wishes to pursue adjudication or discipline on the case, a summary of investigation including an overview of inculpatory and exculpatory evidence concerning the complaint shall be provided to the licensee, without the legal analysis that was provided to the board. The summary of investigation shall be provided to the licensee before the commencement of good faith negotiations of settlement or notice of hearing. The summary of investigation shall remain confidential to the licensee, his or her counsel, and other parties as determined by the board.

XI. ~~III.~~ Notwithstanding any other law to the contrary, the ~~office~~ board shall initiate the investigation ~~investigate~~ of allegations of misconduct by licensees (a) upon its own initiative or (b) upon written complaint alleging misconduct of a licensed, or unlicensed, individual or entity of a profession regulated under the office.

XII ~~.IV.~~ Allegations of misconduct received ~~by the office~~, information and records acquired ~~by the office~~ during an investigation, and reports and records made ~~by the office~~ because of its investigation by the office and boards, shall be held confidential and shall be exempt from the disclosure requirements of RSA 91-A, unless such portions of information subsequently becomes part of a public disciplinary hearing. Public disclosure and use of patient information shall be in accordance with this chapter and rules of the office. However, the office and boards may disclose information acquired in an investigation to law enforcement or licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

XIII. ~~V.~~ To carry out investigations, the executive director is authorized to:

(a) Retain qualified experts that have sufficient knowledge on appropriate statutes or professions and their practices.

(b) Conduct inspections of places of business of a profession regulated under the office.

(c) Issue subpoenas as delegated by the board for persons, relevant documents and relevant materials in accordance with the following conditions:

(1) Subpoenas for persons shall not require compliance in less than 48 hours after receipt of service.

(2) Subpoenas for documents and materials shall not require compliance in fewer than 15 days after receipt of service.

(3) Service shall be made on licensees and certified individuals by certified mail to the address on file with the office or by hand and shall not entitle them to witness or mileage fees.

(4) Service shall be made on persons who are not licensees or certified individuals in accordance with the procedures and fee schedules of the superior court, and the subpoenas served on them shall be annotated "Fees Guaranteed by the New Hampshire Office of Professional Licensure and Certification."

XIV. ~~VI.~~ When ~~an allegation~~ a complaint of misconduct is determined to be unfounded after an investigation, the board shall dismiss the ~~allegation~~ complaint and explain in writing to the complainant and the licensee its reason for dismissing the complaint. The office shall retain all information concerning investigations in accordance with the retention policy established by the office.

XV. ~~VII.~~ Subject to the limitations of ~~the health boards RSA 329-B:26 and RSA 330-A:32~~ RSA 328-B, RSA 328-J, RSA 326-J, RSA 326-E, RSA 328-H, RSA 328-G, RSA 316-A, RSA 317-A, RSA 328-F, RSA 151-A, RSA 328-C, RSA 326-H, RSA 330-C, RSA 329, RSA 330-A, RSA 326-B, RSA 318, RSA 315, RSA 329-, RSA 327, RSA 328-I, RSA 328-F, RSA 326-K, RSA 326-D, RSA 328-E, RSA 326-F, RSA 326-C, RSA 328-F, 328-A, RSA 327-A, RSA 328-F, and 326-F, the office shall obtain, handle, archive, and destroy medical, mental health, substance abuse, and psychological records as follows:

(a) If a client or patient owning a privilege is the person who has made a complaint against a licensee, the office may access the records of such client or patient…

(b) If the person who has made the allegations against the licensee is not the owner of the privilege for the records of the client or patient named in the complaint whose treatment is under investigation by the office, the records for investigation shall be treated as follows: ….

(c) Records of clients or patients who are not named in the initial complaint shall be treated as follows:

….

<section covers medical records privacy protection>

310:9-a. Status of Allegations and Complaints

I. Allegations that do not rise to the level of complaint:

(a) The allegation shall be provided to the licensee by the office as soon as practical unless there is good cause to withhold the allegation from the licensee.

(b) The office shall not require a response from the licensee to an initial allegation.

(c) The existence of an allegation of misconduct shall be confidential and shall not be required to be reported by the office or the licensee to any person or entity.

