Bill as Introduced

HB 786-FN-LOCAL – AS AMENDED BY THE HOUSE

10apr03... 1094h

2003 SESSION

03-0654
04/01

HOUSE BILL ***786-FN-LOCAL***

AN ACT relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

SPONSORS: Rep. Alger, Graf 14; Rep. M. Harrington, Straf 68; Rep. Kurk, Hills 48; Rep. Dickinson. Carr 4; Rep. Dodge, Rock 80; Sen. Johnson, Dist 2; Sen. Gallus, Dist 1

COMMITTEE: Education

AMENDED ANALYSIS

This bill:

I. Prohibits the spending of state general funds for compliance with the federal No Child Left Behind Act of 2001 (NCLBA).

II. Allows school districts to exempt themselves from compliance with NCLBA by a majority vote of the legislative body if the cost of compliance is not fully covered by the additional federal funds received by the school district or other political subdivision.

III. Directs the department of education to ensure that no costs associated with NCLBA shall be included in the calculation of the cost of an adequate education.

IV. Requires the department of education to submit a financial report for expenditures and sources of funding to the house and senate education and finance committees on an annual basis.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03-0654
04/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

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

1 Purpose. The federal No Child Left Behind Act (NCLBA) of 2001 (H.R. 1) directs those states that participate in it to make many meritorious improvements in their system of public education. Furthermore, contrary to state experience with other federal laws, NCLBA was enacted as a fully-funded federal law as directed by federal Public Law 104-4 of 1995 and section 9527 of NCLBA which curb the practice of imposing unfunded federal mandates on states and local governments. Therefore, the general court hereby directs that general funds not be expended on the NCLBA and that school districts also prohibited from such expenditures.

2 New Subdivision; State Compliance with the No Child Left Behind Act of 2001; General Funds Prohibited. Amend RSA 21-N by inserting after section 11 the following new subdivision:

Compliance with the No Child Left Behind Act

21-N:12 Compliance with No Child Left Behind. Notwithstanding any provision of law to the contrary:

I. No general funds of the state or any of its political subdivisions shall be appropriated, expended, or encumbered to implement the federal No Child Left Behind Act of 2001 (NCLBA).

II. A school district or other political subdivision may, upon a majority vote of its legislative body, be exempt from all state administrative rules or regulations of any kind, adopted for the purpose of implementing NCLBA if the cost of compliance with such rules or regulations is not fully covered by the additional federal funds received by the school district or other political subdivision.

III. The state board of education and the commissioner of the department of education are hereby prohibited from adopting any new administrative rules or regulations, or amending existing administrative rules or regulations for the purpose of complying with NCLBA until 60 days after the submission of a written report detailing such new or amended rules or regulations to the house and senate education committees.

IV. No additional costs incurred by the state or any of its political subdivisions in implementing NCLBA shall be included in calculating the cost of an adequate education pursuant to RSA 198:40.

3 New Paragraph; Adequate Public Education; Statewide Testing. Amend RSA 193-E:3 by inserting after paragraph II the following new paragraph:

III. The results of any statewide testing required under the No Child Left Behind Act of

2001 shall be ranked by the commissioner of the department of education by individual school and grade level performance. The rankings shall be made available to the public arranged by numerical rank order and alphabetical order no later than 30 days after the results are available to the commissioner of the department of education. No test shall be ranked until the commissioner of the department of education submits to the house and senate education committees a written explanation of the ranking methodology to be used.

4 Report. No later than January 1 of each year, the commissioner of the department of education shall submit to the house and senate education and finance committees a statement of expenditures by the state and by school districts necessitated by the No Child Left Behind Act of 2001 in the immediately prior fiscal year, and the sources of funding used for such expenses.

5 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

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

LBAO
03-0654
1/28/03

HB 786-FN-LOCAL - FISCAL NOTE

AN ACT relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from the Department of Education. When completed, the fiscal note will be forwarded to the House Clerk's Office.

