

Senate Executive Departments and Administration Committee

Kevin Condict 271-7875

SB 185-FN, relative to office of professional licensure and certification investigations.

Hearing Date: February 5, 2025

Time Opened: 11:34 a.m.

Time Closed: 11:59 a.m.

Members of the Committee Present: Senators Pearl, McGough, Gannon, Altschiller and Reardon

Members of the Committee Absent : None

Bill Analysis: This bill puts time limitations on investigations conducted by the office of professional licensure and certification in response to allegations of professional misconduct.

Sponsors:

Sen. Pearl

Sen. Lang

Sen. Reardon

Sen. Innis

Sen. Rochefort

Sen. Rosenwald

Sen. McGough

Sen. Watters

Sen. Murphy

Sen. Perkins Kwoka

Sen. Ricciardi

Rep. C. McGuire

Rep. Grote

Rep. Moffett

Rep. See

Rep. Cambrils

Who supports the bill: Sen. Howard Pearl (SD 17), Steve Rancourt (ECA), Sara Holland (NHAR), Sen. David Rochefort (SD 1), Sen. Keith Murphy (SD 16), Sen. Daniel Innis (SD 7), Mary Behnke, Jessica Kallipolites, Janet Lucas, Daniel Richardson, and Sen. Tim McGough (SD 11).

Who opposes the bill: Donna Ireland.

Who is neutral on the bill: Nina Gardner (NHBOM) and Nik Frye (OPLC).

Summary of testimony presented:

Senator Howard Pearl, Senate District 17

- Sen. Pearl introduced Senate Bill 185-FN.

- Sen. Pearl explained that he was approached by the New Hampshire Association of Realtors (NHAR) regarding concerns they had about delays in resolving complaints at the New Hampshire Real Estate Commission.
- Sen. Pearl said the current practice at the Office of Professional Licensure and Certification (OPLC) is for staff to review complaints and complete an investigation if necessary. Once the investigation is complete, information is provided to the commission for review and adjudication. He said that this process aligns with what the legislature intended when they determined that professional staff would handle investigations and boards and commissions would act in an adjudicatory role.
- Sen. Pearl stated that this bill proposes adding timelines to the existing process to ensure transparency and to provide more timely resolution for all the licensees under the OPLC. Initially the staff would have thirty days to determine if an allegation against a licensee includes a claim of professional misconduct. If the OPLC finds no claim of professional misconduct, then they would recommend dismissal to the appropriate board at their next scheduled meeting.
- Sen. Pearl said that if the OPLC finds that a professional misconduct claim does exist then the OPLC staff would have sixty days to investigate and report back to the board with their findings. If the investigation is incomplete, then the board or commission can instruct the OPLC to continue their work or make a final determination.
- Sen. Pearl said that without these changes, neither the consumer nor the licensee is aware of the status of the complaint.
- Sen. Pearl noted that there might be concerns from certain boards, commissions, or the OPLC. He said that the current system allows for investigations to remain open for months, if not years, with no public facing updates for licensees or consumers.

Sarah Holland, New Hampshire Association of Realtors

- Ms. Holland explained that in 2021, one of the agents she works with received notification from the Real Estate Commission and the OPLC that a complaint was lodged against them. She said that agent has not heard back from the OPLC as to the status of that complaint.
- Ms. Holland said she has colleagues who lodged complaints well over a year ago who have not received a response. She had a consumer client who asked how or where to lodge a complaint on a cooperating broker. She explained the difference between the Real Estate Association and the Real Estate Commission. She said she provided the consumer with the timelines and an explanation of the process, but that consumer decided not to submit a complaint. She said that is incredibly concerning because the mission of the Real Estate Commission is to protect the public.
- Ms. Holland said that if consumer complaints are not heard and adjudicated then the system is not working.

- Ms. Holland said that prior to 2020, the Real Estate Commission was averaging between twenty and fifty complaints per year. Those complaints were heard or at least there was some transparency as to where they were in the process. She stated that after 2020, the complaints increased to between forty and one hundred and twenty complaints. She stated there was little to no transparency as to what happened to those reports.
- Ms. Holland said that in 2024 there were one hundred and seventeen complaints, but the number shown on the OPLC website as being adjudicated was three. She said that no one knows what is happening with the others.

