

HB 1570-FN - AS INTRODUCED

2016 SESSION

16-2439

01/05

HOUSE BILL ***1570-FN***

AN ACT repealing the law governing access to reproductive health care facilities.

SPONSORS: Rep. Hoell, Merr. 23; Rep. Goulette, Hills. 23; Rep. Itse, Rock. 10; Rep. Ingbretson, Graf. 15; Rep. Abramson, Rock. 20; Rep. W. O'Brien, Hills. 5; Rep. Rideout, Coos 7; Rep. Notter, Hills. 21; Rep. Groen, Straf. 10; Rep. Seidel, Hills. 28

COMMITTEE: Judiciary

ANALYSIS

This bill repeals the law relative to providing certain parameters for access to reproductive health care facilities.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT repealing the law governing access to reproductive health care facilities.

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

1 1 Statement of Findings and Purpose.

2 I. The general court hereby finds that:

3 (a) The exercise of a person's right to free speech is a First Amendment activity, the
4 protection of which is paramount.

5 (b) RSA 132:37 through RSA 132:40 (2014, 81) was based on a similar Massachusetts
6 statute, Mass. Gen. Laws, ch. 266 section 120E ½.

7 (c) On June 26, 2014 the United States Supreme Court unanimously struck down as
8 unconstitutional the Massachusetts statute in the case of *McCullen v. Coakley*, 134 S. Ct. 2518.

9 (d) On July 9, 2014, the United States District Court for the District of New Hampshire
10 held in the case of *Sister Mary Rose Reddy v. Foster*, Docket 14-CV-00299-JL that RSA 132:37
11 through RSA 132:40 "is materially indistinguishable from the Massachusetts statute that the
12 Supreme Court invalidated in *McCullen v. Coakley*."

13 II. States and towns have been charged significant fees for keeping these statutes in law.
14 The state of Massachusetts had to pay \$1.2 million in plaintiffs' attorneys fees for its
15 unconstitutional buffer zone, Burlington, Vermont had to pay \$200,000 and on October 8, 2015, the
16 United States district court in Maine entered an order requiring Portland Maine to pay the pro-life
17 sidewalk counselors' attorneys fees in the amount of \$56,500.

18 III. The New Hampshire attorney general stated: "This case is of public interest and
19 importance. The statute and subject matter at issue has been the focus of media coverage and
20 legislative action, and will likely be the subject of future legislative action." Case no. 14-CV-00299,
21 motion to record, filed 10-19-2015.

22 IV. Therefore, the general court hereby repeals RSA 132:37 through RSA 132:40 because if
23 left as law, this statute will cause the state of New Hampshire to expend considerable sums
24 defending a law which the United States Supreme Court unanimously found unconstitutional.

25 2 Repeal. RSA 132:37-132:40, relative to providing certain parameters for access to
26 reproductive health care facilities, are repealed.

27 3 Effective Date. This act shall take effect upon its passage.

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HB 1570-FN- FISCAL NOTE

AN ACT repealing the law governing access to reproductive health care facilities.

FISCAL IMPACT:

The Judicial Branch and Department of Justice state this bill, **as introduced**, will decrease state expenditure by an indeterminable amount in FY 2017 and each year thereafter. There will be no fiscal impact on state revenue or on county and local revenues and expenditures.

METHODOLOGY:

The Judicial Branch states this bill would repeal RSA 132:37 through 40 regarding access to reproductive health care facilities. These sections make violation of the statute a violation level offense and authorize the attorney general or county attorney to bring injunctive relief to prevent further violations. The potential impact to the Judicial Branch would be fewer violation level offenses in the circuit court and fewer injunction actions in the superior court. The Branch has no information on the possible reduction in the number of violation level offenses or injunction actions but does have dated information on the average cost of such actions. The Branch estimates the cost of an average violation level offense in the district division of the circuit court will be \$47.91 in FY 2017 and \$50.93 in FY 2018. The injunction actions would be considered complex equity cases in the superior court with an estimated average cost of \$716.75 in FY 2017 and \$740.15 in FY 2018. The Branch notes the cost figures for these cases are based on studies of judicial and clerical weighted caseload times for processing average cases. The Branch states these studies are now more than ten years old for judicial time in both courts and clerical time in the district court, and over eight years old for clerical time in the superior court. The Branch also states there have changes been since then that could impact the average processing times. In addition, the Branch indicates the cost figures do not include the cost of any appeals that might be taken following trial.

The Department of Justice indicates the statutes have been challenges in federal court and passage of the bill would eliminate the basis for that legal challenge and the potential cost of litigation, which cannot be determined.

The New Hampshire Association of Counties states the bill will have no impact on county expenditures or revenue.

The New Hampshire Municipal Association cannot identify any impact on municipal revenue

or expenditures.