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Date: May 4, 2010
Time: 8:33 a.m.
Room: LOB 102

The Senate Committee on Commerce, Labor and Consumer Protection held a hearing on the following:

HB 1393 (2nd New Title) relative to the treatment of New Hampshire investment trusts, and relative to pooled risk management programs.

Members of Committee present:
Senator Hassan
Senator DeVries
Senator Reynolds
Senator Cilley
Senator Bragdon
Senator Roberge

The Chair, Senator Margaret Wood Hassan, opened the hearing on HB 1393, and in the absence of the prime sponsor, invited Senator DeVries to introduce the legislation.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair, and for the record I am Senator Betsi DeVries, representing District 18, here to introduce House Bill 1393, which is an act relative to the treatment of New Hampshire investment trusts, and with that, we will move to our testimony. Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you very much. I understand that Mr. Honigberg and two others, Paula Hatch and Grant Butler perhaps would like to testify together?

Attorney Martin Honigberg: Yeah, we can be a lot quicker if we do it that way, Madam Chair.

Senator Margaret Wood Hassan, D. 23: That is what I thought. Thank you very much. Oh, Representative DeJoie is here, we just...Why don't you come up for a second? We just opened and Senator DeVries just read the title of the bill. But, we would love to hear from you.

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Senator Margaret Wood Hassan, D. 23: Okay. Thank you. I am going to recognize Senator Reynolds.

Senator Deborah R. Reynolds, D. 2: Good morning, Madam Chair, and honorable members of the Commerce Committee. For the record, my name is Deb Reynolds and I have the honor and privilege of serving as the New Hampshire State Senator for Senate District 2. I am here to introduce amendment 2010-1830s relative to pooled risk management programs.

Madam Chair, as the Senator from District 2, I represent 31 towns, most, if not all of which are members of the New Hampshire Municipal Association and purchase insurance products from the Local Government Center. Although I had some knowledge of pooled rick programs, it was not until last year, at the request of Secretary of State Gardner, that I started looking at RSA 5-B and remarking that these entities had virtually no regulation or oversight.

Just this past year, Secretary Gardner approached the members of the Judiciary Committee and requested an amendment to House Bill 118, providing the Bureau of Securities Regulation with the authority to investigate complaints regarding pooled risk programs. As you may know, for the past year, the Secretary of State's Office has been investigating these complaints that were raised about the nonprofit Local Government Center.

In addition, there has been litigation around this issue and it has come to light that the Local Government Center has amassed a significant surplus in its health and benefits trust. So, the Secretary of State, who will testify in a moment, has asked us to act before the end of the legislative session to provide him with increased regulatory authority. This is an act that I believe will protect the property taxpayers from being overcharged when they pay into any pooled risk management program such as the one run by the Local Government Center. Besides increased regulation, this amendment seeks to define what would be an adequate reserve for health trusts using our own New Hampshire self-funded employee and retiree health benefit program as a model.

It also would require that funds in excess of that reserve be returned to the cities and towns that paid into the fund—the taxpayers. Provisions already exist in law for returning excess funds, but it appears we need to clarify what the trigger is for reimbursement. So, this amendment would require reimbursement within 60 days of its passage.

Pooled risk management programs were created in 1987 for the benefit of cities and towns. The pools were supposed to provide a cost effective way for

our cities and towns, mainly our property taxpayers, to purchase insurance. I think it's time that we consider why these pools were created, and whether or not they are adhering to the mission for which they were created.

Thank you, Madam Chair. I would be happy to take any questions.

Senator Margaret Wood Hassan, D. 23: Are there any questions? Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair, and thank you, Senator Reynolds. I certainly understand the issue of adding some more oversight authority if that is necessary. Some of the other changes proposed, especially the ones about setting reserve levels, it appears to be changing something that is a very complicated subject. I worked for a period of time with a company that did shared risk pool management.

For example, this side of my binder here is the text and background materials for all bills that we have heard in Senate Commerce Committee since crossover. This here is material that was left with me on Thursday of last week relative to this specific bill. A thousand or so pages here in basically two legislative days versus a whole binder full of materials. Why in your opinion, is it so critical that we rush through something in two days that significantly alters the structure of these groups that have been established for, as you said, many years?

