Bill as Introduced

HB 1231 – AS INTRODUCED

2000 SESSION

00-2070
10/09

HOUSE BILL ***1231***

AN ACT requiring proposed legislation to be reviewed by a house or senate special committee to determine constitutionality prior to its introduction.

SPONSORS: Rep. Marple, Merr 11; Rep. L. Jean, Hills 17; Rep. Weyler, Rock 18; Rep. Brothers, Graf 6

COMMITTEE: Legislative Administration

ANALYSIS

This bill establishes a house special committee and a senate special committee on constitutionality to review proposed legislation prior to initial introduction.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1231 – AS INTRODUCED

00-2070
10/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT requiring proposed legislation to be reviewed by a house or senate special committee to determine constitutionality prior to its introduction.

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

1 New Subdivision; Review of Bills. Amend RSA 14 by inserting after section 49 the following new subdivision:

Review of Bills

14:50 Review of Bills; Special Legislative Committees on Constitutionality.

I. Prior to the introduction of any bill in any session of the house or senate, respectively, a special committee of each body shall review the bill proposed for the body to determine if the contents of the bill violate any provision of the New Hampshire Constitution or the United States Constitution, or are not otherwise in conformity with constitutional requirements, principles, and interpretations.

II. For all house bills, the speaker of the house of representatives shall appoint 3 house members as a special committee for the purposes stated in paragraph I. Such members shall serve for their term of office.

III. For all senate bills, the senate president shall appoint 3 senate members as a special committee for the purposes stated in paragraph I. Such members shall serve for their term of office.

IV. If any special committee under this section determines that the contents of proposed legislation violate the New Hampshire constitution or the United States Constitution, or are not otherwise in conformity with constitutional requirements, principles, and interpretations, the special committee shall recommend that the bill not be passed by the body. The special committee may propose an amendment to remove the constitutional infirmity.

2 Effective Date. This act shall take effect 60 days after its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1231 Date 2/23/00

Committee Legislative Administration

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con

Hearing Minutes

HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION

PUBLIC HEARING ON HOUSE BILL 1231

BILL TITLE: **requiring proposed legislation to be reviewed by a house or senate special committee to determine constitutionality prior to its introduction.**

DATE: **February 23, 2000**

LOB ROOM: **205** **Time Public Hearing Called to Order:** 2:42 pm

Time Adjourned: 3:15 pm

(please circle if present)

Committee Members: Reps. Oyer, G. Chandler, Lozeau, Pappas, Whalley, R. Nowe, Carson, Horton, Calawa, Thomas, McCarty, Tholl, M. Nowe, Rabideau, Burling, DePecol, M. Pelletier, Nordgren, Copenhaver, B. Hall, Lundborn and Mears.

Bill Sponsors: Reps. Marple, L. Jean, Weyler, Brothers

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep. Marple,** sponsor, spoke in support. This bill will examine new legislation and we, the Legislature, will decide if a bill is constitutional. The power should reside with the Legislature, not the Judicial Branch. He believes rulemaking authority should be taken away from the bureaucrats.

Claire Ebel of New Hampshire Civil Liberties Union spoke in opposition because this bill gives power to people who can't be expected to be able to make such opinions. The Supreme Court should determine the constitutionality, not the Legislature. The Legislate is not knowledgeable enough.

Hearing closed at 3:15 p.m.

Respectfully submitted,

Rep. Marie P. Pappas

Testimony

HB 1231

constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."74 Moreover we cannot consider this encroachment a slight one. Throughout history many transgressions by the military have been called "slight" and have been justified as "reasonable" in light of the "uniqueness" of the times. We cannot close our eyes to the fact that today the peoples of many nations are ruled by the military.

Boyd v. U.S. 116 U.S. 6

We should not break faith with this Nation's tradition of keeping military power subservient to civilian authority, a tradition which we believe is firmly embodied in the Constitution. The country has remained true to that faith for almost one hundred seventy years. Perhaps no group in the Nation has been truer than military men themselves. Unlike the soldiers of many other nations, they have been content to perform their military duties in defense of the Nation in every period of need and to perform those duties well without attempting to usurp power which is not theirs under our system of constitutional government.

Ours is a government of divided authority on the assumption that in division there is not only strength but freedom from tyranny. And under our Constitution courts of law alone are given power to try civilians for [354 U.S. 1, 41] their offenses against the United States. The philosophy expressed by Lord Coke, speaking long ago from a wealth of experience, is still timely:

> "God send me never to live under the Law of Conveniency or Discretion. Shall the Souldier and Justice Sit on one Bench, the Trumpet will not let the Cryer speak in Westminster-Hall."75

In No. 701, Reid v. Covert, the judgment of the District Court directing that Mrs. Covert be released from custody is

> Affirmed.

