

and I don't think this is the last conversation we are going to have on this with you. Hopefully, you will be, continue to be before us and help us work.

Mr. Caron: We would love to help you out.

Senator Margaret Wood Hassan, D. 23: Thank you very much. Thank you, Mr. Caron, for being so responsive. I don't know if anybody called on John Salisbury who signed in?

Mr. Steiner: Yeah, he left.

Senator Margaret Wood Hassan, D. 23: He left. Okay.

Mr. Steiner: But, he did provide written testimony.

Senator Margaret Wood Hassan, D. 23: Okay. Thank you. And, Rick Trombly please.

Rick Trombly: Morning everybody.

Senator Betsi DeVries, D. 18: The funny guy.

Senator Margaret Wood Hassan, D. 23: Well, in another time zone, it would be morning.

Mr. Trombly: Rick Trombly, representing NEA New Hampshire, and having sat on both sides of this table I know how you feel, and I know how I feel, and I agree with Senator DeVries. I have some, I have a written letter for you from Rhonda Wesolowski, who is the president of NEA New Hampshire.

**Please see attachment #7, written testimony submitted by Rick Trombly on behalf of Rhonda Wesolowski, NEA New Hampshire.**

And usually when I have written testimony, which is very infrequently, I hate to hand it out ahead of time because people usually end up reading it when I begin to talk, and you know me, I would much prefer you hear me rather than read the words. But, I know you won't do that. Correct, Madam Chair, and members of the Committee?

Senator Margaret Wood Hassan, D. 23: Yes.

Mr. Trombly: Okay. Thank you. I also have some extras. I just want to talk very briefly. I am representing NEA New Hampshire and I do not know,

I will admit right up front, that I do not know quite a bit about risk pools or the intricacies of managing an insurance company.

I just do want to come here and testify on behalf of our members, and the one thing I wish to make clear to the Committee is that our members, as you all know, and by the way, I do want to say this to the members of the Committee before I go further. Our members certainly appreciate the work of you all looking out for tax dollars, public tax dollars because ultimately those tax dollars are theirs as well, and I think that needs to be very clear.

The one thing our members have been doing though, in the negotiating that has been going on is, through these economic times negotiating contracts without salary increases or perhaps increases in co-pays whether it's their insurance or giving back time for trainings and whatnot. The fact that many of our members are being laid off because of the economy and some people are pulling double duty taking care of kids.

The worst thing we can have happen to our members, quite frankly, is to see instability in their health insurance rates, and we don't, we just encourage the Senate, and ask you to, and I think Lisa said it too, is to just take some time. We know where you are going, and where you want to go, but if you could look at this a little more deeply in terms of the affect that it would have on our members, it would be very difficult for them to see wild fluctuations in their insurance premiums. And, in speaking with the School Care folks, which many of our members, by whom they are insured, it seems to indicate that that is one of the consequences that would come from this, and that is something we certainly want to avoid. That is, that is not just simply something I think this Senate Committee wants to see happen, and it is something that certainly our members do not want to see happen.

Another thing before I close here, I just want to remind the Committee is that when the medical retirement subsidy ran out last year for our members, we worked with legislators, and employers to come up with a program that would provide a post-retirement subsidy for our members. The key to that is getting our members to contribute into that, for their retirement, and also trying to encourage employers, school districts, to contribute into that as well.

If, if one of the results of what happens here with this bill is that we do see those fluctuations in insurance costs, the ability for our members and their employees to contribute to that is, is going to be substantially, I dare say probably to the point where a great program, as a matter of fact, New Hampshire's program will be the first statewide program in the country, it would not get off to a very good start, and I'm not certain how long it would take them to get up to what they have to do.

I just wanted to make that, those two comments to the Committee, and with that, I will end my testimony with one observation, and I, I almost hesitate to say this, but I am going to say it anyway. But, I hope not to lead into a bunch of questions from people in an area that I don't know, is that I heard that, I think Senator Cilley, you read the quote about the money, the excess or whatever going back to the school districts, and that is in current law and it is going to stay. I think, based on my experience in talking with our members, that what School Care has done by suppressing future rate increases is by far more preferable to them than having the money go back to the school district, and so, while that is not going to change in the law, I think that Lisa from School Care did say to you that maybe you want to take a longer look at this before you change the statute. And, I think that is one where you want to. Whether or not there is a specific compliance or there is a grey area, or a black and white area on that, suffice it to say to the extent that is part of the practice that has been taking place, I think our members would support that.

I am not certain that the dollars you would send back to the school district would amount to enough to help them educate our young children. But, I can tell you the dollars that do go back from what School Care does to suppress their insurance rate does allow them to keep that insurance. And so, I think that might be, you know, one thing that you might want to look at while you're doing that, and I appreciate that, and with that, I will end my testimony. If there are any questions, I will answer them. If not I am going to go barbecue a steak and have dinner. Thank you, Madam Chair and members of the Committee.

Senator Margaret Wood Hassan, D. 23: I will just note, Mr. Trombly, that one of my school districts is laying off seven employees because of the increase in their rates. So, it is not clear to me that rate stabilization is working in this arena.

Mr. Trombly: It certainly is a problem, Madam Chair, and I will tell you that absolutely, yeah, it is not a specious remark you are making, I hear it, and I just really would hope not to put more school districts into that situation. So, thank you, thank you very much.

Senator Margaret Wood Hassan, D. 23: Thank you very much, Mr. Trombly. Okay. Peter Joseph?

Mr. Steiner: Peter has left. He left testimony though.

**Please see attachment #8, written testimony submitted by Peter Joseph, Town Manager in Lincoln, New Hampshire.**

Senator Margaret Wood Hassan, D. 23: Okay, good. Julie Griffin?

Mr. Steiner: Julia has left as well.

Senator Margaret Wood Hassan, D. 23: Okay.

Mr. Steiner: Julia has left the building.

Senator Margaret Wood Hassan, D. 23: Russell Marcoux? Thank you for your patience.

Russell Marcoux: Maybe I should have left, too.

Senator Margaret Wood Hassan, D. 23: We didn't say that.

Mr. Marcoux: I'll answer that question in a minute.

Senator Margaret Wood Hassan, D. 23: Good evening.

Mr. Marcoux: Good evening. It was good morning two days ago, afternoon and evening. My name is Russell Marcoux. I am the Town Manager in Bedford. I've been in the municipal business for 37 years; I am familiar with what has gone on in New Hampshire. I am not a Board member of NHMA today, I was in the '90s, and I am here to tell you, as a community, we are concerned about rate stabilization, we are concerned about excess costs of insurance, and I will be quite honest with you, our fear is that, if this amendment passes as you have it, we will not have rate stabilization in the future.

The discussion for the last two days has been about the makeup of each of these three organizations and not really about health care, and I am not a health care expert, but I can tell you that, in our community, we spend an incredible amount of time, every year, in a very conservative environment trying to figure out what we are going to do with all kinds of increases, not excluding the things that happen at the State level such as retirement costs, rooms and meals, revenue sharing, all of those items. Those are huge items for local communities, and so we spend a lot of time on that. We trust the organizations that we work with. We trust the organizations, the information that we get from them. We are satisfied as organizations with health care that we get, and for us, that is of primary importance.

I can't speak as well as the gentlemen that were here very early on about actuarial studies, and actuarial numbers, I just can't. But, I have to tell you, we are more than worried about what is going to happen with health care in the future if this happens.

The other thing that hasn't been mentioned at all is every community has labor contracts, they are all different. If this passes, and we have to make changes in health care at the local level, what assurance do we have that all of those labor groups are going to be willing to work with us to make changes in health care? I think we know the answer to that. It is not going to be that easy to do, but that is something that we are going to have to be faced with on this side of the table. Believe me, I have been in government for long enough time to watch what has occurred in the State of New Hampshire. I would not want to be sitting where you are sitting today facing the deficits that you are facing and how you accomplish that. Trust me, I understand that.

We are just worried at the local level that this is going to be another item put on the back of local government. So, if I leave you with any message at all, it is please think about the decisions that are made, the far-reaching decisions because I don't think that any of you, any more than us, have the answers for all the questions you have raised today. Some of them are very good questions. But, this decision, as you have heard from people that are far smarter than I, make me very uncomfortable and very nervous as a manager, running a community and trying to balance budgets, and I am sure you also know because you all come from communities, we haven't begun to feel the dramatic effect of what has occurred in our budgets like we will in this upcoming year, and that's a fact of life that we are all going to have to deal with.

So, that is where we are coming from, again not as any board member, but as a participant in the organizations and trying to get the best, and least expensive health care costs for our employees, who, by the way, are also participants in paying for all of this.

So, one last thing. I haven't heard anything mentioned about the formula for giving this money back, yet I believe the amendment says that it takes effect upon passage and that it is to be accomplished in 60 days. So, I don't know what the formula is, but I would be curious to know before this passes what, how, what's the intent of returning this money, and how is it going to be done. I haven't heard that mentioned at all, and again, that's a concern because our rates are predicated on... our costs are predicated on what the rates are. So, I hung around to tell you what it is like at the local level.

Senator Margaret Wood Hassan, D. 23: Thank you, and for what it is worth, and for the record, your concerns about property taxpayers are exactly our concerns as we are trying to balance what cuts in the State budget, in addition to local aid, might really hurt local communities. If we cut health and human services too much, you all are going to feel it.

Mr. Marcoux: We are already.

Senator Margaret Wood Hassan, D. 23: And, and if we cut other parts of State government, you all are going to feel it. So that's just, you know, it is a very common concern. And other comments or questions for Mr. Marcoux? Okay, thank you very much.

Mr. Marcoux: I have my feelings in here so, I'll pass those around for your reading this evening.

**Please see attachment #9, written testimony submitted by Russell Marcoux, Town Manager, Bedford, New Hampshire.**

Senator Margaret Wood Hassan, D. 23: And, I will give you a would you believe on the issue of how, what kind of formula there should be if there was a direction to disgorge money, which some of us believe the statute already says there is. I do believe that the LGC, for instance, has a lot of sophisticated finance staff who might be able to figure that out.

Mr. Marcoux: Is it possible, could I ask a question?

Senator Margaret Wood Hassan, D. 23: Yes, sure.

Mr. Marcoux: If this, if the theory of this, say you pass the bill as it is amended, as it is currently proposed, and you find out within a year or less that the rates are going to skyrocket.

Senator Margaret Wood Hassan, D. 23: Right, right.

Mr. Marcoux: What is the fall-back position?

Senator Margaret Wood Hassan, D. 23: That is a good question, and I think it is something that we would have to consider.

Mr. Marcoux: Okay.

Senator Margaret Wood Hassan, D. 23: Thank you. Anybody else?

Mr. Marcoux: Any questions? Our timing was perfect.

Senator Margaret Wood Hassan, D. 23: Thank you very much, Mr. Marcoux, for being so patient and sticking around.

Mr. Marcoux: Thank you.

Senator Margaret Wood Hassan, D. 23: I'm just looking at my list and, Elisabeth Corrow? Carroll?

Mr. Steiner: Corrow.

Senator Margaret Wood Hassan, D. 23: From Franklin.

Unidentified speaker: She is not here.

Senator Margaret Wood Hassan, D. 23: She is not here. Keith Hickey?

Unidentified speaker: He is gone.

Senator Margaret Wood Hassan, D. 23: Okay, Keith is gone. Alright, I know the suspense is killing everybody here, Jessie Levine?

Jesse Levine: I am here.

Senator Margaret Wood Hassan, D. 23: Ah, you are here. Thank you for being so patient.

Ms. Levine: Thank you for calling on me. Senator Hassan, and members of the Committee, my name is Jessie Levine. I apologize for not indicating my dual role on the sign-in sheet.

Senator Margaret Wood Hassan, D. 23: That is okay.

Ms. Levine: But, I am the Vice Chair of the Local Government Center Board. I am also the Town Administrator in New London. I am wearing both hats today. So, I am happy to answer questions.