(d) Insurance carriers and certifying bodies shall be prohibited from asking about the existence of such allegations and shall not hold the existence of such allegations in this

chapter against the licensee in any way, including, but not limited to, denial of any professional privileges or increased costs, fees, or charges.

II. A matter is a complaint when it has been declared to be so by the board in an order of complaint and formal investigation.

(a) A complaint is not granted protection pertaining to office or self-reporting of allegations in 310-9a I.

(b) In the course of a formal investigation of a complaint that has been so elevated by the board by its order, licensees shall provide a detailed and good faith written response as directed by the office or the board. The licensee shall provide complete copies of the licensee's office records concerning any individual in the complaint. Health records shall be released in accordance with RSA 310:9. The licensee shall respond to such a request within a reasonable time period of not less than 30 days, as the office shall specify in its written request.

related to suggested 310:9-a above, these definitions would be included in section 310:2:

(a) "Allegation" means the communication of alleged misconduct as received by the office.

(c) "Complaint" means the board has raised the status of an allegation to a complaint because the board has jurisdiction over the matter and the information available raises it to the level of concern requiring a formal investigation.

Please see the emailed full copy for parts, briefly excerpted below:

310:4 Duties

(f) Drafting and coordinating rulemaking for all boards within the office in accordance with RSA 541-A, in active collaboration and with the advice and recommendations of the boards.

....

310:6 Rulemaking

I. All fees set forth in RSA 310:5, in active collaboration and with the advice and recommendations of the respective board. Fees shall be reassessed, at a minimum, every five years.

II. In active collaboration and with the advice and recommendations of the boards, ~~S~~such organizational and procedural rules necessary to administer the boards in the office, including rules governing the administration of complaints and investigations, hearings, disciplinary and non-disciplinary proceedings, inspections, payment processing procedures, and application procedures.

...

V. Temporary licenses to out-of-state health care professionals who present evidence of an active license in good standing from another jurisdiction. Except for temporary licenses issued under RSA 329-B:20 ~~T~~the temporary license shall be valid for 120 days, or until the office acts on an application for full licensure,...

VI. Rules concerning the health professionals program, including but not limited to referral types, confidentiality conditions, and types and degree of feedback to the boards.

...

310:10-a Misconduct

Misconduct sufficient to support disciplinary proceedings under this chapter shall include any allegations of:

... whole section was omiitted from the bill. Please see email copy for full wording from other boards' statutes.

310:12 Sanctions.

I. Upon making an affirmative finding that a licensee has committed professional misconduct, boards may take disciplinary action in any one or more of the following ways:

...

(c) By denial or revocation of license.

(d) By placing the licensee on probationary status or restricted practice. The board may require the person to submit to any of the following:

...

(5) Participating in Corrective Supervision according to the conditions specified by the board and/or as described in the office or board's rules.

(6) Monitoring by a professional health program.

...

II. The board may take confidential nondisciplinary actions toward a licensee in any one or more of the following ways:

(a) By mediation.

(b) By issuing ~~issue~~ a non-disciplinary confidential letter of concern to a licensee advising that while there is insufficient evidence to support disciplinary action, the board believes the licensee or certificate holder should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the board may result in action against the licensee's license. This letter shall not be released to the public or any other licensing authority, except that the letter may be used as evidence to establish a relevant pattern or course of conduct in subsequent adjudicatory proceedings by the board.

(c) By recommendation for training or supervision.

(d) By referring a licensee to the professional's health program when the licensee presents himself or herself to the board seeking help, or is referred to the board through a third party prior to any allegations of misconduct, or following an allegation or complaint.

...

Should be deleted from Sanctions ~

~~V. For any order issued in resolution of a disciplinary proceeding by the board, where the board has found misconduct sufficient to support disciplinary action, the board may require the licensee or certificate holder who is the subject of such finding to pay the office a sum not to exceed the reasonable cost of investigation and prosecution of the proceeding. This sum may be imposed in addition to any otherwise authorized administrative fines levied by the board as part of the penalty. The investigative and prosecution costs shall be assessed by the office and any sums recovered shall be credited to the office's fund and disbursed by the office for any future investigations of complaints and activities that violate this chapter or rules adopted under this chapter.~~

Amendment language HB 655 FN concerning Cost of Investigation

Remove in Section 1, RSA 310:12 Sanctions, delete section V.