Senator Deborah R. Reynolds, D. 2: Thank you very much for the question, Senator Bragdon. The impetus of the amendment was at the instance of the New Hampshire Secretary of State, who has been working diligently for the past year to obtain records that he is already entitled to attain under existing law regarding some of the oversight issues that we are attacking, and I think that the short answer, Senator Bragdon, is that, in the best of all possible worlds, we would have lots and lots of time to address issues that are brought before us by state agencies like the Secretary of State, who we respect and trust.

I think that this is responsible to respond to a need that needs to be addressed. I think that you're right, there are some complexities here. I'm sure we will be hearing from those involved with risk pools about their concerns and that's why we are having this hearing. We are not acting on the amendment as I understand today. So, we will be taking all deliberate speed that we can. But, sometimes, Senator, when instances require that the Legislature act, I think it is responsible to try to address the problem.

Senator Peter E. Bragdon, D. 11: Can I follow up on that?

Senator Margaret Wood Hassan, D. 23: Yes, and then Senator Roberge.

Senator Peter E. Bragdon, D. 11: And, I guess as I look at referring to specifically to the whole issue of setting what appropriate surplus levels are and what to do about it. If we take no action and the law stays as it is, and we deal with that aspect in the next session, it seems to me that all that happens is, if there is a problem there is a delay in getting the money back to the towns. But, if there is not a problem and we make some significant change with unintended consequences. So, I guess I am trying to weigh the risk of taking something that we know really nothing about versus something that, if there is a problem, delays it for six months. Your comments on that?

Senator Deborah R. Reynolds, D. 2: Thank you very much, Senator Bragdon, and I think I applaud your wanting to be careful and thorough. The issue right now is that we do have existing law that says excess surplus and earnings are to be returned to the participants in the pool. So, that is not happening. I think that some of the towns I represent would say that they could use the money, and if there is an opportunity here to do this in a responsible way that doesn't affect any reserve capacity that these pools have, I'm all for it. But, by the same token, it's taxpayer money that we are looking at here, and I think that many of our towns have very tight budgets right now, and I would like to see them have an opportunity to use some of their funds.

Senator Peter E. Bragdon, D. 11: Thank you.

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

Senator Sheila Roberge, D. 9: Are we sure that the communities support such a move?

Senator Deborah R. Reynolds, D. 2: Good morning, Senator. I haven't spoken with each and every member of my local select boards; I have spoken with probably half a dozen. None of them realized that they were entitled to these funds, and many of them expressed a sincere interest in having those funds. So, I can't speak for each and every municipality. I will say that many of my towns are very small and may or may not understand the full intricacies of risk pool management and so forth. But, I would say that most of the towns that are participants in the State would probably appreciate a refund.

Senator Sheila Roberge, D. 9: Do you think that there is...

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

Senator Sheila Roberge, D. 9: Any reason for the communities to be concerned about this particular issue?

Senator Deborah R. Reynolds, D. 2: I think that we all should be concerned, you know, we all are property taxpayers or many of us are. I think, I think the communities should be concerned.

Senator Sheila Roberge, D. 9: Is there a possibility they may lose something out of this particular issue?

Senator Deborah R. Reynolds, D. 2: I, I respectfully don't think that is a possibility.

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

Senator Deborah R. Reynolds, D. 2: Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you, Senator Reynolds. Now, why don't we hear from the Secretary of State please.

Secretary of State William Gardner: Good morning, Madam Chairman. Good morning, Senators.

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

Secretary of State Gardner: Two years ago, we received correspondence asking us in the Department of State to look at the lack of certain filings that were required under Chapter 5-B, the pooled risk management program. And, when we did, we realized that some of those files or filings were not there. And, we asked the Attorney General's Office what we could do about it, and we were told that we really could not do anything, or very, very, very little. And, that was because, when Chapter 5-B was created by the Legislature back in 1987, there was some very specific provisions in that that said, for one thing, that these programs would not be subject to insurance regulation and would not be subject to taxation by the State, and that that these pooled risk management programs shall not constitute doing business as an insurance business for the purposes of regulation or taxation.