Amendments

Sen. O'Hearn, Dist. 12
May 9, 2003
2003-1568s
04/09

Amendment to HB 786-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court hereby finds and declares that the state of New Hampshire's participation in the programs established by the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, will ensure that all children in New Hampshire receive a fair and significant opportunity to obtain a high-quality education and reach proficiency on New Hampshire's challenging academic standards. Furthermore, the general court finds that when the state and its school districts operate in good faith and choose reasonable approaches to improve student achievement and increase teacher quality, as supported by the No Child Left Behind Act of 2001, the funds provided to New Hampshire by the federal government are adequate to ensure that the state and its school districts are fully able to meet and implement the criteria of the No Child Left Behind Act of 2001.

2 New Subdivision; State Compliance with the No Child Left Behind Act of 2001; General Funds Prohibited. Amend RSA 21-N by inserting after section 11 the following new subdivision:

Compliance with the No Child Left Behind Act

21-N:12 Compliance with No Child Left Behind. Notwithstanding any provision of law to the contrary:

I. Section 9527 of the No Child Left Behind Act of 2001 provides that nothing in this act shall be construed to mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act.

II. The state board of education and the commissioner of the department of education are hereby prohibited from adopting any new administrative rules or regulations, or amending existing administrative rules or regulations for the purpose of complying with the No Child Left Behind Act of 2001 that will require funding from general funds.

III. Federal funds used by the state or any of its political subdivisions in implementing the No Child Left Behind Act of 2001 shall not be included in calculating the cost of an adequate education pursuant to RSA 198:40.

IV. Federal education funds appropriated under the Elementary and Secondary Education Act as amended in 2001 that are received by the state or any of its political subdivisions shall be used exclusively for the purpose of implementing the No Child Left Behind Act of 2001 and shall not be used for any other purpose.

3 Report. No later than January 1 of each year, the commissioner of the department of

education shall submit to the house and senate education and finance committees a statement of expenditures by the state and by school districts necessitated by the No Child Left Behind Act of 2001 in the immediately prior fiscal year, and the sources of funding used for such expenses.

4 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

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

2003-1568s

AMENDED ANALYSIS

This bill:

I. Requires funds appropriated under the Elementary and Secondary Education Act, as amended, to be used exclusively to implement the No Child Left Behind Act of 2001.

II. Directs the department of education to ensure that no costs associated with the No Child Left Behind Act of 2001 shall be included in the calculation of the cost of an adequate education.

III. Requires the department of education to submit a financial report for expenditures and sources of funding to the house and senate education and finance committees on an annual basis.

Sen. O'Hearn, Dist. 12
May 9, 2003
2003-1568s
04/09

Amendment to HB 786-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

~~1 Purpose. The general court hereby finds and declares that the state of New Hampshire's participation in the programs established by the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, will ensure that all children in New Hampshire receive a fair and significant opportunity to obtain a high quality education and reach proficiency on New Hampshire's challenging academic standards. Furthermore, the general court finds that when the state and its school districts operate in good faith and choose reasonable approaches to improve student achievement and increase teacher quality, as supported by the No Child Left Behind Act of 2001, the funds provided to New Hampshire by the federal government are adequate to ensure that the state and its school districts are fully able to meet and implement the criteria of the No Child Left Behind Act of 2001.~~ delete

~~2 New Subdivision; State Compliance with the No Child Left Behind Act of 2001; General Funds Prohibited. Amend RSA 21-N by inserting after section 11 the following new subdivision:~~

~~Compliance with the No Child Left Behind Act~~ Keep

21-N:12 Compliance with No Child Left Behind. Notwithstanding any provision of law to the contrary:

I. Section 9527 of the No Child Left Behind Act of 2001 provides that nothing in this act shall be construed to mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act.

II. The state board of education and the commissioner of the department of education are hereby prohibited from adopting any new administrative rules or regulations, or amending existing administrative rules or regulations for the purpose of complying with the No Child Left Behind Act of 2001 that will require funding from general funds.