My testimony has changed quite a bit in the last few hours. I don't want to rehash what has been said about RBC. I also echo sentiments from the communities about the feeling that the way to return money, any money, to the local taxpayers is not in the form of a check, or a repayment that dips into the reserves of any of the three organizations, but in the form of rate reduction, which has been done for a number of years.

I have been on the Local Government Center Board for five years. I joined in the Spring of 2005, so I post-date some of the decision you were referring to, but I have been privy to a number of more recent decisions, including one of the line of questioning, questions was about the rate fluctuate that did happen in the last couple of years, and that rate fluctuate happened despite the use of surplus, and perhaps it was an aggressive stance on behalf of the Board, but two years ago, when we were setting the rates for 2009, we did have surplus beyond the RBC, and we did choose to return as much, all of that surplus to the taxpayers in the form of rate reduction.

The following year, we were faced with a huge rate increase, in part because we had underestimated the trend, and part because we had given all of the surplus back in a year when the rates were looking pretty good. Some of us on the Board did vote two years ago not to return all of the surplus because we were afraid we then wouldn't have it to use in a year when we had a steeper rate increase, and lo and behold, that is what happened.

So, what we did do, even to keep the rates at, in New London, it is 16.9%, I know it was higher in other communities, to keep the rates at that level, we changed the benefit plans, which has been the cause of grievances and much discussion in the last year.

So, there are a number of tools that the Board uses to affect the rates. The surplus is one of them, and we use that when it is available. Making plan changes is another one, and that is becoming more and more common in this health care environment. And then, at the local level, towns choose to make decisions to keep their health costs down.

In New London over the last couple of years, the employees took on a higher percentage of the prescription plan, and then this year we changed our plan entirely, and in doing so, we went out for bid, the employees, I had a very collaborative process, which I don't always recommend, but employees felt very strongly that, despite the small savings we would have in switching all of our products to Primex, they wanted to stay with Local Government Center because of the service, the services that were provided, the training, the relationship, Anthem compared to Harvard Pilgrim. So, this is a competitive marketplace, a lot goes into the decision to stay with certain organizations. Employees are consulted at the local level, just like the employees are part of the decision making process at the Board level.

I am sorry I am jumping around a little bit, but like I said, my testimony kind of went out of the window because it has been said. Just to address some of the questions that have come up before, the 19%, the so-called 19% increase

in salaries I think has been addressed. There have been a number of changes, workers' compensation coming in-house, our staffing levels have changed, our products have grown. We are in a lot of ways an insurance company; as there is more need, we grow to provide that need. We serve all of our claims in-house, so when somebody picks up the phone to call about a health insurance question, they are getting an employee of the Local Government Center. Same for workers' compensation; they are contacting an employee of LGC. So, they are there to serve the participants and the members.

The 1%, the portion of the health insurance that was set aside for workers' comp and for other purposes, that had another benefit that I don't believe has been brought up yet. When the Local Government Center went into the workers' compensation business, which was before I came on the Board, Primex's rates went down. So, whether a community was a member of the Local Government Center, or Primex, or maybe even School Care, but they don't offer workers' comp, the overall rates in the marketplace went down. So, whether they were getting that service from Local Government Center or not, they received the benefit. I just felt like that needed to be said.

Pardon me for just a moment. Some of these are responses in case I am asked questions, but you asked a question about transparency, how members heard about decisions that are made on the Board level. It is very similar to, as Todd Selig said, we try, local governments try to be as transparent as possible. I have recently has started to try to write a weekly column in our local paper in an effort to be transparent because the reporters cannot always get there and we rely on the *Fourth Estate*, and when they are not there, we are the ones that get excused of not being transparent.

The Local Government Center operates the same way. We have a Board that represents the communities across the State. The communities across the State entrust the Board to honor their fiduciary responsibilities and to make decisions on their behalf. It is everybody's responsibility to be open about how that process is done. Perhaps in the past LGC hasn't been open enough. I think we are doing a better job of that; in fact, I think, and you have this little diagram, but it's the four legs of the stool that is LGC, and it says right here, two of the legs are members' balance designated, members' balance undesignated. So, I think we have acknowledged that that is members' money and we take seriously that that is members' money.

**Please see attachment #10, diagram submitted by Jessie Levine, Local Government Center.**

Just like capital reserve funds and general funds surplus belongs to the local taxpayers, we acknowledge that this money belongs to the members. But I, it would be a great windfall for New London if the trustees of the trust funds at the town meetings said, hey let's close all of our capital reserves funds and at the end of the year let's return everything to the taxpayers. But, that is not considered responsible financial management. We take the same approach.

Responsible fiscal management, responsible fiduciaries of the members' money sit on the RBC for potential claims, and unanticipated claims, and we return the surplus to the members in the form of rate reduction.

I have an e-mail from a local businessman named John Foehl, who is the President of Government Entities Mutual and he asked us to share this information with you.

Please share the following information with the rest of the members of the Senate prior to voting on the HB1393 amendment. This information comes directly from AGRIP, the Association of Government Risk Pools. On a national basis, there are 400 plus members of AGRIP. Pooled surpluses range from three times to fifteen times the annual contributions. Harold Pumford, the Executive Director, provided this quote, "While we, AGRIP, do not capture net assets surplus information in our database, my 30-plus years of working in the public entity pooling environment and examining numerous pool financial reports indicate that employee benefit programs more often require subsidies from other coverage programs where this is permissible than vice versa. More pools have had to dissolve benefit plans than other coverage programs for a lack of ability to build sufficient net assets to support the every escalating costs of health care services."

This is a very poorly-crafted piece of legislation that seems more geared toward settling prior scores than toward providing transparency and regulatory oversight. Thank you. John M. Foehl, Junior, President, Government Entities Mutual.

I am happy to answer any questions.

Senator Margaret Wood Hassan, D. 23: Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair, and thank you for your testimony. The e-mail certainly went out that this is to settle scores, and I think that you've heard our explanation of that.

Ms. Levine: I have, and I am sorry, Senator, I was reading from another e-mail as well.

Senator Jacalyn L. Cilley, D. 6: It is a bit offensive to spend as much time on something. But, in any case, you said you wear two hats, and that your member, and when you said employees, I believe you were talking about your town employees?

Ms. Levine: Yes.

Senator Jacalyn L. Cilley, D. 6: And, how during these difficult times, you have had to change their benefit package. Was that who you were talking about?

Ms. Levine: Yes, well actually, excuse me, Senator. But, with both hats on, we changed the benefit packages. Last, this past year, Local Government Center employees had the same benefit reduction or change that was made at the local level. In addition, I actually have been a member of the Personnel Committee since I have been on the Board. I am not Chair of Personnel by virtue of being Vice Chair of the Board.

For the last two year, two years ago, there was a cost of living adjustment and no merit raises beyond that. This past year, what was given out was kind of an across the board number that wouldn't even rank as cost of living adjustment, so there have, and at the leadership team level, some of the higher salaries that you have mentioned, there have been no raises.

So, I do believe that we are terribly scrutinizing how employees are paid and the benefits packages that they receive so that they do reflect what is going on at the local level.

Senator Jacalyn L. Cilley, D. 6: Follow up?

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Jacalyn L. Cilley, D. 6: And, have you scrutinized all of the staff positions, you know, we see in our materials 133, I think you said because you brought in workers' comp, there may be more employees at this point. Have you scrutinized whether these are positions that are, you know, absolutely necessary to the operation, again, of something that is a publicly funded entity such as marketing promotion, graphics designs, etc.?

Ms. Levine: Yes, thank you, Senator. I have three answers to that question. Every time a position is added at LGC, it goes before the Personnel Committee and then is brought to the Board. So, individually, the positions are scrutinized as they are added. In addition to that, the number 133 does

include the recent incorporation of workers' comp in-house. So that, that's a more current number, although there are some vacant positions.

Thirdly, I am glad you asked the question because I forgot to leave off a very important piece of Board business that has been going on, actually, would you believe, since before most of this heightened scrutiny happened. In the process of going out and searching for a new Executive Director last year, the search committee, and ultimately the Board of Directors, realized that we needed to do some naval gazing. We are in the middle of a very, very intense three-part process. We are calling it the SMO, but it's Strategy, Management, and Organizational Study. It is primarily the strategic planning committee with the chairs of some of the other committees sitting in as well on our SMO team, and we have started by doing a management and organizational study that is reviewing our governance structure that has been discussed today, and then that work will be leading into our strategic plan.

So, we are intensely looking at how we are staffed, the structure of that staffing, the number of staffing and then also how the Board operates, are the committees properly determined, are they doing the work that they are supposed to be doing? Should we have other committees? How does that get funneled to stakeholders and the Board of Directors for decision making? And then, part of the strategic planning process, just like any strategic planning process, you go out to the membership and ask how we are doing and we are in the process of some of those how are you doing conversations right now. So, yes, we are carefully scrutinizing.

Senator Jacalyn L. Cilley, D. 6: Final question?

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Jacalyn L. Cilley, D. 6: Much of discussion has focused around this mechanism that is in this amendment about what is the appropriate reserve, and that's having looked across the country, that is all over the place. Some use the RBC formula, others use other formulas, you have even heard today that there are...

Ms. Levine: Three different ways.

Senator Jacalyn L. Cilley, D. 6: Right, there are three different ways of looking at that. So, there are ways to get to a reasonable amount, and then identify what is genuinely surplus. But, beyond that piece of this legislation, do you have any objections, either a community official or as the chair, as the Vice Chair of the Board, to complete and total transparency? That all of

these risk pools should put everything that a town has to put on their website, filed with the Secretary of State, to have full disclosure of all itemized, you know, expenses?

Ms. Levine: I believe that the Court has said that Local Government Center should comply with, or must comply with RSA 91-A, just like the towns do. But, there are exceptions to the right-to-know law that the towns, that apply to the towns and that apply to the Local Government Center, such as proprietary information, competitive commercial information. I do think that, as you have heard today, we operate in a competitive environment and I do believe that these organizations should have the ability to protect their proprietary competitive information, in addition to any information of the actual employees who are getting services from LGC, which are subject to federal law protection.

So, the theory of transparency, absolutely, I think we are doing an excellent job of meeting the spirit of the law and being transparent. But, when it comes down to some of the details, then I would have objections, yes. I think that, I think right now we are being regulated by the members. We have a 31-member Board, we each have to answer to the constituents that we represent, and ultimately people vote with their feet. If they are not happy with the service that they receive from any of these organizations, they can look around and they can make that decision. With that said, I am not opposed to additional regulation, but I think it needs to be reasonable and in the proper venue.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Margaret Wood Hassan, D. 23: Other questions? Senator DeVries.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair, and as a Board member and with all of your hats on...well, let me ask you first as a Board member. Admittedly, this is a non-for-profit organization correct?

Ms. Levine: Mhm.

Senator Betsi DeVries, D. 18: And, admittedly, your competition, because the majority of your competition I would assume would be, if not for your contracts with them, the for-profit health insurer. Correct?

Ms. Levine: Other than the two other nonprofits?

Senator Betsi DeVries, D. 18: Other than the two other entities that are here before us today.

Ms. Levine: Yes.

Senator Betsi DeVries, D. 18: So, so, if I guess I am back asking you because you do scrutinize and have for some number of years scrutinized, I think you said you joined in 2005, the budget, and you heard me ask the question earlier about marketing, and it seems like you are marketing against other companies that are operating in a very similar capitalization of their reserves. So the difference of health insurance costs you would think should be pretty marginal. Your marketing budget, as you scrutinize it, you know, how have you viewed this, and how have you viewed other ways to reduce the costs of health care?

Ms. Levine: Thank you for the question, Senator. The marketing budget is actually fairly broad. It includes a number of collaborative relationships such as, I am also past president of the New Hampshire Municipal Management Association, NHMMA, which is not NHMA, it is a separate organization.

