

Senate Executive Departments and Administration Committee

Ben Mickens 271-1403

HB 1211, relative to the scope of review of state agency interpretations.

Hearing Date: April 1, 2026

Time Opened: 9:00 a.m.

Time Closed: 9:44 a.m.

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

Members of the Committee Absent : None

Bill Analysis: This bill states that in actions brought by or against state agencies, after applying all customary tools of interpretation, the court or hearing officer shall resolve any remaining doubt as to legal meaning in favor of a reasonable interpretation that limits agency power and maximizes liberty for the individuals impacted by restrictions, fees, fines, or civil or criminal action as a result of the state statute, regulation, or other subregulatory agency document.

Sponsors:

Rep. Kofalt

Rep. Granger

Rep. Slottje

Rep. Ankarberg

Rep. Layon

Rep. Alexander Jr.

Rep. Sabourin dit

Sen. Innis

Sen. Murphy

Choiniere

Sen. Sullivan

Who supports the bill: Senator Daniel Innis, Representative Jim Kofalt, Nino Marchese (ALEC), Brian Norman (Goldwater Institute), Sarah Scott (AFP NH), Jamie Cavanaugh (Pacific Legal Foundation), Cory Stone, Curtis Howland, Peter Rondeau, Pamela Harders, Bill Alleman, and Daniel Richardson.

Who opposes the bill: JD Lavallee (NHDOJ), and Kelly Butler.

Who is neutral on the bill: Rob Berry (DHHS).

Summary of testimony presented in support:

Representative Jim Kofalt

- Representative Kofalt explained that the bill allows the judicial branch to exercise independent judgment and no longer requires that they immediately default to an agency's interpretation of statute.
- Representative Kofalt cited the development of the Chevron doctrine and its overturning as the genesis of this bill.
- HB 1211 would codify this new standard in New Hampshire statute.
- Representative Kofalt expressed that this ensures the courts are free to interpret the law without being bound by agency interpretations.

Nino Marchese, *Director, Judiciary Task Force, ALEC*

- Mr. Marchese explained that ALEC members view the Chevron doctrine as handcuffing judges when interpreting law.
- Mr. Marchese explained that, while the Supreme Court overturned Chevron, it did not apply at the state court level.
- Mr. Marchese explained that thirteen states have since outlawed deference, and there are roughly seven states with legislation like this currently pending.

Senator Pearl asked about concerns surrounding ambiguity in the second section.

Mr. Marchese answered that, all things being equal, courts should lean toward individual liberty. This is similar to how courts will lean toward protecting a defendant's rights if there is ambiguity during criminal proceedings.

Senator Altschiller explained that, normally, when national organizations come through Concord, it is inspired by some kind of precipitating event. **Senator Altschiller** asked what the precipitating event was in this instance.

Mr. Marchese stated that there was not an event outside the movement in the legislature which brought him in. There are a number of other states with similar legislation and ALEC wanted to express their members views. It is generally a matter of principal rather a response to a specific event.

Brian Norman, *State Affairs Director, Goldwater Institute*

- Mr. Norman explained that courts deference to agency interpretation leads to a number of issues involving oversteps on individual liberty and legislative intent. It can even practically lead to the executive working as lawmakers.
- Mr. Norman underlined that the recent federal Supreme Court decision does not apply to state courts, which is why the legislation is needed.

Senator Altschiller asked about any preceding event which made this an important issue for a national group

Mr. Norman stated he did not have a particular court case or pressing issues that drew the Institute in. Rather, there has been work with legislators across the state on how to implement similar reforms.

Senator McGough asked if this bill would restore judicial independence.

Mr. Norman stated yes but added New Hampshire does have a bit of ambiguous history. This legislation would help buttress the judiciary's role as a branch of government to interpret the law.