~~V. For any order issued in resolution of a disciplinary proceeding by the board, where the board has found misconduct sufficient to support disciplinary action, the board may require the licensee or certificate holder who is the subject of such finding to pay the office a sum not to exceed the reasonable cost of investigation and prosecution of the proceeding. This sum may be imposed in addition to any otherwise authorized administrative fines levied by the board as part of the penalty. The investigative and prosecution costs shall be assessed by the office and any sums recovered shall be credited to the office's fund and disbursed by the office for any future investigations of complaints and activities that violate this chapter or rules adopted under this chapter.~~

Add section in bill (192, or reorder sections)

Repeals: Cost of Investigations. The following is repealed:

RSA 332-G:11 is repealed.

Rationale:

Reasons for these changes:

1. It is unheard of to collect these costs from the convicted. Even in criminal court cases, the state or local law enforcement does not recover the cost of the investigation from the convicted criminal.
2. The burden of proof for the license hearing is much lower than that of even criminal court (clear and convincing *vs* beyond a reasonable doubt) and yet the licensee would receive a much higher penalty – and now per HB 655 FN – that is unlimited.
3. These costs of investigations are already paid by all licensees, as the office has calculated license fees as 125% of department operating expenses, making these redundant moneys and unjustified punitive in nature therefore an unwarranted violation of the US Constitution's 8th amendment as cruel and unusual punishment.

NHSPA
New Hampshire Society of Physician Assistants

March 29, 2023

The Honorable Harold Pearl, Chair
Senate Executive Departments and Administration Committee
State House, Room 103
107 North Main Street
Concord, NH 03301

RE: Inclusion of Physician Assistants in Telehealth Section of HB655

Dear Chairman Pearl and Members of the Committee:

The New Hampshire Society of Physician Assistants (NHSPA) requests the Committee fix an oversight in HB655, relative to the Office of Professional Licensure and Certification. This oversight also occurs in HB2, as introduced, which we will discuss with Finance.

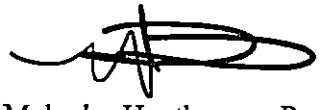
On page 6, starting on line 9, authority to practice via telehealth is prescribed. Unfortunately, PAs were inadvertently left out of this section, while every other pertinent provider was included. To correct this oversight, NHSPA respectfully requests the Committee include the following language in the final version of the bill it recommends to the full Senate:

> On page 6 of HB655 as passed by the House, line 24, insert "RSA 328-D" between RSA 327 and RSA 328-E.

Simply FYI, for HB2, as introduced, the analogous change in would be on page 95, line 6.

Thank you for your consideration of NHSPA's request to fix this accidental omission of PAs. If you have any questions, please contact me, or our lobbyist, David Cuzzi of Prospect Hill Strategies.

Sincerely,



Malcolm Hauthaway, President

February 3, 2023

Letter from the Board of Psychologists to the legislature concerning HB 655 as introduced. *Regarding sections of the bill that change Board of Psychologists RSA 329-B statute and also the inadequate replacement of such in OPLC's own RSA 310.*

The Board of Psychologists understands that an efficient consolidation of administration will be a positive direction for the department. Yet the Board is very concerned that the statutory changes proposed in the new OPLC bill will greatly diminish the effectiveness of the board, the protection of the public, and fairness to the occupations of the psychologists it regulates. The Board sees many problems with this bill and **strongly urges the Committee to retain the bill in committee to study** the bill so that the many details that are harmful can be known and resolved before sending it to any further action in the house.

Below are just some of the major areas of our grave concerns about the bill. We hope that the details of these and our other issues could be discussed in detail along with the other professions as your committee hopefully would keep and study the bill. While the board wishes to cooperate with consolidating administrative supports, it is seriously concerned about the actions in sections 144, 145, 146, and 147 as well as omissions of content that need to be rectified in section 1 as a result.