Senator Margaret Wood Hassan, D. 23: Got it.

Ms. Levine: And, NHMMA, and the Local Government Center, and UNH have partnered for the last couple of years to have a fellowship program for UNH MPA Master's and Public Administration students to help develop them into public management careers that comes out of the marketing line. Training comes out of the marketing line. Yes, we are marketing against each other, but we are also marketing to employees and to the members so that they know what the services are that they are paying for—thoroughly. It could be something as simple as giving out hand sanitizers at a wellness conference that say Local Government Center on them, or a booklet that describes how employees go through the process of the wellness program, or what other benefits they gain because their employer is a member. So, it is not strictly advertising, it is actually hands-on relationship building expenses.

Senator Betsi DeVries, D. 18: And, the question consistently asked today, in such tough economic times when everybody is looking for any way to tighten their belts, to keep a twenty-odd percent increase in health insurance costs from occurring, why wasn't there added scrutiny on those kind of line items on your budget to see if you couldn't hold back and reduce so that the reserves, the draw down on the reserves for your non, for your discretionary spending could have been less?

Ms. Levine: There was, thank you, Senator, but there was that level of scrutiny. Dave Caron already talked about the cars, the fleet of cars being reduced. We reduced the level of travel and training for the Board and employees. We did actually cut on the hand sanitizers, and we heard complaints about that. We're, we're talking about a, almost \$400,000,000 budget, 1% of that which is what was peeled off for workers' comp and other member services is \$3,500,000. Marketing is half a percent, if that. So, we are not talking about something that would have a tremendous impact on surplus or on the rates, but it is noticeable to the members when that is absent. So, it's always a decision, it is always, the Board takes seriously, in the five years that I have been on the Board, we have not had one discussion about rate settings that doesn't try to balance the saving money for the taxpayers returning money to the taxpayers with the obligation, the fiduciary responsibility to maintain reserves. It is all a balance.

Senator Betsi DeVries, D. 18: Arguably...

Senator Margaret Wood Hassan, D. 23: Follow up.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair, and arguably. I think you just said that marketing line is something, something like half a percent, \$1,500,000 something like...

Ms. Levine: I don't know the exact number, I don't.

Senator Betsi DeVries, D. 18: If 1% was \$3,000,000 of the workers' comp.

Ms. Levine: 1% is actually \$3,000,000 so actually less than that.

Senator Betsi DeVries, D. 18: Half a percent would be half of that, so that would be \$1,500,000. If that is in fact what we are talking about.

Ms. Levine: I'm sorry Senator. Do you have the number in front of you because I don't.

Senator Betsi DeVries, D. 18: I don't have the number in front of me, I am going off of your testimony, of what you just said to me. If the line for workmen's comp, the 1%, is \$3,000,000 and if half a percent is your marketing line...

Ms. Levine: And, I don't know that, sorry.

Senator Betsi DeVries, D. 18: Would be half of that. In any case, arguably, I am looking at a statute that talks about those reserves and says that the

return of all earning in surplus, in excess of any amounts required for the administration, claims, reserves and purchase of that said insurance, shall be returned to the participating political subdivision. Then that is soup to nuts why we are here today because there just seemed to be so many examples of things that we have to answer to our collective municipalities in the State, would you believe, as to why they are 100% necessary, and not subject to the return of all earnings because that is in law today, and has been since 1987?

Ms. Levine: Thank you, and for the 23 years that that law has been in effect, I believe that the Local Government Center and the others, as they have come into existence, have honored the law and returned any surplus funds to the rate payers. I believe that that is truly happening.

It sounds like we have a disagreement over some of the definitions, what is administration? What is required? What is truly surplus? But, I believe that the spirit of the law is being met by all of the organizations involved that would be affected by this legislation.

Senator Betsi DeVries, D. 18: And, would you believe? And, not trying to be argumentative, but would you believe that not everybody would say that hand sanitizers are necessary?

Ms. Levine: Right.

Senator Betsi DeVries, D. 18: And, maybe that is part of what should be returned.

Ms. Levine: I, I agree with you that there may be disagreements. We have disagreements on the Board all the time about what is necessary and what is not necessary. I have heard very, I have heard no concern about the surplus that you described from anybody other than the House and Senate members who support, who proposed this bill.

Senator Betsi DeVries, D. 18: Thank you.

Senator Margaret Wood Hassan, D. 23: Senator Reynolds.

Senator Deborah R. Reynolds, D. 2: Thank you very much, and thank you very much for your testimony and, you know, just for the record, I have talked to some of my boards of select, elected officials in my district, and they do have concerns about some of the things that are occurring here. But, I would like to just compliment you on your testimony because I think the focus of my concerns has nothing to do with the Board. I think the Board

tries to do its best and the governance issues, I believe, is not transparency and, I think it will probably change and that is a good thing.

But, here is what happens at the State House, just so you know. You know, we receive copies of the LGCs newsletter that goes out, and what we see are complaints about the Legislature, about the Governor, about proposals that the LGC chooses to message in a very adversarial way against State government. So, when we get a concern from probably the most highly respected State official that we have that the LGC has fought public disclosures of important information for months, spent a lot of money of the taxpayers on legal fees, and then we look at some of the budgetary items that are here, it does cause us some legitimate concerns.

So, I guess from our side of the table once again, I think that we are trying to be responsible, we are trying to respond to a crisis that is happening in many of my small towns that don't have town managers, that can't afford a town manager, can't afford even a computer, that are struggling to address budgetary issues in their towns, and I just want you to know that we are acting in our fiduciary duty on behalf of the taxpayers. Thank you.

Ms. Levine: May I respond?

Senator Margaret Wood Hassan, D. 23: Yes.

Ms. Levine: Thank you, Chair, and thank you, Senator Reynolds. I assume you are talking about the NHMA newsletter, LGC doesn't issue a newsletter along the lines of the legislation. I am...

Senator Margaret Wood Hassan, D. 23: Can I just clarify that. NHMA is a member organization governed by LGC, correct?

Ms. Levine: Yes, NHMA issues the newsletter.

Senator Margaret Wood Hassan, D. 23: I understand that, but let's be clear about your organization.

Ms. Levine: That is what I am trying to do, I am trying to be clear.

Senator Margaret Wood Hassan, D. 23: Thank you.

Ms. Levine: I, I may be, I understand what you are trying to accomplish, I truly do. I know that we have been beating up on the Legislature over the funds that will be cut to the towns, have been cut, will be cut. I think we are all looking for new revenue sources. I don't think this is an appropriate one,

and apparently we disagree on that, I understand. I think if you ask any Board of Selectmen if they would like the return of the money in the form of a check, they would say yes without knowing the intricacies involved with this legislation and the intricacies involved with operating the risk pools.

It is all of our obligation to make sure that they understand that better. But, I am jaded, I just spent 4 months in the State House, I spent a lot of time here over the last 4 months working on a bill that would allow local towns to bond money to build out broadband infrastructure. You may be familiar with that bill.

I'm, I'm offended by hearing Legislators say that voters are not sophisticated enough to understand what is in their best interest so we have to do it for them. I am offended by that as a town administrator, I am offended by that as a voter, I am offended that Legislators would think so little of the people who put them in office, and I am starting to hear some of that around this bill. And, that is part of what bothers me.

Yes, you may have to insert your judgment for the selectmen who may not understand, but therefore, I think it is your obligation to be even more educated, to understand more of the impact of what this happens, of what would happen and that is what we are trying to do.

Senator Margaret Wood Hassan, D. 23: And, let me be clear. I think we need to all be careful about entering into a debate because that is not what this hearing is intended to be. But, I have not heard a single person at this table make a comment that you clearly have interpreted one way, that we don't think the voters can make this judgment.

My personal concern, and I want to ask a question to follow this up, is that the LGC, at times, is assuming that people won't understand the intricacies of what they do, and therefore, don't engage fully with them. So, I think we are both concerned that voters and taxpayers are included in this process, which leads me to my question, which is that I would like to understand how it is that a town or selectman, or taxpayer would know that they are in fact getting a rate reduction if the exclusive provider of the product through the LGC is Anthem, and if I am a member of the LGC I cannot get an independent quote from Anthem, and if I leave the LGC, I can't go back to Anthem. So, how do I know independently that the surplus as identified under the standard that the Board has set, is actually being used to actually lower rates? If I asked the question, usually I can call up competitors, so I might be able to call up Primex and get a Harvard Pilgrim quote, but I can't call Anthem and say if I was calling on the private market, what would my

quote be. So, how do I find out that that's, that my rates are really lower than they would otherwise be?

Ms. Levine: So, you're, I'm sorry Senator, so you're talking about the relationship between the Local Government Center and Anthem then exclusively? Whether...

Senator Margaret Wood Hassan, D. 23: I'm talking about the local government coming to me as a member and saying to me, guess what your rates are lower this year than they would otherwise be because we have infused some surplus into rate reduction. How do I know?

Ms. Levine: Thank you, you may not know between Anthem and Local Government Center because that is the relationship that exists.

Senator Margaret Wood Hassan, D. 23: Right.

Ms. Levine: But, you know, by going out the other competitors, whether they are the other nonprofit pools, or a private entity, and seeing what people pay for health insurance and we have the information. But, at some level, the municipalities evaluate whether the services, whether the price that they are paying for the services they receive is appropriate or not, and if it is not, they do have choices.

Senator Margaret Wood Hassan, D. 23: But, that is not my question.

Ms. Levine: I know, and...

Senator Margaret Wood Hassan, D. 23: What, what you are telling us is we have identified this much in surplus, membership, and we are talking, let's say, \$10,000,000 to lower your rate. Next year, if we didn't do that, the rate through LGC for you would be x. Right?

Ms. Levine: Right.

Senator Margaret Wood Hassan, D. 23: Because that's what Anthem, that is what we have negotiated with Anthem. I have no way of knowing if that is true.

Ms. Levine: Oh, I am sorry, I'm sorry. Yes, I mean, we have all of that information if asked. We don't send our detailed worksheets of how the rates are calculated out to every individual taxpayer, but it is available to individual members, and if the members then want to share it with the taxpayers they can do that as long as the proprietary information is

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Ms. Levine: Oh, I am sorry, I'm sorry. Yes, I mean, we have all of that information if asked. We don't send our detailed worksheets of how the rates are calculated out to every individual taxpayer, but it is available to individual members, and if the members then want to share it with the taxpayers they can do that as long as the proprietary information is

protected. So, and part of it is the democratic process. You trust the people that you elect, you trust the people they hire.

Senator Margaret Wood Hassan, D. 23: Right, I understand that, but I'm still not understanding this. If I wanted to independently find out from Anthem whether in fact your methodology is valid, whether in fact rates would have been x, y or z next year, can I call Anthem as one of your members and ask them for a quote as if I wasn't a member of the LGC? I have been told that I can't, I can't get a quote from Anthem, except through you guys.

Ms. Levine: May I defer to Wendy Parker to address that.

Senator Margaret Wood Hassan, D. 23: Sure, sure.

Ms. Parker: Let me just add to that, your right that you can't get a quote from Anthem, but what we do do for every group that has over 100 employees, because they are rated on their own, I give them, at renewal time, a rate sheet, and it shows at the top, and I can share a copy of on of the Committee, it shows what you had in claims last year, what your claims are projected to be with what trend we are using, exactly how much we are putting in for administration, exactly how much we pay Anthem. If we are returning surplus, there is a line on that that says return of member surplus and you will see an amount there, and that all calculates out to the rate increase that you receive.

So, you do have that information so you can see exactly what you are paying us on all the lines. You are correct that you can't go to Anthem and say for the same product with the same network, am I getting a better deal? You can do that through the other carriers, but we do provide you with all that detail; it is totally transparent.

Senator Margaret Wood Hassan, D. 23: I will stop the line of questions there, but I, I have no way of independently verifying that there is, that there is a rate reduction from this surplus, I really don't.