~~III. Federal funds used by the state or any of its political subdivisions in implementing the No Child Left Behind Act of 2001 shall not be included in calculating the cost of an adequate education pursuant to RSA 198:40.~~

~~IV. Federal education funds appropriated under the Elementary and Secondary Education Act as amended in 2001 that are received by the state or any of its political subdivisions shall be used exclusively for the purpose of implementing the No Child Left Behind Act of 2001 and shall not be used for any other purpose.~~ delete

~~3 Report. No later than January 1 of each year, the commissioner of the department of~~

~~education shall submit to the house and senate education and finance committees a statement of expenditures by the state and by school districts necessitated by the No Child Left Behind Act of 2001 in the immediately prior fiscal year, and the sources of funding used for such expenses.~~ delete

~~4 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect~~ other provisions ~~or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.~~ delete

5 Effective Date. This act shall ~~take effect 60 days after its~~ be immediate upon passage.

2003-1568s

AMENDED ANALYSIS

This bill:

I. Requires funds appropriated under the Elementary and Secondary Education Act, as amended, to be used exclusively to implement the No Child Left Behind Act of 2001.

II. Directs the department of education to ensure that no costs associated with the No Child Left Behind Act of 2001 shall be included in the calculation of the cost of an adequate education.

III. Requires the department of education to submit a financial report for expenditures and sources of funding to the house and senate education and finance committees on an annual basis.

Senate Education
May 15, 2003
2003-1661s
04/05

Amendment to HB 786-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; State Compliance with the No Child Left Behind Act of 2001; General Funds Prohibited. Amend RSA 21-N by inserting after section 11 the following new subdivision:

Compliance with the No Child Left Behind Act

21-N:12 Compliance with No Child Left Behind. Notwithstanding any provision of law to the contrary:

I. Section 9527 of the No Child Left Behind Act of 2001 provides that nothing in this act shall be construed to mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act.

II. The state board of education and the commissioner of the department of education are hereby prohibited from adopting any new administrative rules or regulations, or amending existing administrative rules or regulations for the purpose of complying with the No Child Left Behind Act of 2001 that will require funding from general funds.

2 Effective Date. This act shall take effect upon its passage.

2003-1661s

AMENDED ANALYSIS

This bill prohibits the state board of education and the department of education from adopting any new administrative rules or regulations or amending any existing administrative rule or regulation for the purpose of complying with the No Child Left Behind Act of 2001 if such compliance would require funding from general funds.

Committee Minutes

Date: May 15, 2003
Time: 1:15 p.m.
Room: 105-A SH

The Senate Committee on Education held a hearing on the following:

HB 786-FN-Local relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

Members of Committee present: Senator O'Hearn
Senator Johnson
Senator Foster
Senator Larsen

The Chair, Senator Jane E. O'Hearn, opened the hearing.

I'll open the session on HB 786 and call the prime sponsor, Representative Alger.

Representative Alger: Thank you Madame Chairman and members of the committee.

It's delightful to be here today on this important day and this important bill. For the record my name is John Alger. I am State Representative for District 14 representing the towns of Ellsworth, Campton, Rumney, Wentworth and Orefield. Of course as prime sponsor I'm very much in favor HB 786 which passed the house on a vote of 310 in favor 36 opposed.

I do before I begin further I want to read quickly a letter that Senator Gallus and that I think I gave to you.

See Attachment A

Madame Chairman and member next I would like to go briefly through the bill and the document I passed out to you a little bit.

See Attachment B

In the bill itself the purpose starts off with the fact that the federal No Child Left Behind Act directs those states that participate in it to make meritorious improvements in their system of public education. The first page I gave you, the blue page, is a little flyer on what that does. "Will Your Child Achieve the American Dream?" Accountability, Continuous Improvements, Helping Teachers and so forth. I know that you are all familiar with that and we don't need to spend any time on that.

The next sentence in the bill says, "no child left behind". You didn't get one of those? I'm sorry. I meant to give you one. If you turn that to the next page you'll find that in the bill it says "No Child Left Behind Act was enacted as a fully funded federal law as directed by federal Public Law 104-4 and section 9527 of No Child Left Behind which curbs the practice of imposing unfunded federal mandates on states and local governments."

If you look at the letter on the second page, it's a copy of part of the letter I received from Senator Gregg on September 19th.

See Attachment B

The next page I gave you a copy of the prohibition in No Child Left Behind that talks about this point that Senator Gregg makes. Nothing in this act shall be construed to authorize an officer or employee of the federal government to mandate, direct or control a state, local educational agency or schools curriculum, program of instruction, or allocation of state or local resources or mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act.