Sarah Scott, *Deputy State Director, Americans for Prosperity*

- Ms. Scott expressed AFP's support for this legislation and brings back a correct balance of power between branches.
- Ms. Scott stated that this is not just an abstract issue, but a practical one when families and citizens are trying to navigate executive rules and regulations.
- Ms. Scott further stated it is also not an anti-agency law. Agencies have a very important role to play. The bill simply reallocates proper authority across branches.
- Ms. Scott spoke to possible "triggering actions," which Senator Altschiller asked about. There was an issue for fishermen in New Hampshire where they were required to have an observer on board at the expense of the fishermen. This issue was what led to the federal case overturning Chevron, although that case did not involve the New Hampshire fishermen.

Senator Altschiller clarified that rulemaking in New Hampshire is not done solely by the agencies and many legislators are involved in the process.

Ms. Scott agreed and stated this bill was complimentary to the existing rulemaking regiment.

Senator Altschiller asked to clarify that there is an understanding that New Hampshire rulemaking process does reflect legislative intent, given that legislators are involved in the process throughout.

Ms. Scott agreed but added there is still room for state agencies to use this kind of rule-making authority, as well as concerns about when the rulemaking process happens years later.

Summary of testimony presented in opposition:

JD Lavallee, *Assistant Attorney General, NH DOJ*

- Mr. Lavallee stated that NH DOJ is opposed, but with nuance.
- Mr. Lavallee stated that the Attorney General's office supports the first paragraph regarding the Chevron doctrine.
- Mr. Lavallee stipulated that the AG's office has concerns with the second section and believe it may cause confusion.
- Mr. Lavallee outlined that there is one potential spelling error in paragraph five and there is some further clarification on terms that are likely needed.
- Mr. Lavallee expressed that the largest concern is that the legislation directs courts to limit agency power and maximize liberty, and these terms are not

necessarily clear. This could invite inconsistent application. An example of how this can cause confusion is when trying to balance liberty between individuals.

Senator Pearl asked if the word individual should be swapped with person.

Mr. Lavallee stated he would not necessarily give a recommendation, but that 541a defines the term person and it includes the word individual. If this legislation was adopted with the word individual in use, it would not mean person and the meaning would be unclear.

Senator Pearl asked if the definition of person in 541a includes corporations?

Mr. Lavallee confirmed it does.

Senator Pearl asked if this would not run contrary to the purpose of section 2, which is using individual so as to not include corporations?

Mr. Lavallee stated that it may be true and it may bear defining the term individual.

Senator McGough asked if changing regulation to rule on line four, administration to administrative on line five, and individuals to persons or otherwise defining individuals on line eleven, would lend clarity.

Mr. Lavallee agreed.

Senator McGough asked how there could be greater clarity around maximizing liberty.

Mr. Lavallee stated he did not have language ready, and it would require some work.

Senator Reardon clarified that maximizing liberty was generally a policy question, which in turn is normally a legislative prerogative.

Mr. Lavallee confirmed and stated that the scope of this policy goal was not clear.

Neutral Information Presented:

Rob Berry, *General Counsel, Division of Medicaid*, DHHS

- Mr. Berry explained he did not come to speak to the first section, but a potential issue with the second paragraph.
- Mr. Berry explained the specifics of patients being involuntarily admitted to hospitals through court proceedings and the issues this might raise with the phrase “maximizing liberty.”

- Mr. Berry stated that the standard is already very high for hospitals when it comes to involuntary admissions for individuals experiencing psychiatric emergencies.
- Mr. Berry believes this language would create too high a barrier to hospitals trying to address psychiatric emergencies.

Senator Altschiller asked what the practical implications would be for hospitals.

Mr. Berry explained that this would come up as an issue after court proceedings. For example, a patient who is not taking their medicine, presenting a threat to staff, and causing major issues in the hospital. After this point the hospital can take action to hold the patient. The patient has a right to appeal. The doctor explains what medicine is being prescribed, and what it does, and so on. The hospital may be given the emergency power to administer the medicine. This authority expires after a certain time, and only two are possible to be granted per admission.

Senator McGough asked about if the phrase “customary tools of interpretation” would exempt the issues in the hospital system.

Mr. Berry stated that he wrestled with the question. There is an argument that this would encompass everything. It is just unclear what this line and specific terms mean.