Ms. Parker: There is a line that, if that was not there, your increase would have been higher.

Ms. Levine: Yes.

Ms. Parker: So that is the independent check that did that renewal, that did you received the money that reduced your increase.

Senator Margaret Wood Hassan, D. 23: Well, I will leave it for now because I'm, I think we are several steps away.

Senator Jacalyn L. Cilley, D. 6: I have a line of, you know, comments and questions. I just want to respond to your comment about you didn't think that this was the appropriate mechanism for fixing the budget. I am going to say it one more time, I know we have been slammed for this, you know, with all these e-mails going around. This is not what we are doing, it is not what we are doing. This is an issue of transparency, it is an issue of following up on the Secretary of State's concern. I think you have heard that repeated over, and over and over again today.

So, I can assure you that I don't think that, you know, we are going to do anything in regard to the budget with this mechanism. You mentioned earlier in your testimony that you returned all of this money a couple of years ago, and that was part of the reasons the rates went up because you had inaccurately predicted a trend. According to the House testimony, the decision to return \$31,000,000 was done a third, a third, and third, and one third was returned, and then, to the best of my knowledge, the testimony suggested that nothing else had been because the following year because of the pandemic situation, and you know, flu vaccines and all of that. It increased the health care costs, so none of the rest of that monies had been returned. Am I correct about that?

Ms. Levine: I wasn't there for the House testimony.

Senator Jacalyn L. Cilley, D. 6: But, you had indicated that it all had been returned. I'm just wondering.

Senator Margaret Wood Hassan, D. 23: Would you just...don't interrupt, okay.

Ms. Levine: The, yes, I believe, and perhaps I'm wrong, but I believe that the surplus above the RBC that was kept was returned.

Senator Jacalyn L. Cilley, D. 6: Well, there is a discrepancy there.

Ms. Levine: Well, we will get that straightened out.

Senator Jacalyn L. Cilley, D. 6: Thank you. And, then the last question, you mentioned the money that started the workers' comp, my understanding was that about \$12,500,000 was used from the health care trust to start workers' comp? I think somewhere in that basically there was an acknowledgement of that money being used.

Ms. Levine: Okay. I wasn't there when the decision was made and when the program was started up. I, so, it's been 1% on an ongoing basis, I don't know initially what was used. There are other people in the room who can answer that better than I could.

Senator Jacalyn L. Cilley, D. 6: Good, I hope so. Thank you.

Ms. Levine: Thank you.

Senator Margaret Wood Hassan, D. 23: Are there other questions? Thank you very much.

Ms. Levine: Thank you. Thank you for your time.

Senator Margaret Wood Hassan, D. 23: And, thanks for being so patient waiting here today. That, I believe, is all the names I had signed up to speak. Was there anybody else who wanted to speak on the amendment to House Bill 1393?

Attorney Moquin: Madam Chair, can I just clarify a point?

Senator Margaret Wood Hassan, D. 23: Yes you may, please come on up, Mr. Moquin.

Attorney Moquin: And, it is just one point that was made earlier about the filings for limited liability companies. I believe there was testimony that the law at one point did not provide for corporations to convert to limited liability companies, and since 2006, I believe it was, has changed. I have a copy of the statutes here and actually the law on that has not changed since 1997.

Currently, under 304-C:17-a, any business entity may convert to a limited liability company by complying with the requirements of this section. So, and that has been law since 1997. So, I'm not sure what the misunderstanding is, but I just wanted to clarify that for you.

Senator Margaret Wood Hassan, D. 23: Thank you. Anybody else with any...you just raised a hand so. Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. Mr. Moquin, then I am confused because you heard testimony and it is replete in the House testimony, it was said again today, that you know, they really couldn't do it up here and they, you know, they just wanted to get it under one umbrella and all of that. Why would somebody do this in Delaware?

Attorney Moquin: I can't answer that. I apologize, I think somebody else would have to answer that, but we, we actually spoke with the head of the corporation, not the head of the Corporation Division, but some person, a senior member of the Corporations Division, and has a lot of experience with us. Her understanding is that this has not been an issue in a long time.

Senator Jacalyn L. Cilley, D. 6: Follow up to that.

Senator Margaret Wood Hassan, D. 23: Okay, you are testing everyone's energy level including your own.

Senator Jacalyn L. Cilley, D. 6: That is right. We have also heard testimony that all of the filings that should have been done with the Secretary of State, actually I think all the risk pools said that they had filed what they needed to file, you know, major filings, every year. Can you speak to that at all?

Attorney Moquin: I haven't checked all of them, so I can't comment on all of them.

Senator Jacalyn L. Cilley, D. 6: Can you comment on any?

Attorney Moquin: I believe that the comments made by the Local Government Center that they had made their filings as accurate that they have made their filings over the years. That is the only comments that I heard. So...

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Margaret Wood Hassan, D. 23: Any other questions? Seeing none, anybody else want to testify on the amendment to House Bill 1393? Seeing no other testimony, I am going to close the hearing.

Hearing closed at 6:55 p.m.

Respectfully Submitted,



Richard M. Parsons  
Senate Committee Secretary  
6/15/2010

10 Attachments

**HinckleyAllenSnyder** <sup>RP</sup> <sub>LLP</sub>  
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May 6, 2010

*Via Hand-Delivery*

Honorable Margaret W. Hassan  
Chair, Commerce, Labor and Consumer Protection Committee  
Legislative Office Building  
Room 102  
Concord, NH 03301

*Re: Testimony on Amendment to HB 1393*

Dear Madam Chair:

I serve as general corporate counsel to Local Government Center, Inc. and its subsidiary organizations. I was present at the hearing on the above amendment on May 4<sup>th</sup> and heard the testimony of Secretary of State William N. Gardner. This is to correct factual misstatements made by Mr. Gardner, and to respond to implications raised by his testimony.

**Legislative History of RSA 5-B**

Mr. Gardner's testimony regarding the legislative history of 5-B did not start at the beginning, but rather with the Department of State's request in 2009 for investigatory powers over pooled risk management programs. In 1987, the Legislature worked carefully with the Insurance Department to craft RSA 5-B. At the time, as then Insurance Commissioner Louis Bergeron testified, municipalities were unable to procure liability insurance in the commercial insurance market at a reasonable cost – if at all – and thus found self-insurance as their only option. RSA 5-B created a structure by which several municipalities, and later counties and school districts, could pool their self-insurance funds and consolidate their administration in order to spread (and thus lessen) risk and lower the administrative costs of their self-insurance programs.

The Legislature in 1987 adopted a national model for pooled risk management programs. RSA 5-B essentially requires such programs to be structured as cooperatives, so that the pooled risk programs are governed by, and provide services only to, their local government members. In fact, Local Government Center's entire 31-person board of directors is comprised entirely of representatives of municipalities, school districts, counties and their employees. Consistent with the concept of self-insurance, 5-B entities are not independent, commercial enterprises but

instead are organizations limited to serving local governments and governed and overseen by public officials who are directly accountable to their selectmen, town councils, school boards and ultimately taxpayers for the management of the funds in such pooled risk programs.

Because of this self-governance model, and to maintain the affordability of pooled risk management programs, the Legislature did not require regulatory oversight of 5-B entities. To ensure a fully-informed membership, however, RSA 5-B does require pooled risk management programs to file annual financial statements and actuarial reports. This concept actually was endorsed by Insurance Commissioner Bergeron in his 1987 testimony before the Senate Committee of Insurance regarding HB 608-FN.

In his testimony to your Committee, Mr. Gardner alluded to testimony by a legislator in 1987 that the structure of RSA 5-B could result in the theft of money by a pooled risk management program because of the lack of regulatory oversight. In fact, this comment was made by Insurance Commissioner Bergeron in the context of explaining his amendment to HB 608-FN requiring that the annual informational filings be made with the Secretary of State. Originally, the bill required such filings to be made with the Insurance Department, but Insurance Commissioner Bergeron was concerned that this would mislead the public into thinking that 5-B entities are subject to Insurance Department regulation and oversight. Instead, again endorsing the concept that such entities be self-regulated, he proposed that the annual 5-B filings be made with the Secretary of State because that is the office with which all corporations file informational reports annually.

Insurance Commissioner Bergeron's statement that a pooled risk management program could "[take] the pot and [run] away tomorrow..." was made in his rather inimical and colloquial style at the end of his testimony and was meant to emphasize that RSA 5-B entities are not subject to regulation because they are self-governed by public officials directly accountable to the taxpayers. Again, this was a concept expressly endorsed by the Insurance Commissioner and enacted by the Legislature. By the express language of RSA 5-B, the Secretary of State's role was strictly that of a repository, and Insurance Commissioner Bergeron testified that he was sure that the Secretary of State would contact him if there were any concerns with a filing by a 5-B entity. To suggest that the Legislature or Insurance Department in 1987 had any concern that public funds would be misused by pooled risk management programs simply is not true.

Mr. Gardner began his testimony by stating that he was made aware that one or more pooled risk management programs had not made the annual filings required by RSA 5-B:4, and that was the impetus for the amendment sponsored by the Department of State a few days prior to the end of the legislative session last year. Given the subsequent investigation of Local Government Center, Mr. Gardner's testimony raises the implication that LGC had failed to make these filings. In fact, Local Government Center has made all of its annual filings required by RSA 5-B since the requirement was instituted in 1988.

Curiously, it does not appear that the Secretary of State discussed his concerns with the Department of Insurance. It is important to note that the primary purpose of RSA 5-B is to

establish the organizational and operational requirements for a pooled risk management program to qualify for an exemption from insurance regulation and premium taxation. If a program fails to meet the 5-B standards, it does not cease to exist but instead could become subject to Insurance Department regulation and taxation. Therefore, it would be logical, as Insurance Commissioner Bergeron anticipated years ago in his testimony, for the Secretary of State to voice his concerns about filings to the Insurance Department. He apparently did not.

Even more curious is the fact that the Secretary of State sought investigational powers beyond his role as the repository of annual filings. As noted in the Department of State time line, the Secretary of State did not receive allegations about Local Government Center's adherence to the operational requirements of RSA 5-B until after the amendment to RSA 5-B was passed. It also is concerning that the amendment was submitted in the last days of the legislative session, without notice to the affected parties or the Insurance Department, and without a public hearing. Although Local Government Center raised its constitutional concerns about the Secretary of State's authority as early as last August, the Department of State apparently now is employing a similar strategy with the above-referenced amendment.

#### **Nature of the Department of State Investigation and LGC's Response**

Mr. Gardner went to great lengths in his testimony to paint Local Government Center as unreasonable and unwilling to provide his office with information, when nothing could be farther from the truth. As the Local Government Center time line and its attachments reveal, we responded immediately to the Secretary of State demand by: (1) requesting a copy of the allegations being investigated so that we could be afforded due process in preparing a response; (2) seeking clarification because of the ambiguous language of the 2009 amendment to RSA 5-B (coupling the Department's 5-B investigatory authority with its powers under a separate securities regulation procedural statute) and its inconsistency with the framework of the statute and the original intent of the Legislature that enacted the statute in 1987; and (3) requesting an opportunity to meet with the Secretary of State to understand his goals and to discuss a method by which information could be delivered in a manner which protected the legitimate interests of Local Government Center and its members.

Local Government Center repeatedly requested meetings with the Department of State, and each time except one the Department flatly refused. Following the one meeting on October 27, 2009 between Kevin Moquin of the Bureau of Securities Regulation and me which I memorialized in a letter (*see* attachment to LGC time line), the Department of State responded by stating that they do not "negotiate investigations" and then held a press conference insisting that Local Government Center was being obstructionist and declaring that "trick or treat time is over."