Senator Gregg certainly is right that this is the case. One more thing I would say about that. I did receive, after inquiring further, I did receive a letter from Laura Gerald Zellin who raised questions about that particular part of the No Child Left Behind Law. Namely that and you can have a copy of this letter if you so choose, basically he says that the way it's defined is that it may or may not in fact prevent a mandate. I wrote a letter to Senator Gregg asking about this question and I received a letter on March 3rd from Eugene Hicock Undersecretary of Education. At the request of Senator Gregg I respond to your question of No Child Left Behind as an unfunded mandate. On two separate occasions the Congressional Budget Office found that NCLBA contained no intergovernmental or private sector mandates. House Report 10763 includes the relevant text of the Congressional Budget office opinion, Senate Report 107.

So the point is that they are saying down there that it's a fully funded federal law in spite of the fact that our lawyer here or one of the guys can question

some of those words. But if it's fully funded it seems to me that it's very sensible for us to take a position that's fun. We like that. We haven't liked all these federal mandates that came down without full funding. Therefore the general court hereby directs that general funds not be expended in No Child Left Behind and the school districts be prohibited from such expenditures. Now you go down to the bill, line 13 and that's what it says. No general funds shall be appropriated.

Well that has raised a lot of hackles. I've got to tell you from my perspective as a representative, the more people complain about that the more nervous I get that it's an unfunded mandate. Because if it's truly funded as it's said to be by the Undersecretary, by the Senator then there's no problem. Maybe there are some technical problems. I'm not knocking that. There may be some technical problems. Maybe somebody says "well we're spending general fund money in a way that's, where taking some of the No Child Left Behind and putting it in the wrong place". So in the state we're fudging. So fix that. Because certainly if it's fully funded as it's said to be I don't see a problem.

The second line 15, I revised this bill even though this is the first time in my history that I've revised a bill when it was successful. When we went through finance in the House they raised the question about letting the school district opt out without a specific reason, like not full funding. So Roman numeral 2 we put together. A school district or other political subdivision my, upon a majority vote of the legislative body be exempt from the rules and regulations adopted for the purpose of implementing No Child Left Behind if the cost of compliance is not fully covered by the federal funds received by that district. The point of that being again that if they're moving ahead and they're not receiving. Now I learned today from 2 superintendents they're already spending money in their districts and not getting anything right now. Maybe that's not much. They're just doing studies, they're doing paralegal. We know Madame Chairman, how we get the money from the state to the locals is a question we all have. That's something to work on.

The point I'm making is that these folks it seems to me ought to have an option for going out. That question has been raised as to whether it's legal. Since January several of us have inquired of local, federal and state people about the legality of this. You know what? To this day Senator Gregg referred it to Nick Donahue. Nick Donahue stammers. So I'm telling you, my perspective is that this is perfectly fine. We should adopt it. In my view.

The next one, Roman numeral 3. It's interesting roman numeral 3. Why would we want to do that? It says here the state board and the commissioner shall be prohibited from adopting new rules until 60 days after submission of a written report to the House. Do you know, just as late as this week we

were writing your famous, we were rewriting your famous accountability bill. We had in there, we had to get the targets to the feds by August 15. Well, we learned yesterday no problem. He's already done it. He's already sent the targets. I'll talk to him later. So Nick Donahue is following one rule. It's a good rule from my perspective. He is going to meet the federal dates regardless. He's going to do that. He's doing that. If the legislature is behind him, not up to him, that's our problem. Not his problem. I agree that's probably, if I were him I would do the same. I admire his style. He's going to make this thing happen unless we get there to control it.

So Roman numeral 3 is written to say, "Hey Nick, we need to know." We had 120 days, 60 days. We did 60 because I can't wait that long so he agreed with 60, at least in principle he agreed. I have to say one thing more. I see that his representative here today is going to have bunch of technical problems with this bill. I think. Again I say, if they are let's fix them. The principle of this bill is extremely important. I have been in over 150 bills the last 7 years and I think this is probably in principle the most important bill I've ever been involved in.

The next one is that "no additional costs should be in the cost of an adequate education. Simply because that's where we get paid and we have no costs. So it's not an added cost. We've already gotten paid.