A few examples of the major problems of the bill HB 655 FN:

Section 147, VIII: The repeal of **RSA 329-B:22, VI** loses the individual's protection of **privacy medical records**. A decade ago, this matter was brought to the House and Senate because the state's attorneys were taking medical records without the patient's knowledge or consent when they pursued third party investigations (such as an unhappy ex-spouse complaint) or expanded investigations beyond the original case (when the investigation looks for patterns of incompetence across patients). After two years of work with the state's attorneys and legislators, the carefully crafted provisions of RSA 329-B:22 VI now protect your medical records from ending up in the state's Attorney offices and archives. Bipartisan legislation passed unanimously in the House and Senate to bring this measure of protection to the public. It was hoped by the sponsors of the original bill that this important privacy protection would be promulgated across all the health boards to bring this right to all citizens. But it is slated for repeal in this bill.

Section 147, IX: The repeal of **RSA 329-B:22, IX** that provides a **summary of findings** from an investigation to be shared with the licensee before facing settlement which gives the licensee a review of the facts that have been assembled against them. This step in our board's fair process allows an individual who practices an occupation to know if the evidence against them seems real to them or if they ought to take a matter

to full hearing to fight for the truth. This due process protection for an occupation is slated for repeal. RSA 329-B:22 IX provides a fair due process and ought instead to be applied to all the boards.

Section 147, VIII: The repeal of **RSA 329-B:22, VIII** has the **immediate notification of an allegation,** sending the copy to the licensee. Psychologists deal with sensitive patients and their concerns need to be known to the practitioner. If a patient is deeply concerned about treatment conditions, and if the psychologist is not made aware of this, it could bring about dangerous conditions for both the patient (escalation unknown to the doctor) and to the practitioner. This is important for those health professions that deal with sensitive issues and the emotional well-being of patients.

Section 147, VIII: The repeal of **RSA 329-B:22, X** will lose the distinction between the **status of an allegation versus a complaint,** which is a very important safeguard of our Board's statutes and process. Allegations can be ANY sort of item someone wishes to report, which could include matters that do not violate professional standards or issues outside of the board's jurisdiction. Under current law, the allegation, which is the first communication to the department, is completely confidential in all respects, being exempt from reporting by the licensee practicing their occupation of psychology. Only after the board has determined that the allegation could violate practice laws, it is elevated to be a "Complaint" and then it is formally investigated. In considering this distinction in our laws, it is important to recognize that in practice, the presence of even a small allegation on a psychologist without protection from reporting could ruin their occupation as they would be eliminated from insurance panels, hospital privileges, practice insurance, membership in professional groups and more. Retaining this distinction **should be promulgated across the health professions** instead of being repealed.

The Board of Psychologists hopes to be helpful in the process of making the department streamlined, but also effective in protection of the public and fairness to the individuals practicing their occupations. Please retain the bill in committee so that we and others can facilitate the reconciliation of these issues for better health boards, safer practice, and fairness to the occupations.

Signed, for the Board of Psychologists

Tonya F Warren Psy.D.
Chair

N.H. Lakes Management Advisory Committee

N.H. Lakes Management and Protection Program
29 Hazen Drive; PO Box 95; Concord, NH 03302-0095; Tel: 603-271-8811
https://www.lmac.des.nh.gov/

March 28, 2023

The Honorable Howard Pearl, Chair
Senate Executive Departments and Administration Committee
Statehouse Room 103
Concord, NH 03301

RE: HB 655 - AN ACT relative to the Office of Professional Licensure and Certification.

Dear Chair Pearl and Members of the Committee:

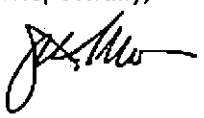
The Lakes Management Advisory Committee (LMAC) is writing to **comment** on **House Bill 655**, which proposes reforms to the Office of Professional Licensure and Certification. The LMAC is **neutral on the bill as amended** by the House. The LMAC **opposed the bill as originally filed** and encourages the Senate to keep the existing processes of licensure renewal and disciplinary actions.