And so, if you remember back in the fall of 2008, there was a lot of problems swirling around the financial industry. We knew about AIG and what was happening. Well, I asked the person who I considered to be a titan of industry in New Hampshire, probably the equivalent of New Hampshire's

Warren Buffet, and I asked him about AIG, if he could explain it to me, and he couldn't. He said I don't know, you know, we think it is an insurance company, but it is a lot of other things, and it is really big, and we know what happened, and we know how much money had to be put in to save it.

The Bureau of Securities had looked into the deferred comp plan in the State, and what is the deferred comp plan? It's made up of employees that, on their own, contribute into that plan, and we found out that that there were a number of things that were done in that plan that should not have been done. And that deferred comp plan, originally, Aetna had the business for the State. And, Aetna was bought by ING, an international financial company, and that company was controlling the deferred comp plan that we looked into.

Well, come to find out the Bureau was able to get $3,000,000 from the company to give to state workers, the money that they had put in that because they were using directed brokerage the revenue sharing, and they should not have been. So, in the fall of 2008, knowing what we were faced with, not only here but in the country, we, after looking into the request that we had received to look into, we came over through the Bureau of Securities and said to the Legislature that this is something that you may want to take a look at that it is something that has no regulation. And, when I actually looked back at the law in 1987, as it was passed, when it was introduced it had nothing to do with the Department of State. We weren't involved in it, we didn't ask for it, but at the end, the Legislature decided that Chapter 5-B, the filing should be in the Secretary of State's Office, and what it said in the very first section and under the definitions, the purpose of this Chapter is to provide for the establishment of pooled risk management programs, and in this Chapter, the word Department means the Department of State.

So, so we came over and asked the Legislature to take a look at this because the last thing that we wanted was to have some financial issue, something blow up, and all of a sudden people saying well how did this happen? How come there is no one looking over at this? How come there is nothing, everything is exempt? How did this happen? How did this take place 20 plus years ago?

So, you responded to that, and you wrote, in legislation that passed last year that the, and the legislation said that the Department, because 5-B says the word Department means Department of State, may make requests for additional information necessary to exercise regulatory or enforcement authority pursuant to, but not limited to hearings, procedures over any pooled risk management program formed or affirmed in accordance with this Chapter. So, you passed that and I have a timeline that I would like all of

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you to get a chance to see that will show you what we have been through over the last many months dealing with what the authority was that you had granted.

Please see attachment # 2, timeline submitted by Secretary of State William Gardner.

Well, at the very beginning... well we had a complaint, a very specific complaint, and we requested certain information—just information. And, the first objection was, well, we don't want to give you the information unless you tell us who filed the complaint. Well, it is standard practice throughout the regulatory industry that that information becomes public at the end of an investigation, and so we weren't prepared to do that and that has been the standard for the Bureau. The Bureau has investigated Merrill Lynch, Ameriprise, UBS, ING, international companies. We have a standard.

So, at that point, we said that we are not going to provide this and we want this information. Then, then we said we would like that to have it within 30 days, and we didn't get it within 30 days. And, immediately it was well we are not going to give it to you because you want medical information of our, of the employee. Well, we didn't want medical information, I don't want my medical, I don't think anybody, nobody wants that, that's not something that we have any reason to have, and we firmly did not want it, and we hassled over that, over and over and we said even if you give it to us, if you give it to us somehow by mistake, not because we are asking for it, but you are saying you have to give it to us somehow, we are going to give it back. Redact it, do whatever you have to do, it is financial information that we are looking for.

Well, in the timeline, you'll see beginning, we received the complaint in July and point-by-point you can see what happened in August, what happened in September, what happened in October, what happened in November, and then we get before the Superior Court because everything was challenged—one thing after another, after another, after another. We get into Superior Court and the judge finally, in December, says that, he cites the law, and he says that the legislative intent is to be found not in what the Legislature might have said, but rather in the meaning of what it did say. And, the judge was very clear that legislative history does not aid analysis unless the statutory language is ambiguous or more than one reasonable interpretation exists, and the judge did not buy it and the judge said you can get the information and you have regulatory oversight, and the Legislature granted it. And actually, cited examples of what one Senator said on the floor of the Senate, what was said in the House about this and what the Legislature meant when they did it.