Because of the Secretary of State's refusal to discuss this matter or Local Government Center's legitimate concerns, we filed an action with the Merrimack County Superior Court to address the following concerns:

1. The Department of State appears to be asserting authority (and expertise) to determine whether pooled risk management programs meet the operational requirements of RSA 5-B. This would require a determination of adequate reserves among other insurance business judgments – which is well beyond the traditional repository role established for the Secretary of State since 1987 -- without express language in the 2009 amendment that the Legislature intended to confer such authority upon the Department.
2. The Department of State sought powers far beyond their role and concerns as a repository of annual informational filings under RSA 5-B, which was followed within three weeks of the 2009 amendment by the investigation of a private anonymous complaint and a request for information which is remarkably similar to the list of information sought by a labor union involved in prior litigation with Local Government Center.
3. Given the language in the Department of State subpoena that no information could be redacted and the Department's refusal to confirm the confidentiality of any information provided to them, Local Government Center raised concerns about the protection of protected health information under HIPAA as well as its proprietary information.

Although the Court did not grant a preliminary injunction based on initial pleadings, it did issue a protective order addressing Local Government Center's concerns about the confidentiality of the information. As soon as the Court issued its decision and protective order, LGC promptly complied with the subpoena. It is important to note that no final Court decision has been made regarding Local Government Center's constitutional concerns, which are scheduled for trial in September. In April, 2010 the Secretary of State made a supplemental request for information, with which Local Government Center complied within seven days of receipt.

### **Regulatory "Forum Shopping"**

Mr. Gardner indicated several times during his testimony that Local Government Center is "shopping" for the regulator of its choice. This simply is untrue. As noted above, because of their self-governing nature and the desire to maintain affordability of municipal self-insurance programs, the Legislature in 1987 did not require regulatory oversight of pooled risk management programs. Although Local Government Center continues to believe that this is an appropriate model, it would understand if the current Legislature desired more regulatory oversight of pooled risk management programs. Local Government Center conducts itself with integrity, prudence and professionalism, and engages the advice of actuaries, insurance consultants, underwriters, attorneys and accountants to ensure that its risk pools are properly and prudently managed. It is confident that an informed regulator would confirm this.

Local Government Center's concern is that the Department of State lacks the expertise to review the business judgment and methodologies of pooled risk management programs in establishing

Hon. Margaret W. Hassan  
May 6, 2010  
Page 5

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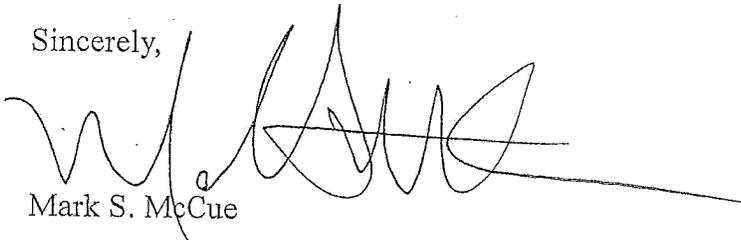
reserves for their varied lines of coverage. Mr. Gardner essentially testified to this effect. The determination of adequate reserve levels is integral to the determination of whether, and how much, surplus exists for return to the members as required by RSA 5-B. Throughout the country approximately half of the pooled risk management programs are subject to some level of regulatory oversight. In each state which regulates these programs, the oversight is conducted by the Insurance Department. As noted above, RSA 5-B sets forth qualifications for exemption from Insurance Department regulation and premium taxation, so it is only logical that any regulatory oversight be conducted by the Insurance Department. As Local Government Center's actuary will testify, the determination of adequate reserve levels is incredibly complex and complicated, and the application of an inappropriate formula could have dire consequences for both the pooled risk management programs and the municipalities, counties and school districts they serve.

### **Fear-Based Approach**

Mr. Gardner's many references in his testimony to AIG and embezzlement are inappropriate and offensive to the municipal and school officials and employees who serve on Local Government Center's Board. As an attendee of every Board and committee meeting, I am impressed continually by the diligence, dedication and integrity exhibited by each board member as well as by LGC personnel. The fact that Local Government Center operates one of the largest pooled risk management programs in the country is a testament to its sound management and responsiveness to taxpayer needs -- it is not a clarion call for state regulation. Local Government Center and its risk pools are voluntary and compete not only with other pooled risk management programs, but with commercial insurers as well. The fact that hundreds of members with hundreds of thousands of covered lives choose Local Government Center and its programs reveals that it is responsive to its members and has earned their trust.

Thank you for the opportunity to submit this testimony, and your consideration of it.

Sincerely,



Mark S. McCue

cc: Maura Carroll, Interim Executive Director

Peter J. Riemer, LLC  
479 Heights Road  
Ridgewood, NJ 07450

May 6, 2010

Honorable Margaret W. Hassan  
Chair, Commerce, Labor and Consumer Protection Committee  
Legislative Office Building  
Room 102  
Concord, NH 03302

**Subject: Testimony on Amendment to HB 1393**

Dear Madam Chair:

My name is Peter J. Riemer and I serve as consulting actuary to the New Hampshire Local Government Center HealthTrust. I have been asked to comment on a proposal now being considered by this committee to change the provisions of RSA Chapter 5-B, based on my experience as the actuary to HealthTrust. I will comment on the specific amendment under consideration and generally about statutory changes that would require the return of reserves or limit the reserves that could be held by HealthTrust or any other 5-B entity. The proposal requires that the reserve be limited to no more than the sum of:

- a) Five percent of estimated annual claims; and
- b) The amount determined annually by a qualified actuary to be necessary to fund the unpaid portion of ultimate expected losses, including incurred but not reported claims, and related expense.

The reserve identified in (b.) is the standard reserve for incurred but unpaid claims and presents no issues. However, the amount of reserve (a.) allowed beyond the incurred but unpaid claims reserve is inadequate, in my opinion.

The chief concerns with the 5% limit are:

1. The limit is below the level, as measured by the so-called Risk Based Capital (RBC) method, that would require remedial intervention by the New Hampshire Insurance Department for insurers it regulates.
2. The limit is substantially below the levels of reserve traditionally maintained by HealthTrust and commercial insurers, and deemed appropriate to cover the business risks associated with fully-insured health plans.
3. HealthTrust has already issued guaranteed rates totaling \$474 million through June 2011. These rates were set with reliance on the protection afforded by HealthTrust's customary target reserve level. HealthTrust expects to experience significant losses in its July pool through June 2010. Nevertheless, these losses had no adverse impact on the July 2010 renewal rates, as reserves, while expected to be below target level at June 30, will still be substantial enough to allow gradual rebuilding. Had we been limited to a 5%, or even a 10% reserve level, we would have set these rates with significant additional charges.

#  
RPI

4. A 5% reserve limit for HealthTrust would be about \$20 million. If HealthTrust were immediately limited to that level, actual reserves will soon fall far below the \$20 million, as significant additional losses are expected through June 30. Such losses could bring the reserve down to less than \$10 million, or about 2.5% of expected annual claims, threatening the viability of HealthTrust.
5. A reserve capped at 5% of expected claims would sometimes fall well below the 5% limit, given the normal variance of results, even in a pool as large as HealthTrust. A significant drop in a reserve so limited would have two adverse consequences: an exposure to continued losses while the reserve is low, and a need to increase premiums, beyond the otherwise normal increase, to rebuild the reserve. In such a scenario, the subsequent rate increase would have three components: the cost to eliminate the inadequacy in the prior rates; the normal inflationary cost increase; and the cost to rebuild the reserve. This would lead to volatile changes in rates.

### Background

Since 2002, HealthTrust has used the Risk Based Capital (RBC) method for managing its reserves. The RBC method, developed jointly by the American Academy of Actuaries and the National Association of Insurance Commissioners (NAIC), quantifies an insurer's reserve strength as the ratio of assets to a risk measure known as the Authorized Control Level (ACL). The ACL is determined by a complex formula, based on an insurer's product mix, provider arrangements, reinsurance arrangements, and types of assets. This measure is intended to reflect the insurer's exposure to all types of risks, but the formula is largely driven by claims risk.

For most insurers, the complex formula for calculating the ACL produces an ACL that is about 4% of claims. The RBC ratio is then calculated by dividing the amount of reserves (in excess of the incurred but unpaid claim reserve) by this figure. Here are the results for HealthTrust at March 31, 2010:

1. Reserve: \$71.3 million
2. ACL: \$16.5 million
3. RBC ratio (actual):  $\$71.3 \text{ divided by } \$16.5 = 4.3$

By comparison, under the proposed 5% limit on reserves, the results are:

1. Expected 2010 claims: \$397.0 million
2. 5% of expected claims: \$19.9 million
3. RBC ratio (under 5% limit):  $\$19.9 \text{ divided by } \$16.5 = 1.2$

The RBC methodology was developed because state insurance regulators wanted a tool for judging when an insurer is at risk of failing. To this end the Model NAIC RBC Regulation (adopted by most states, including New Hampshire) requires disclosure of RBC ratios, and specifies that when an insurer's RBC ratio falls below 2.0, the insurer is subject to certain regulatory interventions by the Insurance Department.

Just below the 2.0 level, the insurer must submit a plan to get reserves back to that level. Below the 1.5 level, the Insurance Department can take steps to examine and correct problems. If the ratio falls below one, the Department is authorized to take control of the insurer, and takeover is mandatory if the ratio drops below 0.7.

Honorable Margaret W. Hassan  
May 6, 2010  
Page 3 of 3

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RP2

Though HealthTrust is not regulated by the Insurance Department, HealthTrust's board decided eight years ago to adopt the RBC method for measuring and managing its reserves, recognizing the approach as an important standard for assessing the strength of large insured programs. HealthTrust would regard reserves at or below the 2.0 RBC ratio level with the same alarm as would a state insurance department.

As noted, the proposed 5% reserve limit would, for HealthTrust, equate to an RBC ratio of 1.2, and amount to \$19.9 million. This is \$13.1 million lower than HealthTrust's 2.0 trigger level of \$33.0 million, and only \$3.4 million above the 1.0 trigger for Insurance Department takeover. This \$3.4 million represents less than 1% of expected claims, well within the range of variance that HealthTrust actually experiences on claims costs and investment results.

By contrast, HealthTrust's current reserve level assures its ability to meet all obligations and to respond to adverse results in a measured way. Further, HealthTrust has a practice of systematically crediting reserves in excess of its RBC target back to its members.

A survey of major New England health insurers shows that typical RBC ratios have been in the range of 5.0 to 8.0 over the last three years. And, the Blue Cross Blue Shield National Association, which licenses the local state Blue Cross Blue Shield plans, will place a licensee in a monitored status when the licensee's RBC ratio drops below 5.0. The monitored status is intensified if the ratio falls to 3.75, and the license is withdrawn if the ratio falls below 2.0.

As noted in the attached guidance from the NAIC, an RBC ratio of 2.0 (200% in their terminology) should not be construed as an adequate reserve level. As stated in their guidance: "To our knowledge the NAIC has never attempted to define what a theoretically adequate or optimum level of capitalization would be for an insurance company, nor has it attempted to establish financial strength ratings for companies;" and, "insurers will generally maintain capital well above the requirements established by this formula."

In summary, a 5% reserve limit would automatically place an insurer under regulatory corrective intervention, and would almost certainly result, in some years, in reserves dropping to levels currently regarded as close to insolvency. Indeed, insolvency itself would be a genuine threat. Long-term industry practice, the actuarial profession, and NAIC guidance all point to maintenance of reserves levels significantly higher than that in the proposed amendment.

Sincerely,



Peter J. Riemer  
Fellow, Society of Actuaries  
201-670-8821  
[pjriemer@aol.com](mailto:pjriemer@aol.com)  
Enclosure

#8  
RP



## REGULATORY GUIDANCE ON THE MISUSE OF RBC IN RATEMAKING

Adopted by the NAIC's Casualty Actuarial and Statistical Task Force  
August 12, 2008

The Casualty Actuarial and Statistical Task Force wishes to re-emphasize its previous statements that capital levels indicated by the Risk-Based Capital (RBC) formula should not be used as, or assumed to be, measures of adequate capital. This would be an erroneous and therefore inappropriate use.