The next one is about testing. I think that's important but again if we're going to do that same testing under the profile under the accountability bill, maybe that's the place to put it. But we did put it in the profile. That's one of the changes finance recommended or perhaps DOE recommended. If we're going to do that it should be under 193-E: 3 and not where we had it before. That was again, that testing program was something we think is important. It should be done. The exact bill and where it should be. That is the question.

Then the reporting. We need to know where the money is. Where is it going? Who's getting it? Where's the expenses? That's really a report that's what we're asking. Severability has to do with at some point it was declared not acceptable.

I would next, I know I shouldn't take a lot of time but I have note here from the Honorable James H. Diller, Chairman of the House Education Committee in the State of Virginia. He gave a talk on this subject a month ago. We have all heard of the tail that wags the dog. I'm here today to warn this body that the new national elementary and secondary school act is the dog's tail on steroids and is about to wag the entire state education budget. Then he talks about individual schools being labeled failing if there's lack of adequate progress by one group, low income. He goes through the things we know.

Lastly he says that there is an eerie parallel between this legislation and the original elementary and secondary school education act passed in 1965. The lofty promises of Lyndon Johnson's plan to help needy children were quickly replaced by a maze of federal regulations and regulators and much of the money to implement the plan was diverted to support the Vietnam War. You probably know Madame Chairman that we got $65 million from the feds this year and we're going to get $64 million next year. Now we're going to get some more special ed money but we're not going to get anymore No Child Left Behind. We all know the failure of the federal government to meet it's funding share of special ed. Now here is a federal law with over 100,100 pages of federal mandates for general education with the same imbalance of financing he believes. That's from Virginia.

Now I look at our amendment, which I am going to support tomorrow. We're going to pass this bill Madame Chairman, strongly. The bill you started, it's the centerpiece of No Child Left Behind. The accountability bill. The famous struggle we've had for 6-8 years. Senator Larsen knows very well how we've struggled with this. The House and Senate actually passed one and the Governor vetoed because it didn't have enough sanctions in it. Well this has something more in it. I only wanted to point out that the cost of this has not been identified yet.

#1 A school district shall have one year from the date that it is declared as in need of improvement to remedy, identify problems at the local district. They shall create a plan that attempts to correct the areas of concern. Who pays for that? If a school is in a district....

Senator Jane E. O'Hearn, D. 12: Representative Alger, are you referring in this bill that the accountability bill is written solely for No Child Left Behind?

Representative Alger: I thought you might bring that up. The point you're making is a good one.. The bill we always had that we voted were social pressure. They were ones that said you shall correct through your own support and you get state aide. I'm not going to knock the point you made. If you think and we agree that part of this is our own state responsibility for the court I think you're right. I'm not knocking that. My only point is it does have in it, in part 7, the state board shall direct the school board to implement the plan. Now I know from these things here that only 80% of our schools are said not to be failing. In the targets we've sent down to the feds goes up slowly. So we're going to get a bunch of schools I guess, according to DOE that are going to be failing. I don't know how many yet but I'm bound to find out because when this bill shows up in Finance then we're going to have that discussion. You're right. You can come in and you can say that it's

a state responsibility that's a federal responsibility. Who knows? That is one of our critical issues is separating the two so we can clearly understand where the money is federal and where the money is local. You're right. You and I have talked about this and this is the point you're making.

The only point I'm making is that I go down through this and a bunch of districts are going to ask for help. They can get help from the assistance from the Department of Education. So the Department of Education has to have teams to go. Their going to have progress review teams. They're going to have peer review teams. They're going to have corrective action plans. If the corrective action plan is not sufficient the state board will get recommendations from DOE. This is what Rumney will do. We're a failing school by the way, last year. But I have a good friend of mine who is graduating from the naval academy next week with a Bachelor of Science in Oceanography and she's going to be a carrier pilot. She graduated from a failing school I'm told. She's a great gal. So it isn't all failing.

So how are we going to do this with testing? It's going to be interesting. The only point I'm making is that there is a lot of money in this thing. Part of it is state I grant you.