In No. 713, Kinsella v. Krueger, the judgment of the District Court is reversed and the case is remanded with instructions to order Mrs. Smith released from custody.

> Reversed and remanded.

MR. JUSTICE WHITTAKER took no part in the consideration or decision of these cases.

RECEIVED
JAN 3 1 2000
NEW HAMPSHIRE
SECRETARY OF STATE

Footnotes

[Footnote 1] 50 U.S.C. 712.

[Footnote 2] 50 U.S.C. 552 (11).

[Footnote 3] Martin v. Hunter's Lessee, 1 Wheat. 304, 326; Ex parte Milligan, 4 Wall. 2, 119, 136-137; Graves v. New York ex rel. O'Keefe, 306 U.S. 466, 477; Ex parte Quirin, 317 U.S. 1, 25.

[Footnote 4] Marbury v. Madison, 1 Cranch 137, 176-180; Hawaii v. Mankichi, 190 U.S. 197, 236-239 (Harlan, J., dissenting).

[Footnote 5] 2 Clode, Military Forces of the Crown, 175.

[Footnote 6] Cf. Barron v. Baltimore, 7 Pet. 243, 250.

[Footnote 7] This Court has constantly reiterated that the language of the Constitution where clear and unambiguous must be given its plain evident meaning. See, e. g., Ogden v. Saunders, 12 Wheat. 213, 302-303; Lake County v. Rollins, 130 U.S. 662, 670-671. In United States v. Sprague, 282 U.S.

DICK MARPLE
State-Federal Relations & Veterans Affairs

Room 306
Legislative Office Building
Concord, NH 03301
(603) 271-2169
Fax: (603) 271-6689

21 Dartmouth Street
Hooksett, NH 03106
Fax/Phone: (603) 627-1837

HB 123

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, concurring.

I agree with the substantive standard announced by the Court today, imposing liability when a public-official defendant [457 U.S. 800, 821] "knew or should have known" of the constitutionally violative effect of his actions. Ante, at 815, 819. This standard would not allow the official who actually knows that he was violating the law to escape liability for his actions, even if he could not "reasonably have been expected" to know what he actually did know. Ante, at 819, n. 33. Thus the clever and unusually well-informed violator of constitutional rights will not evade just punishment for his crimes. I also agree that this standard applies "across the board," to all "government officials performing discretionary functions." Ante, at 818. I write separately only to note that given this standard, it seems inescapable to me that some measure of discovery may sometimes be required to determine exactly what a public-official defendant did "know" at the time of his actions. In this respect the issue before us is very similar to that addressed in Herbert v. Lando, 441 U.S. 153 (1979), in which the Court observed that "[t]o erect an impenetrable barrier to the plaintiff's use of such evidence on his side of the case is a matter of some substance, particularly when defendants themselves are prone to assert their goo[d f]aith . . . ." Id., at 170. Of course, as the Court has already noted, ante, at 818-819, summary judgment will be readily available to public-official defendants whenever the state of the law was so ambiguous at the time of the alleged violation that it could not have been "known" then, and thus liability could not ensue. In my view, summary judgment will also be readily available whenever the plaintiff cannot prove, as a threshold matter, that a violation of his constitutional rights actually occurred. I see no reason why discovery of defendants' "knowledge" should not be deferred by the trial judge pending decision of any motion of defendants for summary judgment on grounds such as these. Cf. Herbert v. Lando, supra, at 180, n. 4 (POWELL, J.,

http://caselaw.findlaw.com/scripts/getcase.pl?navby=case&court=US&vol=457&invol=800 4/12/99

NEIGHBORHOOD PUBLICATIONS, INC. MAY 6, 1999 A-11

The 'something-to-hustle-everyone tax bill' is unconstitutional

To the Editor:

They've done it again!

On Dec. 2, 1998, I took an oath to support and maintain the constitution of the United States and the state of New Hampshire along with all the other members of the Legislature. I took that oath with great respect and honor as I had done many years ago when I enlisted in the U.S. Navy for a four year hitch.

Last Thursday, April 29, 1999, I kept my word and honored my oath of office. I voted against the "something-to-hustle-everyone tax bill." Why? Simply because it is unconstitutional!