There seems to be a common and persistent misconception that the upper end of the Company Action Level, that is, the capital level that is 200% of a company's Authorized Control Level Risk-Based Capital requirement published in the Annual Statement, is somehow a measure of "adequate" capital. The logic of this appears to be that since, in most cases, no regulatory action is triggered under the Risk-Based Capital Model Law when an insurer's policyholders' surplus exceeds this amount, that this amount is considered by the NAIC to be the lowest level that is still "adequate". This misconception appears to be surfacing most commonly in a rate regulation context, where this surplus level (200% of Authorized Control Level) is frequently misconstrued as an "adequate" surplus level that can be used to establish limits on permitted profit levels, surplus accumulation, or leverage ratios.

It is appropriate to think of the capital level of 200% of the Authorized Control Level RBC requirement as the minimum capitalization level above which an insurer can operate without regulatory intervention (unless it is triggered by the Trend Test) as defined in the RBC Model Law. Below this level, regulatory intervention is explicitly authorized under the RBC statute. It cannot reasonably be concluded, however, that this minimum level of capital is "adequate", because a very small decline in surplus could be enough to trigger regulatory intervention. There is no evidence that companies that are consistently operating at or near this surplus level are sound or that consumers would be well served by having this level as a regulatory goal. In fact, it would seem logical, in theory, that an adequate level of surplus would be one that would ensure that there would be a very low probability of insurer insolvency, and a relatively low probability that an adverse event or events could result in a reduction in a company's surplus to a level that would put it in an RBC action level.

The drafters of the original Property-Casualty Risk-Based Capital Formula shared this perspective. In June 1993 the NAIC Property/Casualty Risk-Based Capital Working Group exposed for comment a proposed RBC formula. At that time the Working Group stated that: "The primary objective of the NAIC's Risk-Based Capital initiative is to raise the safety net that statutory surplus provides for policyholder obligations. The formula will not compute, nor was it designed to compute, the precise amount of capital a property/casualty insurer needs to operate in a competitive, dynamic and uncertain marketplace. ... Accordingly, insurers will generally maintain capital well above the requirements established by this formula." The Working Group goes on to also say: "Since the formula is intended to identify insurers that require regulatory attention and does not purport to compute a target level of capital, the Working Group does not believe the results of this formula should be used in setting or reviewing premium rates or in determining the rate of return for an insurer."

To our knowledge the NAIC has never attempted to define what a theoretically adequate or optimum level of capitalization would be for an insurance company, nor has it attempted to establish financial strength ratings for companies. The RBC formula and model law were devised for the sole purpose of establishing risk-based, company-specific minimum capital requirements that specify the point at which regulatory intervention is necessary and provide statutory authority for such intervention based solely on the insurer's capital level relative to the standard. The RBC formula and statute were never intended to serve any purpose other than solvency regulation, as has been so clearly stated in the 1993 quotation above. Risk-Based Capital was originally, and continues to be, a minimum capital standard. The task of evaluating the optimum capitalization of insurers is separate and distinct from the task of evaluating minimum capital standards for solvency regulation.

#2  
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TITLE XXXVII  
INSURANCE

CHAPTER 404-F  
RISK-BASED CAPITAL (RBC) FOR INSURERS

Section 404-F:1

**404-F:1 Definitions.** – In this chapter:

I. "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with RSA 404-F:2, V.

II. "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

III. "Domestic insurer" means any insurance company domiciled in this state.

IV. "Foreign insurer" means any insurance company which is licensed to do business in this state under title XXXVII but is not domiciled in this state.

IV-a. "Health organization" means a health maintenance organization, limited health service organization, dental or vision plan, health service corporation, or other managed care organization licensed under title XXXVII.

V. "NAIC" means the National Association of Insurance Commissioners.

VI. "Life and/or health insurer" means any insurance company licensed under title XXXVII writing life, accident and health insurance, health maintenance organizations, limited health service organizations, dental or vision plans, health service corporations, or a licensed property and casualty insurer writing only accident and health insurance.

VII. "Property and casualty insurer" means any insurance company licensed under title XXXVII but shall not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

VIII. "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions.

IX. "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

X. "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

XI. "RBC plan" means a comprehensive financial plan containing the elements specified in RSA 404-F:3, II. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

XII. "RBC report" means the report required in RSA 404-F:2.

XIII. "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed; and

(b) Such other items, if any, as the RBC instructions may provide.

Source. 1995, 113:1. 2000, 207:1, 2, eff. July 29, 2000.

**House Bill 1393  
As Amended**

**An Act Relative to Pooled Risk Management  
Programs for Municipalities and Public Entities**

Testimony from Todd I. Selig, Administrator, Town of Durham  
for the Commerce Committee  
New Hampshire State Senate

May 6, 2010

My name is Todd I. Selig. I serve as the Administrator for the Town of Durham, New Hampshire and from 2004-2009 served as a member of the Board of Trustees of PRIMEX, the New Hampshire Public Risk Management Exchange. In 2007 and 2008, I served as Vice Chair of the Primex Board and Chair of organization's Investment Committee. I am here today to testify against Senate Bill 1383.

In response to the commercial insurance market raising premiums for cities and towns by 200-300% in the late 1970's and denying coverage altogether for some political subdivisions of the state, the legislature concluded that insurance and risk management were essential to the proper functioning of political subdivisions. Risk management services can be obtained through the purchase of traditional insurance in the commercial market or through participation in pooled risk management programs for the benefit of political subdivisions such as PRIMEX (formerly Compensation Funds of New Hampshire and the New Hampshire School Boards Insurance Trust), the Local Government Center (operating HealthTrust, Inc. and Property Liability Insurance Trust, Inc.), and the New Hampshire School Health Care Coalition operating SchoolCare. Pooled risk management provides focused public sector loss prevention programs, accrual of interest and dividend earnings that can be returned for the public benefit, and the establishment of insurance costs predicated solely on the actual experience of the political subdivisions (cities, town, counties, and school districts) within the state.

House Bill 1393, as amended, would require Primex, the Local Government Center, and SchoolCare to reimburse participating municipal, school, and county members by an arbitrary legislatively assigned portion of their cash reserves. The cash reserves Primex has on hand are actuarially based and are the subject of robust annual conversation and objective review by the Board of Trustees who are in fact all representatives from member entities. Net revenue over expenditure is ultimately passed on to Primex members in the form of reduced premiums, periodic reimbursements, or credits toward the next year's premium. Durham has obtained its Property & Liability insurance through Primex since 2001 (9 years), its Workers' Compensation insurance through Primex since 1980 (30 years), and its Unemployment Compensation insurance through Primex since 1979 (31 years). We obtain Health Insurance coverage for our four labor unions (police, fire, public works, and middle manager) as well as our non-unionized employees through the Local Government Center.

(over)

**House Bill 1393, As Amended  
An Act Relative to Pooled Risk Management  
Programs for Municipalities and Public Entities**

Testimony from Todd I. Selig, Administrator, Town of Durham  
for the Commerce Committee, New Hampshire State Senate

May 6, 2010

Page 2

It is my belief that Primex, the Local Government Center, and SchoolCare provide extremely high quality insurance products and excellent value for member entities which meet a diversity of needs in a cost effective manner. These organizations place great weight on education and risk management -- both in terms of encouraging healthy employee life choices and workplace safety. Over the long-term this strategy has led to increased workplace satisfaction for public employees, decreased loss ratios and costs for public employers, higher quality customer service for residents, and ultimately long-term tax rate stabilization through the buying power of pooled resources working directly for member entities.

As was the case in the 1970's, insurance and risk management remain essential to the proper functioning of political subdivisions and Primex, the Local Government Center, and SchoolCare have an integral place within this framework. House Bill 1393, as amended, would serve to create financial instability within these organizations and does not serve the long-term public interest of the State of New Hampshire or its political subdivisions.

**Primex Board of Trustees:**

- John Wozmak**, Chair, County Administrator, Cheshire County
- John Bohenko**, City Manager, City of Portsmouth
- Chuck Connell**, Town Manager, Town of Littleton
- Scott Isabelle**, Assistant Superintendent, Gilford School District
- Paul Partenope**, Gorham School Board, Town of Gorham
- Guy Scaife**, Town Administrator, Town of Milford
- John Scruton**, City Manager, City of Rochester
- Trish Temperino**, Assistant Superintendent, SAU 2

# SCHOOLCARE

## HEALTH BENEFIT PLANS

of the NEW HAMPSHIRE SCHOOL HEALTH CARE COALITION

May 4, 2010

### COALITION FOUNDERS

National Education  
Association –  
New Hampshire

New Hampshire  
School Boards  
Association

New Hampshire  
School  
Administrators  
Association

New Hampshire  
Association of  
School Business  
Officials

New Hampshire  
School Boards  
Insurance Trust

The Honorable Margaret W. Hassan  
Senate Commerce, Labor and Consumer Protection Committee  
State House  
107 N. Main St., Room 302  
Concord, N.H. 03301

**Re:** Opposition to the proposed Amendment to House Bill 1393 re pooled risk management programs

Madam Chair and Members of the Committee:

The New Hampshire School Health Care Coalition (the "Coalition"), a unique partnership between management and labor, was formed in 1995 to assist public entities in New Hampshire address the multitude of issues affecting health insurance quality, service and costs. The Coalition health plans called "SCHOOLCARE" are provided to nearly 14,000 employees, retirees, and their dependents in approximately 60 school districts and municipalities throughout New Hampshire.

The proposed Amendment to HB 1393 relative to pooled risk management programs seeks to mandate a maximum level of reserve for such programs and to require that any reserve above the maximum be distributed to participant political subdivisions. Appropriate calculation of pooled risk management program reserves is critical to assure that such programs will be able to meet their future financial obligations. In making this calculation, several significant risks must be taken into account, including:

**Health Care Cost Trend Risk.** Health care cost trend is the annual increase in the per capita cost of the benefits provided to plan participants.

**Catastrophic Claim Risk.** Most plans generally provide an unlimited lifetime maximum benefit for each covered participant. Notwithstanding stop loss protection, reserves could be depleted should the pool experience an increase in the number of high amount claims.

**Economic Downturn Risk.** A downturn in the local economy, such as the one the state and nation are currently facing, could result in deteriorating claim experience. In a contracting workforce, younger employees are more likely to lose their jobs than older employees who are heavier users of medical services.

RP #4

Determination of the appropriate level of reserve for pooled risk management programs is a very complex financial issue. It is not something that should be brought forward at the end of a legislative session when the committee must vote within days and the full Senate must vote by next week.

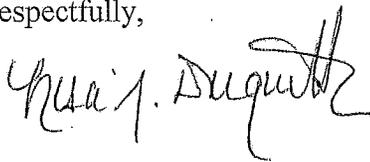
The Coalition's Board of Directors has maintained a policy which designates 20% of expected annual claims for Medical Risk Corridor (reserves). Net Assets (surplus) beyond the Medical Risk Corridor is designated for Rate Stabilization and returned to the members through reduced premiums. This is accomplished over a period of time to provide rate stability and predictability, avoiding significant swings in premiums year over year. Over the past five years, **SCHOOLCARE** has returned over \$8,750,000 of surplus through reduced premiums. For 2006-2010, **SCHOOLCARE'S** five (5) year average annual increase was 5.2% as compared with Health Care Cost Trend of approximately 11%.

The Amendment to House Bill 1393 threatens the future viability of pooled risk management programs such as **SCHOOLCARE**. If we cannot maintain adequate reserve levels, pools will be forced to purchase additional excess insurance and member groups will experience greater rate volatility and increased premiums.