The bill as filed eliminated roles of the board of natural scientists that are vital to the success of certification in protecting the public. Soil analyses and wetland delineations are complex and require expertise to perform. Improperly conducted delineations risk adverse impacts to wildlife and to homeowners' interests. By removing the requirement for licensure renewal and the disciplinary processes associated with the board, the bill removed mechanisms for accountability that are important for ensuring that state and municipal permits contain reliable information. Elimination of these provisions would have introduced confusion and delayed the issuance of the many types of permits that require work by a certified soil or wetlands scientist. The LMAC believes that the current licensure process is effective and does not need the types of reform proposed in HB 655 as originally filed. The bill as amended addressed these concerns.

The LMAC is a legislatively created body charged to work with the New Hampshire Department of Environmental Services (NHDES) to administer RSA 483-A, the Lakes Management and Protection Program. The Governor and Council appointed Committee is comprised of 19 members representing academia, business, conservation organizations, lake associations, tourism, fish and game commission, marine trades, realtors, municipal government as well as several state agencies.

In conclusion, the LMAC encourages the Senate to keep the scope of the bill as amended, for the reasons stated above. Thank you for the opportunity to comment. Should you have questions, please feel free to contact me at (603) 366-5531 or Jared@cruisenh.com.

Respectfully,



Jared Maraio, Chair

LMAC VOTING MEMBERS: **Jared Maraio, Chair,** NH Travel Council • **Shane Bradt,** Scientific Community • **Ryan Cardella,** Marine Trades Association • **Tiffany Grade,** Conservation Community • **Sara Holland,** NH Association of Realtors • **Janet Kidder,** Planning Boards • **Frank Lemay,** NH Business & Industry Assoc. • **Andrea LaMoreaux,** NH LAKES • **Lisa Morin,** State Conservation Committee • **Susan Price,** NH Fish & Game Commission • **Dick Smith,** Fishing Interests • **Meredith Smith,** Municipal Official • **Steve Wingate,** Conservation Commissions

LMAC NON-VOTING MEMBERS: **Garret Graaskamp, Vice Chair,** NH Fish & Game Dept. • **Capt. Tim Dunleavy,** NH Dept. of Safety • **Eric Feldbaum,** NH Dept. of Natural and Cultural Resources • **Jennifer Gilbert,** NH Dept. of Business and Economic Affairs • **Mark Hemmerlein,** NH Dept. of Trans. • **Shawn Jasper,** NH Dept. of Ag, Markets & Food

ec: Senators Carson and Lang
LMAC Representatives
Robert R. Scott, Commissioner, NHDES

STATE OF NEW HAMPSHIRE

OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION

BOARD OF REGISTRATION IN OPTOMETRY

7 EAGLE SQUARE, CONCORD, NH 03301-4980
Telephone: 603-271-2152
TDD Access: Relay NH 1-800-735-2964
www.oplc.nh.gov

April 3, 2023

Honorable Howard Pearl
Chair, Senate Executive Departments & Administration Committee
State House Room 105-A
107 North Main Street
Concord, New Hampshire 03301

The Board of Optometry has been made aware of an inconsistency in the Optometry statute between license renewal for Doctors of Optometry and reporting of continuing education requirements.

License renewal for Optometrists, like other licensed professions, has moved to an every-two-years cycle. However, RSA 327:33-a (Continuing Education Courses Required for Pharmaceutical and Glaucoma Certification) states, in part, *"Each optometrist shall report continuing education hours to the board annually... "*.

The Board, at its March 9th meeting, voted unanimously to request the word "annually" be stricken from RSA 327:33-a. We understand that the Senate Executive Departments & Administration Committee has held its public hearing on HB 655 (relative to the office of professional licensure and certification). We're hoping the Committee uses HB 655 as an opportunity to adopt an amendment that makes this change, which is necessary to allow CE reporting to be on the same schedule as license renewal.

Please do not hesitate to reach out should there be any questions.