Nina Gardner, Public Member of the New Hampshire Board of Medicine

- Ms. Gardner said this bill starts a conversation that needs to happen.
- Ms. Gardner echoed the sentiment that things changed dramatically in 2020.
- Ms. Gardner stated that the Board of Medicine relies on the investigative process that the OPLC has in place. She said that, as staffed now, that process is inadequate to meet the needs of all the boards. She said that the Board of Medicine has hundreds of cases that are not heard yet. She said they were hearing some cases on that day that went back to 2021.
- Ms. Gardner said that it is important that investigations take place in a timely manner. She said this bill provides a good starting point, but she was unsure that it was realistic given the backlog of cases.
- Ms. Gardner said that the OPLC would need resources to enact this bill.
- Ms. Gardner said that as a public member of the Board of Medicine, she asked repeatedly for a list of complaints. She said they had a miserable database system so they could not even figure out what was open and what was closed. She said that it has been remedied.

Executive Director Deanna Jurius and Nik Frye Office of Professional Licensure and Certification

- Director Jurius explained that she is new to the OPLC. She said that she hired a new Director of Enforcement in November 2024. She said their first task was to clean up the data and look at every single case that was pending.
- Dir. Jurius said that prior to April 2024 there was no initial review for legal viability.
- Dir. Jurius stated that they began the cleanup process in November, and they had about six thousand and two hundred pending complaints. She said that they are now down below three thousand. She said they have identified approximately one thousand complaints that are either in some process with the board or to be drafted for dismissal. She said clearing the rubble is the most accurate metaphor for what the OPLC is doing.

- Dir. Jurius stated that the OPLC sees the need for a conversation and movement on these matters. She said the goal is to look at the whole system and find how it can be done more efficiently.
- Mr. Frye explained the developments to the OPLC. The OPLC started on July 1, 2015, with the Division of Technical Boards and Health Boards. In 2021, it was changed to the current structure of the Division of Licensing and Board Administration and the Division of Enforcement. In 2023, a lot of control shifted from boards to the OPLC. He said that 2023 was when the Division of Enforcement gained control over the majority of investigations.
- Mr. Frye explained that RSA 541-A, RSA 332-G:9, and RSA 310:9 set up the five-year statute of limitations. He said that the OPLC has five years to initiate a disciplinary proceeding. He explained that once the board commences a disciplinary proceeding, they have two years to hold the hearing.
- Mr. Frye said that the OPLC has created their own language for emergency suspension. The authority to do so was given under RSA 310:10, which allowed the OPLC to create rules on how disciplinary proceedings would operate and how boards would handle them.
- Mr. Frye explained that they have emergency suspension hearings, which means that if a license is taken away by the board before there is an actual hearing, then the hearing happens in ten days. For those hearings in which the suspension is upheld there are time limitations like what is in this bill. He said that if a suspension is upheld, they need to have a hearing within sixty days. He said that this system was meant to deal with issues similarly to what happens in other litigation experiences.
- Mr. Frye said he looked for timeline requirements similar to what is proposed in the bill. He said the Board of Accounting has one, but no other board does.
- He stated that he was aware of a court case (Ruel v. New Hampshire Real Estate Appraiser Board, 2011) where there were limitation periods that were in place on investigations and hearings. He explained that case was appealed because the Board did not hear the cases within the timeframe. The Supreme Court upheld the Board's right to hold the hearing.
- Mr. Frye said that most of the complaints that the OPLC sees will end up being dismissed. He said that a board can say that there is conduct that is unacceptable but does not rise to the level of professional misconduct. He said that a board can then issue a confidential letter of concern which would tell the licensee that the board is concerned but does not reach the level of professional misconduct.
- Mr. Frye voiced the concern that in many cases, especially those for healthcare boards, records must be subpoenaed. He said those would most likely not fit into the timeline. He also said getting an expert review would be difficult, as they must get an evaluator to have enough time to go through the records to move forward.
- Sen. Pearl noted that it seemed like the timeline in Section 2 was not the issue, but that the timeline in Section 3 is a concern.

- Dir. Jurius said that the process is theoretically happening within two or three days. She said that if a board meets quarterly then they will not be able to hold a hearing within thirty days.
- Sen. Pearl asked about the timeline in Section 3.
 - Dir. Jurius said that it would be hard to meet the timeline with current staff.
- Sen. Reardon noted that the bill would take effect sixty days after signing. She asked if there is an issue of needing more time to address the backlog.
 - Dir. Jurius said the backlog is a consideration. She said they must compare the number of complaints received versus the number of cases closed. She said the OPLC must figure out how to not have a backlog.

KC

Date Hearing Report completed: February 11, 2025