A final consideration not addressed in the Amendment relates to the fact that surplus amounts are comprised of both employer and employee dollars. The employee contribution toward the medical premium varies by school district/municipality and collective bargaining unit within the various public entities making it virtually impossible, from a logistic perspective, to return the surplus to employers and/or individual employees fairly. For this very reason, the Coalition's Articles of Agreement specifically state that surplus accrues to the benefit of the members for the purpose of stabilizing future benefit costs under the program.

Thank you for this opportunity to testify in opposition to the proposed Amendment to House Bill 1393.

Respectfully,



Lisa J. Duquette  
Program Administrator

Willis

RP

Willis of Massachusetts, Inc.  
Three Copley Place  
Suite 300  
Boston, MA 02116  
Phone: 617-437-6900  
Fax: 617-351-7430  
www.willis.com

May 5, 2010

Ms. Lisa J. Duquette  
Program Administrator  
New Hampshire School Health Care Coalition  
370 Harvey Road, Suite 4  
Manchester, NH 03103

Dear Lisa:

We are responding to your request for our opinion regarding the appropriate level of reserves for the medical benefit program sponsored by the New Hampshire School Health Care Coalition.

The April 1998 issue of *Employee Benefits Digest* includes an article "Investment Management of Multiemployer Welfare Plans" by Marc Greenberg. With regard to reserve levels for health & welfare funds, Mr. Greenberg writes:

"Welfare funds are established as *reserve funds* to pay health benefits. For trustees and fiduciaries, the question is, how much reserve do you need? As a rule of thumb, a well-funded plan can pay out the next 18 months' anticipated claims experience from existing reserves. But in some cases, an even higher reserve may be desirable. If the fund's catastrophic stop-loss coverage is fairly limited, additional reserves maybe be appropriate. Further, if the industry group under coverage is more cyclical – i.e., longer boom to bust periods or some seasonality – reserves should be higher."

We are also aware that the State of Maine Insurance Code requires that multiple-employer welfare arrangements have an actuarial report prepared every two years. The report must include an assessment of the adequacy of contribution rates including any changes needed in the contribution rates to achieve a level of funding adequate for payment of benefits. The Code further states:

"If the superintendent determines that a multiple-employer welfare arrangement has failed to establish or maintain the actuarially indicated level of funding as required, the superintendent may require the arrangement to file a security deposit or a surety bond in accordance with this section. If required, deposit funds, which may consist of cash, securities or any combination of cash and securities acceptable to the superintendent, must be filed with the superintendent for deposit with the Treasurer of State in an amount equal to the greater of either 25% of the immediately preceding 12 months' health care claims expenditures or 15% of the expected gross annual contributions for the current year."

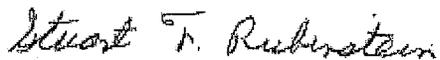
Ms. Lisa Duquette  
May 5, 2010  
Page 2 of 2

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Based upon the above discussion and our experience with similar programs, we recommend that an appropriate level of unallocated reserve funds for the New Hampshire School Health Care Coalition is 6 months of expected paid claims and expenses, currently approximately \$35 million.

We hope this information is helpful.

Sincerely,



Stuart F. Rubinstein, FSA  
Member, American Academy of Actuaries  
Vice President

Testimony before the  
NH Senate Commerce Committee  
May 4, 2010  
Amendment to HB 1393

My name is John Salisbury. I am retired and a resident of Concord, NH for more than 12 years. I am here as a citizen and not an employee of any NH self-insured group.

More than 40 years of my professional career have been as an executive in captive insurance companies and organizations that operate group self-insurance programs controlled by their public entity members. Three of captive insurance companies were national in scope. Four of the organizations provided self-insurance or group insurance programs. They were located in Maryland, Maine, Connecticut and New Hampshire. Currently I serve as a professional director on the Board of a captive insurance company that serves the metal working industry.

I am here to testify against this legislation. However, I am not against more appropriate regulation of self-insurance pools in NH.

The first reason for opposing this bill should be very self-evident. Effective legislation is seldom enacted when <sup>it is introduced</sup> the Legislature is one week away from the end of a legislative session. Each of you are well aware of this fact and do not need to be reminded of the outcome of last year's JUA debacle.

If in its wisdom the Legislature thinks the regulation of self-insurance pools is an emergency, the appropriate place for the pools to be regulated is the State Department of Insurance. Some of you may not realize but the self-insured pools workers' compensation programs in NH are already regulated by the NH Department of Labor.

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One question I have about this legislation is whether it will result in a regulatory conflict between the Secretary of State's Office and the Department of Labor should this legislation pass.

Having worked in several states and operated national programs, I am aware of a variety of ways in which self-insurance pools are regulated. Some states such as New York, Wisconsin, Connecticut, Idaho, Kansas, Louisiana, Maine, Massachusetts and Vermont are regulated by state insurance departments. In fact in New York, Idaho and Wisconsin public entities programs are required to be either reciprocal or mutual insurance companies. They can not be formed as self-insurance groups. Other states such as NH have minimal regulation of self-insurance for coverages other than workers' compensation. These facts suggest that a more prudent approach going forward would be to defeat this amendment and create a study committee to evaluate how NH should proceed if it chooses to regulate self-insured programs more effectively.

If there is one thing that I have learned over many years, issues such as the one you are trying to legislate here, are more complex than they may seem on the surface. The proposed standard that a pool can not maintain more than 5% of the estimated annual claims of the pool plus the amount determined by a qualified actuary is reflective of that fact. For example, what about a significant change in the economy and the corresponding change in interest rates? What about a reinsurer of a self-insured pool becoming insolvent? There are risks other than unanticipated claims or the development of claims!!

#6  
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Similarly an arbitrary threshold of a given percentage of the estimated annual claims will have the effect the amount of reinsurance that a risk pool is required to purchase. The amount of risk that can be assumed by a risk pool is dependent upon the amount of capital in a risk pool. The amount of risk assumed and the cost of reinsurance can have a substantial effect on the savings public entities can achieve through participation in a risk pool.

I understand the purpose of the amendment is to have any excess funds returned to the members of a self-insured program. However, what I do not understand is the lack of trust this demonstrates in the decision-making of the local officials that serve on the boards of the self-insurance trusts. They perform their fiduciary duties with the benefits of professional actuaries, accountants, investment advisors, lawyers and experts with in-depth knowledge and experience with insurance and self-insurance programs. You and I both know deep down local officials, school, municipal and county are deeply concerned about their respective budgets. What makes you think that this is not actively considered in the decision-making process on rates and return of surplus funds? From my first hand experience I can emphatically tell you it is. They, like you, do not like to have rate increases unless the increases are absolutely necessary. What most pools try to achieve in rate stability thereby protecting the local taxpayer. These are other sound reasons why this legislation is not an emergency or necessary.

I appreciate your time and welcome any questions. Should the Legislature decide to create a study group I would welcome the opportunity to serve and share my knowledge.

ATTACHMENT #7



May 5, 2010

The Honorable Margret W. Hassan, Chair  
Senate Committee on Commerce, Labor  
And Consumer Protection  
State House  
Concord, New Hampshire 03301

Dear Senator Hassan:

I am writing to you to express NEA-NH's concerns regarding Senator Reynold's amendment to HB 1393 which restricts the amount of reserves of public entity risk pools and seeks to return reserved pooled funds to the political subdivisions.

NEA-NH was a founding member of SchoolCare which is a non-profit, public entity risk pool providing health benefits. As President of NEA-NH, I am a board member of SchoolCare. I am, by virtue of this position, familiar with the operation of SchoolCare. It is from the experience of sitting as a member of the SchoolCare board that I write to you today.

I have read in the press concerns expressed by elected officials that reserves held by some public entity health benefit pools appear to be excessive and that the limitation proposed in the Reynold's amendment would be an appropriate way to return excess reserves to school districts. In the case of SchoolCare, passage of the amendment would be a financial disaster for our NEA-NH members who receive benefits from SchoolCare.

SchoolCare is a conservatively managed entity that is proud of its record of keeping premium increases to our members around 4% while the industry standard has been 11%. These low increases are possible because of management decisions and because reserves are maintained that are applied each year to prevent dramatic benefit premium increases. In these difficult economic times, I can assure you our members appreciate these small rate increases.

If the Reynold's amendment passes, our members will face wild variations in their premium cost. In fact, the only predictable aspect of these increases is that they will be burdensomely high. Educators cannot afford either the prospect of huge annual increase or the loss of those dollars from their paychecks.

In addition to using these reserves to depress premium increases, SchoolCare uses these funds to benefit our members by sponsoring wellness programs, education programs, and workshops that help our members manage their health and the health of their families.

While it is laudable to try to provide additional resources to school districts, I ask you not to forget that a portion of the funds that would be refunded to school districts is, in fact, money paid by our members

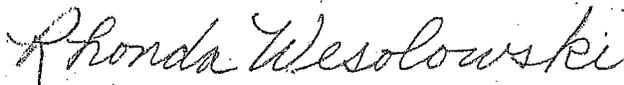
for insurance premiums. Under the amendment they would receive none of their money back. We cannot support a bill which returns member money to their employer, especially when there is no requirement as to how the districts will spend the money.

At the bargaining table these past few years our members have responded to the economic crisis by foregoing pay increases and agreeing to benefit reductions that have cost them and their families' money out of their own pockets. Our members have responded to the burdens facing local tax payers.

Just this week the House Finance Committee voted to increase educator's retirement contribution rates by 40%. Our members cannot sustain the financial burden placed on them by passage of the Reynold's amendment.

Thank you for consideration of these concerns while you debate the amendment to HB 1393.

Sincerely,

A handwritten signature in cursive script that reads "Rhonda Wesolowski". The signature is written in dark ink and is positioned above the typed name.

Rhonda Wesolowski  
President, NEA NH



## TOWN OF LINCOLN

Town Manager's Office  
148 Main Street - P.O. Box 39  
Lincoln, New Hampshire 03251

Phone: (603)745-2757 - Fax: (603)745-6743

Email: [TownManager@LincolnNH.org](mailto:TownManager@LincolnNH.org) - Website: [www.LincolnNH.org](http://www.LincolnNH.org)

### Testimony regarding amendments to HB 1393 - submitted May 06, 2010 Senate Commerce, Labor, and Consumer Protection Committee

Chairman Hassan & Members of the Committee,

On behalf of the Town of Lincoln, I would urge you to oppose any amendment that would seek to return money held in reserve from a pooled risk management program to the towns and other political subdivisions of the State. This issue is of concern to the members of my Board of Selectmen, and to me. Also concerning is the last-minute nature of these legislative developments. I was surprised to learn of this hearing and proposed amendment just yesterday, and I am sure that many municipal officials are still unaware of these proceedings.

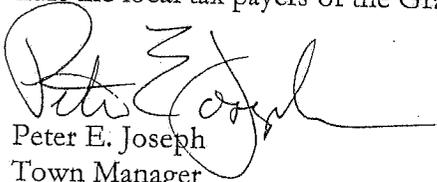
Our main concern is that imposing *any* arbitrary limit (such as 5% of the estimated annual amount of claims) on the reserves that a pooled risk management program keeps will severely limit the ability of such a program to respond to unanticipated claims or catastrophic events. Furthermore, over the long run, such an action may impact the solvency of these programs, which many towns, cities and school districts rely on to provide effective and affordable coverage. Municipalities in New Hampshire are limited to purchasing property and liability coverage from pooled programs, primarily either the NH Public Risk Management Exchange (Primex3) or the Local Government Center (LGC) Property-Liability Trust. However, when we compare the health insurance rates that these programs also offer to rates offered by private agencies and insurers (which we do on an annual basis), we have found that both Primex3 and LGC Health Trust are consistently more affordable to the Town of Lincoln than these private agencies.