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So, finally in December, after five months, we got the first bit of information because everything had been denied from the very beginning. So, now if... do we have regulatory authority right now? Yes. Do we have oversight authority? Yes, and we will proceed because we are in the middle of this investigation. As far as this amendment, if this amendment is a reaffirmation by the Legislature of what the Legislature meant, well, that is fine. If this is an attempt to make sure that we don't spend another five or six months in Court arguing over somehow the Legislature didn't really know what it was doing, or they didn't mean what they actually said, which we have been having to deal with.

And then finally, the question of constitutionality, whether it is even constitutional. So, this has been...now last Friday, in contrast to what was said when the legislation was introduced at the very beginning. At that time, the Municipal Association said, we don't want regulation, we are not an insurance company, we don't want oversight, we'll file information but that is it, and there was quite a discussion about it at that time. Now, last Friday they're offering to say okay, we never meant, we are okay to be regulated, but now they want to shop, they want to go shopping for who does the regulation. After we have spent this many months haggling in the courts over whether you and the others in the House and Senate actually meant what you did, and so that brings us to where we are today, and we are moving, we are moving ahead, we are, we could have had something back to you. But, we spent half the time before we even got any information, and it was just the information that we were asking for, that was it. We were asking for financial information because, in this day and age, and we just heard last Friday by someone representing the New Hampshire Municipal Association that they are the largest in the United States of America—hundreds of millions of dollars. And, and, and granted that now they are saying well, you know, we aren't really against regulation but we think we should be able to shop for who is actually going to be the ones to provide the regulation.

So, I think, if you continue down the path that you took last year, that this amendment fulfills what you originally envisioned and felt that there should be some regulation over these kinds of entities; that these kind of entities are public entities. We have already had Supreme Court rulings to make it absolutely clear that this is taxpayer money that is being talked about here, and so I will leave this. Someone from the Bureau, I have not actually spoken to any committees before about this, I have left it to the Bureau, but this morning it, circumstances necessitated that I come over and be the one to talk to you.

Senator Margaret Wood Hassan, D. 23: Thank you very much for your testimony. I see a question from Senator Roberge.

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Senator Sheila Roberge, D. 9: Mr. Secretary of State is there any difference between this and the JUA situation?

Secretary of State Gardner: Any difference between?

Senator Sheila Roberge, D. 9: Yes, the JUA situation that we had recently? That was also a trust, was it not?

Secretary of State Gardner: A difference?

Senator Sheila Roberge, D. 9: Yes, a difference.

Secretary of State Gardner: Between what?

Senator Sheila Roberge, D. 9: Between this particular trust and the JUA situation we've just...

Secretary of State Gardner: What was done last year?

Senator Sheila Roberge, D. 9: Yes.

Secretary of State Gardner: Well, this does add a provision that I didn't speak about, a provision about giving something back. We are not, we have not had any findings; that is part of the investigation. So, I can't speak about that part of it.

But, this, this would... I see this amendment, when I looked at it, as a reaffirmation by the Legislature of what you did last year that could have no relevance at all because we already have this decision by a Superior Court judge, Judge Smukler, where he got into this at hearings, it took him several weeks before he wrote what he wrote. But, I see this amendment as something that may prevent us from having to spend more time arguing about whether you actually meant what you said you meant, and what one judge has said he believes that you meant what you did last year. And, it was, when this was done, it was a bipartisan effort last year to do this and, and so that's where it is at.

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

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair, and before I get to the question I had, I wanted to clarify what Senator Roberge was asking about. And I think your answer was something different than what she was asking about. She was asking you about similarities and differences

between this current bill before us, and the LGC trust and the shared risk pool reserves for the various groups versus the JUA, the Joint Underwriting Authority Medical Malpractice fund.

Secretary of State Gardner: Oh, oh, oh, oh, okay.

Senator Peter E. Bragdon, D. 11: And, maybe you need to clarify your remarks then.

Secretary of State Gardner: Okay, there's, there's, I don't...no, this is not anything like JUA.

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

Senator Peter E. Bragdon, D. 11: Madam Chair, now to my question?

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

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: Or different question.

Senator Peter E. Bragdon, D. 11: Yes, it is not a follow up.