One glaring part that is unconstitutional is the extension of the 8 percent rooms and meals tax to rented automobiles. If one reads Article 6a of Part Two Form of Government, one finds that *all funds* generated from automobiles and their use is dedicated to the highway department for building and maintenance and repair of highways and bridges. These funds *cannot* be diverted by any means whatsoever. Read Article 6a and decide for yourself.

Everyone who voted for that tax all violated their oath of office!

And you ask, "Why am I so ticked over such a small twisting of the supreme law of the land?" Well, this isn't the first time that public policy, not law, has been twisted by special interests. Last year, the same legislators passed the so-called "conservation plate" bill, another vanity plate to generate funds for programs other than those specifically enumerated in Article 6a.

This was a total violation of the constitutional mandates and all of my political attempts to have the violation addressed were met with arrogance and disdain, including the governor's office – at least in the male voice on the phone who identified himself as speaking for the Governor but would not identify himself to me when asked.

OK, Governor, Article #41, part Two is explicit. You now have public notice of not one but *two* blatant violations of the New Hampshire Constitution by those who should know better.

Will you impose the penalty that RSA 92:2 requires? If not, why not?

The trashing the constitution cannot go on and the fuzzy-feel-good public policy must cease. That is what the chains of the constitution were put in place to do.

If the reader reveres the supreme law of the land, as I do, please write me with your support.

Dick Marple
21 Dartmouth St.
Hooksett NH 03106
Rep., Merrimack #11

that these wives could be tried by the military would be a tempting precedent. Slight encroachments create new boundaries from which legions of power can seek new territory to capture. "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional [354 U.S. 1, 40] practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."74 Moreover we cannot consider this encroachment a slight one. Throughout history many transgressions by the military have been called "slight" and have been justified as "reasonable" in light of the "uniqueness" of the times. We cannot close our eyes to the fact that today the peoples of many nations are ruled by the military.

We should not break faith with this Nation's tradition of keeping military power subservient to civilian authority, a tradition which we believe is firmly embodied in the Constitution. The country has remained true to that faith for almost one hundred seventy years. Perhaps no group in the Nation has been truer than military men themselves. Unlike the soldiers of many other nations, they have been content to perform their military duties in defense of the Nation in every period of need and to perform those duties well without attempting to usurp power which is not theirs under our system of constitutional government.

Ours is a government of divided authority on the assumption that in division there is not only strength but freedom from tyranny. And under our Constitution courts of law alone are given power to try civilians for [354 U.S. 1, 41] their offenses against the United States. The philosophy expressed by Lord Coke, speaking long ago from a wealth of experience, is still timely:

> "God send me never to live under the Law of Conveniency or Discretion. Shall the Souldier and Justice Sit on one Bench, the Trumpet will not let the Cryer speak in Westminster-Hall."75

In No. 701, Reid v. Covert, the judgment of the District Court directing that Mrs. Covert be released from custody is

> Affirmed.

In No. 713, Kinsella v. Krueger, the judgment of the District Court is reversed and the case is remanded with instructions to order Mrs. Smith released from custody.

> Reversed and remanded.

MR. JUSTICE WHITTAKER took no part in the consideration or decision of these cases.

RECEIVED
JAN 3 1 2000
NEW HAMPSHIRE
SECRETARY OF STATE

Footnotes

[Footnote 1] 50 U.S.C. 712.

[Footnote 2] 50 U.S.C. 552 (11).

[Footnote 3] Martin v. Hunter's Lessee, 1 Wheat. 304, 326; Ex parte Milligan, 4 Wall. 2, 119, 136-137; Graves v. New York ex rel. O'Keefe, 306 U.S. 466, 477; Ex parte Quirin, 317 U.S. 1, 25.

[Footnote 4] Marbury v. Madison, 1 Cranch 137, 176-180; Hawaii v. Mankichi, 190 U.S. 197, 236-239 (Harlan, J., dissenting).

[Footnote 5] 2 Clode, Military Forces of the Crown, 175.

[Footnote 6] Cf. Barron v. Baltimore, 7 Pet. 243, 250.

[Footnote 7] This Court has constantly reiterated that the language of the Constitution where clear and unambiguous must be given its plain evident meaning. See, e. g., Ogden v. Saunders, 12 Wheat. 213, 302-303; Lake County v. Rollins, 130 U.S. 662, 670-671. In United States v. Sprague, 282 U.S.