It has also been implied that these pooled risk management programs are "hoarding" taxpayer money and that the taxpayers have no control over how this money is being used by the programs. To say that local taxpayers have no control over the business practices of the pooled risk management programs is foolish and misleading. The 30 members of the LGC Board of Directors, 8 members of the Primex3 Board of Trustees and 22 members of the Primex3 Member Advisory Council represent some of the finest school board members, superintendents, teachers, county officials, city councilors, selectmen, city managers, town managers and administrators, municipal employees, and department heads that exist in the State of New Hampshire. Although it is indirect, it would seem that local taxpayers have infinitely more control over the operation of these programs than they would have over the operations of a private, for-profit insurance corporation.

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There is already fierce competition between Primex3, the Local Government Center, and other private, for-profit insurance agencies. This free market competition allows the political subdivisions of the State to obtain coverage at affordable rates. Regulating the way that professional pooled risk management fund administrators handle reserves through the application of an arbitrary 5% limit will certainly affect the ability of these programs to compete in the market. This will allow fewer options, increase costs to towns, cities, counties and school districts in the state, and decrease the amount of control that local taxpayers (albeit indirectly, through local officials) currently enjoy over their insurance carriers and risk management pools.

To me, this sounds like a poor solution to a non-existent problem, and one that would ultimately hurt the local tax payers of the Granite State. I urge you to oppose any amendment to HB 1393.



Peter E. Joseph  
Town Manager  
Town of Lincoln, NH

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Written Testimony on HB 1393 and Amendment to SB450-FN  
Relative to Health Insurance Trust Revenues

Senate Commerce Committee

May 6, 2010

By Russell Marcoux, Town Manager, Bedford, NH

Thank you Madame Chair and members of the Committee. My name is Russell Marcoux, Town Manager of Bedford. For your information, I have been involved in local government for close to 35 years, nine as an elected Alderman and 26 as a Professional Manager. In that time I have also served as President of the NHMA, prior to its being reorganized as the Local Government Center. I say this only to give the sense that I do have some level of professional experience managing local government issues.

That said, I am here today to offer testimony solely as the Manager of a community that will be impacted by the decision, should you choose to make it, which is to approve this Amendment before you which deals with returning accumulated health insurance reserve funds to local communities. I say that because I understand how Public Risk Pools work and have experienced the difference between such pools and "going it on you own" so to speak.

To that end, please bear with me for a moment:

- ✓ There is clearly a difference between Public Risk Pools and private insurance.
- ✓ Communities, school districts and county government make cautious decisions on what insurance of choice they choose to associate themselves with.
- ✓ Communities participate voluntarily and they alone make the decision on which choice to make based on rates, returns, claims ratios, rate escalations, etc.
- ✓ Where communities are the ones making the decision on which coverage they choose, they should also be part of this discussion, which appears to have taken place without any discussion with those who will be affected.
- ✓ Decisions on choice are made fully with the understanding that risk pool reserves are used to offset future rates and also extraordinary claim costs. Please note here, that we make those choices with those thoughts in mind.

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- ✓ There was a day when risk pools did pay back reserve earnings to the participants, but in those years, rates were very fluctuating year to year.
  - ✓ We are not interested in returning to those years! Rate stabilization is very important to local communities and school districts. Ask anyone who has been there, and I am sure they would all agree. Was that question asked?
  - ✓ The Governance of Risk Pool Boards fluctuates with members of each group, labor unions, employee representatives and other actuarial professionals. Yes, professional advice is constantly sought out in the rate decision making.

Hopefully those comments give you some idea of how we "locals" make decisions which now leads to our observation about this amendment. Again, please bear with me.

As I see it, this amendment was introduced last Wednesday, a House hearing on Friday and a hearing in the Senate today. I read in an article that it is the plan to bring this major decision which affects practically every community in NH to the floor for passage on Thursday, all in less than 10 days! When something happens that quickly that affects so many individuals, one becomes suspect.

Some questions that are out there, and have not been answered at all or in part are the following - and as I mentioned earlier, your decisions affect local communities, not the State of NH budget - so one would think that these questions should be answered:

- ✓ If the State of NH as an employer is not part of the "Risk Pool", then why was this brought forward and why so quickly?
- ✓ Can the Legislature force such changes onto private business without any positive outcome? Does this introduce politics into the insurance industry rate setting structure?
- ✓ If none of the local communities who are participants in these risk pools are complaining or have not begged for this change, then why this proposal?
- ✓ Who has provided the sponsors with Actuarial information to base your decision on and why is there no formula for returning these funds to the participants?

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- ✓ I ask that question as the House sponsor stated there is a \$70 million reserve available for returning to participants, and the Senate sponsor stated there is \$100 million available. Has anyone asked what funds are available? Any idea what the current RBC is and what affect this would have on that rate?
  - ✓ You are suggesting the Secretary of State have oversight? If oversight is what you are looking forward, why not a discussion with the Insurance Commissioner which would seem like the logical department for oversight.
  - ✓ After these funds that you claim are not necessary are returned to local communities, and the rates escalate next year - who will be responsible for that increase? Remember there will not be any "extra funds" available next year. That will happen you know, and you should be prepared to answer that question.

One of the original prime sponsors, Senator Reynolds said in one article that the "...the plan requires the Local Government Center to return excess reserves from its non-profit Health Trust to member communities and school districts." Another interesting comment was that "This is taxpayer money and if the LGC has a surplus, then it should be returned to the taxpayers." That comment was from Governor Lynch, so are we to assume that he also supports this Amendment? Please, let us all be clear about one thing: These insurance payments are made by taxpayers through local tax rates, and most of those taxpayers are also contributors as employees. That seems to have been missed in those comments. With increased rates in the future, taxpayers and employees suffer. Contracts are negotiated!

As employers, we need choices in making Health Insurance decisions. In that decision our union organizations are also participants in those decisions, and if not, they are clear to remind us. What happens to city or town costs if the unions don't renegotiate the higher premiums as a result of low reserves? Again, as a reminder, the State of NH as an employer is NOT a participant in these local risk pools, but the 234 communities which you represent are. You are affecting our decision making without being a partner in the process. In your decision, remember that we here in the audience and in local governments throughout NH will have to deal with the consequences

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of this decision. This will impact local government budgets while having absolutely no impact on the state budget.

Why the rush with this amendment? It is a serious decision, with many unintended consequences. Is this more of a state budget issue, or is it a part of the continuing battle of certain labor unions vs. the Local Government Center, or is this about helping communities maintain quality affordable health insurance?

Why were all these original comments geared to the LGC Health Trust and not Primex, SchoolCare or any other risk pools or private insurance reserves as well? All we heard at your Tuesday hearing from the prime Senate sponsor and Secretary Gardner was "LGC". It would appear that the question is answered by the comments in the Union Leader from the PFFNH President David Lang when he said *"...he's glad to see this legislative action, but hopes that lawmakers will continue to probe administrative fees and practices at the nonprofit."* He went on to say *"I'm thrilled they are taking these steps, noting public workers are accepting pay freezes to help their communities while they struggle through the recession. Give the money back to them, they need it."* That is quite a ringing endorsement of your amendment that is proposed here, without mentioning what many of their groups did not do. That subject continues that debate.

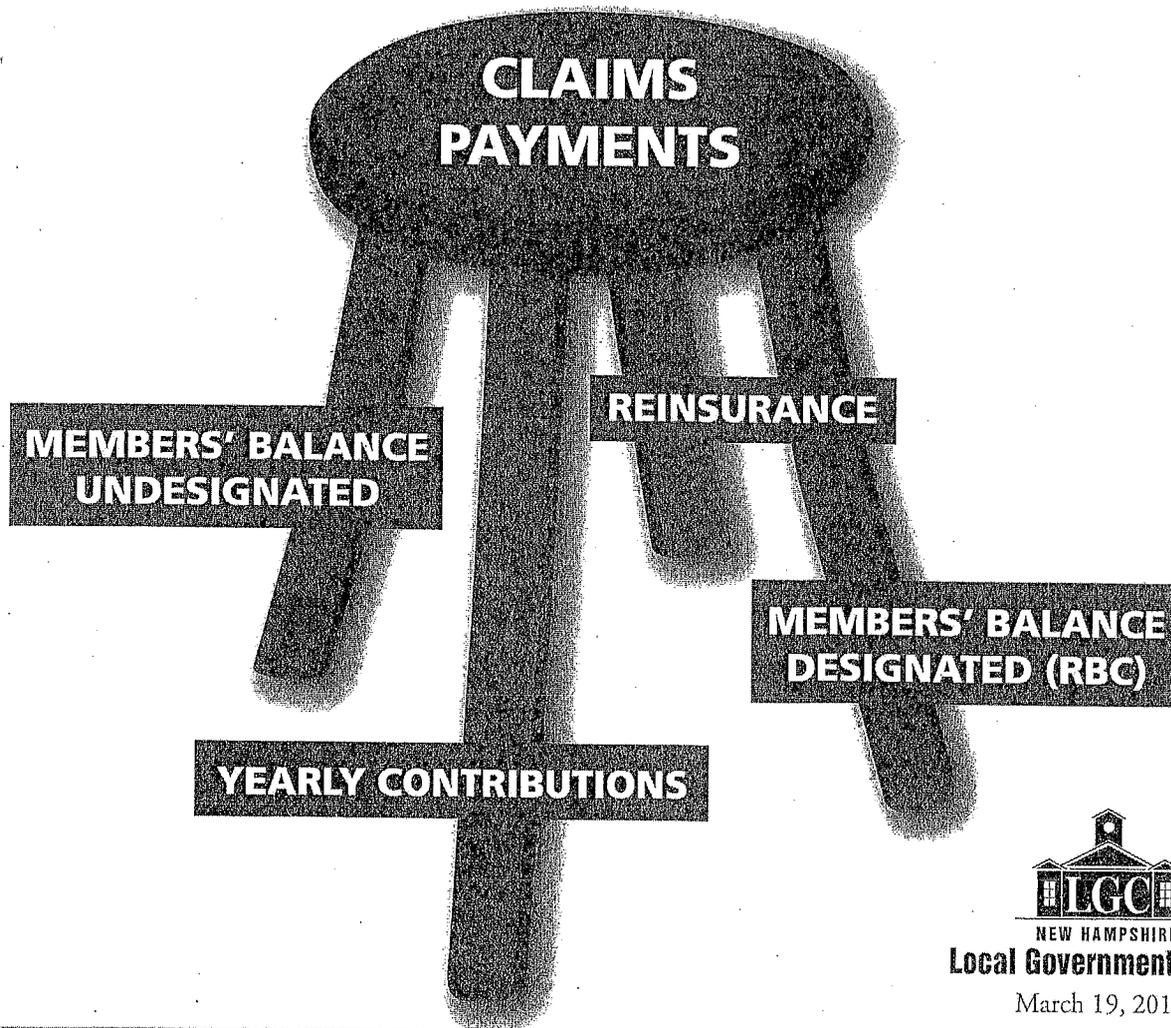
I am attempting to stay away from your State Budget, however, with such wide reaching legislation that we who are involved in these pools not being a participant, you have to say, there is possibly a question here that is not being answered.

We ask you to please take this amendment off the table and consider its far reaching unintended consequences. If anything, this subject deserves far more study and questions answered. Thank you for your attention to our comments and concerns.

## FOUR LEGS OF PROTECTION FOR HEALTHTRUST MEMBERS AND PARTICIPANTS

There are four legs of protection for HealthTrust members and participants to ensure claims are paid:

1. **Yearly Contributions:** Set by the Board of Directors with the aid of actuaries, consultants and staff and based on trends, claims and administration
2. **Members' Balance Designated (RBC):** An amount of money set aside (called Risk Based Capital, RBC) established by board vote using an industry formula to prevent insolvency and protect members
3. **Reinsurance:** A policy purchased in case claims exceed a certain limit
4. **Members' Balance Undesignated:** A pool of reserves above RBC used to moderate rate fluctuations and to further protect the Trust's ability to pay claims



NEW HAMPSHIRE

Local Government Center

March 19, 2010