Sincerely,

Andrea L. Murphy, OD
Board Chair
NH OPLC - Board of Optometry

Voting Sheets

Senate Executive Departments & Administration Committee

EXECUTIVE SESSION RECORD

2023-2024 Session

Bill # 655

Hearing date: 3/29

Executive Session date: 4/19

Motion of: OTP **Vote:** 3-2

Committee Member	Present	Made by	Second	Yes	No
Sen. Pearl, Chair	✓			✓	
Sen. Carson, VC	✓	✓		✓	
Sen. Gendreau	✓		✓	✓	
Sen. Perkins-Kwoka	✓				✓
Sen. Altschiller	✓				✓

Motion of: _____ **Vote:** _____

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Sen. Pearl, Chair					
Sen. Carson, VC					
Sen. Gendreau					
Sen. Perkins-Kwoka					
Sen. Altschiller					

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Sen. Pearl, Chair					
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Sen. Perkins-Kwoka					
Sen. Altschiller					

Motion of:_____ **Vote:**_____

Committee Member	Present	Made by	Second	Yes	No
Sen. Pearl, Chair	☐	☐	☐	☐	☐
Sen. Carson,VC	☐	☐	☐	☐	☐
Sen. Gendreau	☐	☐	☐	☐	☐
Sen. Perkins-Kwoka	☐	☐	☐	☐	☐
Sen. Altschiller	☐	☐	☐	☐	☐

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Sen. Pearl, Chair	☐	☐	☐	☐	☐
Sen. Carson,VC	☐	☐	☐	☐	☐
Sen. Gendreau	☐	☐	☐	☐	☐
Sen. Perkins-Kwoka	☐	☐	☐	☐	☐
Sen. Altschiller	☐	☐	☐	☐	☐

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Sen. Carson,VC	☐	☐	☐	☐	☐
Sen. Gendreau	☐	☐	☐	☐	☐
Sen. Perkins-Kwoka	☐	☐	☐	☐	☐
Sen. Altschiller	☐	☐	☐	☐	☐

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Sen. Pearl, Chair	☐	☐	☐	☐	☐
Sen. Carson,VC	☐	☐	☐	☐	☐
Sen. Gendreau	☐	☐	☐	☐	☐
Sen. Perkins-Kwoka	☐	☐	☐	☐	☐
Sen. Altschiller	☐	☐	☐	☐	☐

Motion of:_____ **Vote:**_____

Committee Member	Present	Made by	Second	Yes	No
Sen. Pearl, Chair	☐	☐	☐	☐	☐
Sen. Carson,VC	☐	☐	☐	☐	☐
Sen. Gendreau	☐	☐	☐	☐	☐
Sen. Perkins-Kwoka	☐	☐	☐	☐	☐
Sen. Altschiller	☐	☐	☐	☐	☐

Reported out by: Carson

Notes:_____

Senate Finance Committee

EXECUTIVE SESSION

Bill # HB 655-FN

Hearing date: N/A

Executive session date: 05/16/23

Motion of: OTP VOTE: 6-0

		Made by Senator:	Seconded by Senator:	Reported by Senator:
	Gray	☐	☐	☐
	Innis	☐	☐	☐
	Bradley	☐	☐	☐
	Birdsell	☐	☐	☐
	Pearl	☑	☐	☑
	D'Allesandro	☐	☐	☐
	Rosenwald	☐	☑	☐

Motion of: _____ VOTE: _____

		Made by Senator:	Seconded by Senator:	Reported by Senator:
	Gray	☐	☐	☐
	Innis	☐	☐	☐
	Bradley	☐	☐	☐
	Birdsell	☐	☐	☐
	Pearl	☐	☐	☐
	D'Allesandro	☐	☐	☐
	Rosenwald	☐	☐	☐

Committee Member	*Present*	Yes	No	*Reported out by*
Senator Gray , Chairman	☑	☑	☐	☐
Senator Innis, Vice-Chair	☒	☐	☐	☐
Senator Bradley	☑	☑	☐	☐
Senator Birdsell	☑	☑	☐	☐
Senator Pearl	☑	☑	☐	☑
Senator D'Allesandro	☑	☑	☐	☐
Senator Rosenwald	☑	☑	☐	☐

Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, April 19, 2023

THE COMMITTEE ON Executive Departments and Administration

to which was referred **HB 655-FN**

AN ACT relative to the office of professional licensure and certification.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 3-2

Senator Sharon Carson
For the Committee

Phil Jasak 271-1403

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 655-FN, relative to the office of professional licensure and certification.
Ought to Pass, Vote 3-2.
Senator Sharon Carson for the committee.