Voting Sheets

HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION

EXECUTIVE SESSION on HB 1231

BILL TITLE: requiring proposed legislation to be reviewed by a house or senate committee to determine constitutionality prior to its introduction

DATE: 3/22/00

LOB ROOM: ~~205~~ 203

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL), Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Thomas

Seconded by Rep. Thell

Vote: 13-1 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: yes

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Marc P. Pappas, Clerk

OFFICE OF THE HOUSE CLERK

2000 SESSION

LEGISLATIVE ADMINISTRATION

Bill #: HB 1231 **Title:** requiring proposed legislation to be reviewed by a house or senate committee to determine constitutionality prior to its introduction.

PH Date: 2/23/00 / **Exec Session Date:** 3 / 22 / 00

Motion: ITL **Amendment #:**

MEMBER	YEAS	NAYS
Dyer, Merton S, Chairman	✓	
Chandler, Gene G	✓	
Lozeau, Donnalee	✓	
Whalley, Michael D	✓	
Nowe, Ronald J	✓	
Carson, Gregory G		
Horton, Lynn C	✓	
Calawa, Leon	✓	
Thomas, John H	✓	
McCarty, Winston H		
Tholl, John E	✓	
Nowe, Mary Lou	✓	
Pappas, Marc P		
Rabideau, Marie N		
Burling, Peter H	✓	
DePecol, Benjamin J		
Pelletier, Marsha L		
Nordgren, Sharon L	✓	
Copenhaver, Marion L		✓
Hall, Betty B	✓	
Lundborn, Raymond A		
Mears, Edgar H		
	Consent 13-1	
TOTAL VOTE:		

Printed: 1/19/2000

Committee Report

File copy

COMMITTEE REPORT

COMMITTEE: **Legislative Administration**

BILL NUMBER: **HB 1231**

TITLE: requiring proposed legislation to be reviewed by a house or senate special committee to determine constitutionality prior to its introduction.

DATE: March 22, 2000 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The committee voted this bill inexpedient to legislate because the legislature proposes, the governor executes, and the judicial system interprets laws. The house, which is ever-changing, has good common sense but may not have the legal expertise and the research capabilities to determine the constitutionality of legislation before it has been heard. The state constitution is one item, but the United States Constitution is another matter. The bill allows only the special committee to make amendments or recommends that the bill not be passed. There is no provision on what action will be taken if the committee finds the bill is not in conflict with the constitution.

Vote 13-1.

Rep. John H. Thomas
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Legislative Administration

HB 1231, requiring proposed legislation to be reviewed by a house or senate special committee to determine constitutionality prior to its introduction. INEXPEDIENT TO LEGISLATE

Rep. John H. Thomas for Legislative Administration: The committee voted this bill inexpedient to legislate because the legislature proposes, the governor executes, and the judicial system interprets laws. The house, which is ever-changing, has good common sense but may not have the legal expertise and the research capabilities to determine the constitutionality of legislation before it has been heard. The state constitution is one item, but the United States Constitution is another matter. The bill allows only the special committee to make amendments or recommends that the bill not be passed. There is no provision on what action will be taken if the committee finds the bill is not in conflict with the constitution. Vote 13-1.

COMMITTEE REPORT

COMMITTEE: **Legislative Administration**

BILL NUMBER: **HB 1231**

TITLE: requiring proposed legislation to be reviewed by a house or senate special committee to determine constitutionality prior to its introduction.

DATE: March 22, 2000 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The committee voted this bill inexpedient to legislate because the legislature proposes, the governor executes, and the judicial system interprets ~~as to whether each has a veto on the other that may be overridden~~. The house, which is ever-changing, has good common sense but may not have the legal expertise and the research capabilities to determine the constitutionality of legislation before it has been heard. The state constitution is one item, but the United States Constitution is another matter. The bill allows only the special committee to make amendments or recommends that the bill not be passed. There is no provision on what action will be taken if the committee finds the bill is not in conflict with the constitution.

Vote 13-1.

Rep. John H. Thomas
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

BLURB HB 1231 legislation to be revived by a special committee to determine constitutionality.

The committee voted this bill inexpedient to legislate because the legislature proposes, the governor executes and the judicial system interprets as to whether each has a veto on the other that may be over ridden. The house, which is ever changing, has good common sense but may not have the legal expertise and the research capabilities to determine the constitutionality of legislation before it has been heard. The state constitution is one item but the United States Constitution is another matter. The bill only allows the special committee to make amendments or recommends that the bill not be passed. There is no provision as what action will be taken if the committee finds the bill is not in conflict with the constitution

Rep John Thomas

MD