Senator Margaret Wood Hassan, D. 23: Okay.

Senator Peter E. Bragdon, D. 11: Thank you, Mr. Gardner, and I appreciate your testimony and I am certainly all for increased regulation. But, I don't begrudge someone who is trying to exercise their rights to go through the judicial process, although I disagree with them in that particular take.

I am concerned though. Your testimony focused on the parts of the bill adding more regulatory authority, which may well be needed. But, there is a significant piece of this, which you alluded to, which deals with the establishment of reserves and the calculations needed to do that. And, I guess I am curious, are, are you capable, or people on your staff familiar with all the various actuarial methods and the shared risk pool finances and how that should be set? And, do you have comments on whether we should be setting a reserve limit within the legislative in this short period of time?

Secretary of State Gardner: Yes, well, the statute, 5-B, says that the reserves, there are certain, that administrative costs can be, can be used. But, if there is a surplus, the surplus goes back to the cities and the towns,

and I think that you can get different actuaries giving different opinions about whether 5%, 10%, 12%, just like you can have a Cadillac, you can have a Volkswagen, you can... though there was discussion last week that at one point, one-third of the surplus was given back and there was a reason they explained why one-third of it was given back and two-thirds were not given back. I am not here to, that specific issue is a judgment that you can make if you choose to make it.

In the review by the Bureau of Securities, they will decide, looking at all the financial information that we had to, we had to actually subpoena to try to get, the subpoena wasn't adhered to. I mean to actually get to the truth you need to see all the information, and then apply the law that, that, that says what the money can be used for to operate the pooled risk, but that a surplus shall be returned to the cities and towns, and I mean this is, as the Supreme Court has said, this is the people's, I mean, this is all taxpayer money.

And, I have the section that, well, it is 5-B it's 4 pages and... return all earnings and surplus in 5-B:5, return all earnings and surplus in excess of any amounts required for administration, claims, reserves and purchase of excess insurance to the participating political subdivisions. And, you will find those numbers. Some people would like to say that everything is reserves, and that can just keep growing for years and years and years because that might bring down the rates, and others might say that you don't want tens of millions, or a $100,000,000 sitting around. And one of the things that was actually said in the testimony, the original legislation in 1987, when all these exemptions were given, someone who thought it wasn't a good idea to do it then said that, don't hold me responsible years to come if someone walks off with all this money because nobody will have had any opportunity to review it and look at it, and that is a quote that was said in front of the Legislature when the original bill in '87.

But, times have changed. We have become much more sensitive to financial issues and ways that companies come up with these new forms of like, of derivatives, for instance, they are not regulated. Companies, it is sort of like campaigns in a way, every new cycle somebody comes up with something new, some new technique, some way to get around regulation, and this one was the biggest of all back before you asked it last year because this one was basically exempt from everything possible.

Senator Margaret Wood Hassan, D. 23: Any other questions? Seeing none thank you very much for your testimony. I am going to recognize Representative Hikel, is that Hikel, did I say it correctly? And then, I think he is going to be our last witness on this for the day and we will recess till Thursday. So, Representative come on up.

Representative Hikel: Thank you, Senator, Committee. My name is John Hikel from Goffstown and Weare, Goffstown and Weare, representing both of those towns.

Please see Attachment #3 - written testimony by Sue Desruisseaux, Goffstown Town Administrator, presented by Representative John Hikel, Goffstown and Weare.

Senator Margaret Wood Hassan, D. 23: Thank you, and I just want to double check on the box you checked. So, you are opposing the amendment, right?

Representative Hikel: Yes.

Senator Margaret Wood Hassan, D. 23: Okay, thank you. Are there any questions for Representative Hikel? Seeing none, thank you very much.

I apologize to the rest of the folks who came in today, but I am, we are close to 9:30 and my sense is that whoever speaks next, and I was going to call on representatives of the New Hampshire LGC next, is going to want more than 5 or 10 minutes and we are going to have more back and forth than that. So, we will recess the hearing on House Bill 1393 and its related amendment. Thank you.

Hearing closed at 9:22 a.m.

Respectfully Submitted,

Richard M. Parsons
Senate Committee Secretary
6/8/2010

3 Attachments