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, May 16, 2023

THE COMMITTEE ON Finance

to which was referred **HB 655-FN**

AN ACT relative to the office of professional licensure and certification.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 6-0

Senator Howard Pearl
For the Committee

Deb Martone 271-4980

General Court of New Hampshire - Bill Status System

Docket of HB655

Docket Abbreviations

Bill Title: relative to the office of professional licensure and certification.

Official Docket of **HB655.:**

Date	Body	Description
1/20/2023	H	**Introduced** (in recess of) 01/05/2023 and referred to Executive Departments and Administration **HJ 3** P. 24
2/1/2023	H	Public Hearing: 02/08/2023 10:00 am LOB 306-308
2/2/2023	H	Subcommittee Work Session: 02/08/2023 10:00 am LOB 306-308
2/1/2023	H	Subcommittee Work Session: 02/10/2023 10:00 am LOB 306-308
2/27/2023	H	Full Committee Work Session: 02/28/2023 10:00 am LOB 202-204
2/21/2023	H	Subcommittee Work Session: 03/08/2023 09:00 am LOB 306-308
2/21/2023	H	Executive Session: 03/08/2023 01:30 pm LOB 306-308
3/13/2023	H	Committee Report: Ought to Pass with Amendment **#2023-0807h** 03/08/2023 (Vote 20-0; CC) **HC 15** P. 6
3/16/2023	H	Amendment **#2023-0807h:** AA VV 03/16/2023 **HJ 9** P. 9
3/16/2023	H	**Ought to Pass with Amendment** 2023-0807h: MA VV 03/16/2023 **HJ 9** P. 9
3/21/2023	S	Introduced 03/16/2023 and Referred to Executive Departments and Administration; **SJ 11**
3/22/2023	S	**Hearing:** 03/29/2023, Room 100, SH, 09:00 am; **SC 15**
4/19/2023	S	Committee Report: Ought to Pass, 05/11/2023; **SC 21**
5/11/2023	S	Ought to Pass: MA, VV; Refer to Finance Rule 4-5; 05/11/2023; **SJ 14**
5/17/2023	S	Committee Report: Ought to Pass, 05/18/2023; **SC 22A**
5/18/2023	S	**Ought to Pass:** MA, VV; OT3rdg; 05/18/2023; **SJ 15**
6/13/2023	S	Enrolled Adopted, VV, (In recess 06/08/2023); **SJ 19**
6/13/2023	H	Enrolled (in recess of) 06/08/2023 **HJ 15**
6/29/2023	H	Signed by Governor Sununu 06/28/2023; Chapter 112; eff: 07/01/2023 **HJ 16**

NH House	NH Senate

General Court of New Hampshire - Bill Status System

Docket of HB655

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2/1/2023	H	Subcommittee Work Session: 02/10/2023 10:00 am LOB 306-308
2/27/2023	H	Full Committee Work Session: 02/28/2023 10:00 am LOB 202-204
2/21/2023	H	Subcommittee Work Session: 03/08/2023 09:00 am LOB 306-308
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5/18/2023	S	**Ought to Pass**: MA, VV; OT3rdg; 05/18/2023; **SJ 15**
6/13/2023	S	Enrolled Adopted, VV, (In recess 06/08/2023); **SJ 19**
6/13/2023	H	Enrolled (in recess of) 06/08/2023 **HJ 15**
6/29/2023	H	Signed by Governor Sununu 06/28/2023; Chapter 112; eff: 07/01/2023 **HJ 16**

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB655 **Senate Committee:** EDA

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

___ Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

_____ 7/7/23

Committee Aide **Date**

Senate Clerk's Office AHL

Senate Inventory Checklist for Archives

Bill Number: HB 655-FN **Senate Committee:** FINANCE - 2ND Comm Bill

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

___ All Calendar Notices

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X Committee Report

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___ as amended by the senate ___ as amended by the house

X final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Debra A. Martone 07/12/23

Committee Aide **Date**

Senate Clerk's Office AL