Now the next one I bring up to you is the Vermont study. It's interesting how in the Vermont study maybe you've seen it. He talks about the difficulty of how much money it costs. Figuring out how much No Child Left Behind will cost requires knowing how much it will take to have all of the students pass the standards. How do we figure that out? We ought to know something about that before we go much further in my view. There's the professional judgement method. There's the successful school technique. There's the statistical method. Indiana, they've done some work on that. They say it's going to increase their cost by 31%. Maryland, part of it, 46%. Montana, 34%. Nebraska, 45%. Wisconsin 35%, New York, 15%. So this study here is another interesting way of saying, "hey, this is a federally funded law. We are told that it's paid by the feds." So what is the prudent thing for us to do as representatives.

What is the prudent thing to do? The thing to do is to pass it that says we don't have to put our own money because the feds are going to pay for it. That's the prudent thing to do.

Now, in conclusion, some that are here may say that No Child Left Behind is a law, which we should embrace as our own. We should have done it long ago. That it is all we're due. That regardless of cost we should move into it and be thankful for the federal dollars that we're going to get in the process. You're going to hear some of that I think today. I couldn't disagree more with

that idea. Recently we have raised new state taxes for education so that in this very biennium we will spend $1.1 billion dollars on public education from the state. 36% of unrestricted revenue contrasted with $343 million in 1996-1997 biennium and that's not including the property tax. That's just raising business taxes to pay for the universities, the k-12, the state aide, I'm just taking the total. I got Mike Marr to put that together for me some time ago.

If state property tax is included we have increased to $2.1 billion this biennium or 52% of unrestricted revenue crowding out the nursing homes and the retirees and the rest of them. Total spending on public education furthermore is also increasing at 8-9% a year. We know that from Doug Hall and all of his studies. So we're going up at 8-9 and we put in a whole bunch more money because of Claremont and now we certainly don't need anymore unfunded federal mandates if they are there.

Furthermore there is no evidence that I can find that so called high stakes testing with centralized control of curriculum and planning will significantly enhance our students education. This is a very large federal experiment in my view. It therefore in my mind would be highly imprudent and rash and not very sensible to rapidly expand in No Child Left Behind without a deep concern as to whether and how much state and local tax money will be required. Far better will be that we follow the federal directives in No Child Left Behind in so far as their federal support will take us, reserving our state and local dollars for what appears to be an especially effective for our New Hampshire students.

Now the last point I want to make is this. You have in this room today the management of our public school system. The people that are charged with responsibilities for managing what we do in the schools as far as money and plans and effectiveness. Now that's the superintendents and the school boards. I would urge you to listen carefully to what those folks are telling you about this law and how they should improve it. Not what we should do because in the final analysis all the federal money and the state money is going to come down on their heads and come down to our school boards and it's going to be the basis upon which the schools are improved or not improved. So their advice I think is extremely important.

Thank you very much and I hope you'll vote to pass this bill.

Senator Jane E. O'Hearn, D. 12: Thank you representative. Any questions of Representative Alger? Senator Larsen.

Senator Sylvia B. Larsen, D. 15: Three questions really. In Roman numeral 2, line 16 and 17 when you allow for an opt out by a local school district by a

majority vote, who determines if the cost of compliance is not fully covered by additional federal funds? What is your standard for determining that? I don't see anything in the bill that clarifies that.

Representative Alger: Right. Good question in my view. A lot of discussion about that. You could argue for that being put in rules but my view of that is that they would have to show that to be the case probably to the state board. I suggested to Jane O'Hearn, the representative and the speaker, excuse me what am I speaking about, the chairman that it should be considered the legislative oversight committee. I didn't put that in here. I think they're big boys and girls. If they don't get it they'll show it but if you think, we think, collectively think that we need to have a way to specifically say somebody, they have to refer to somebody, then I would say the legislative oversight committee is fine with me. Or the state board, whichever.

But the point is, see the other thing you could say about that is they would go, in fact there were two reasons we talked about for not being able to opt out. One was, hey you don't have enough money. Then the state board says, "wait a minute, we'll get you some more money if that's all you need." So communication. So fine they keep going.

Second reason was what about a local, if I opt out in my school district but I'm going to impact another school district then the chairperson here said to me, "that should be a reason to consider." So we've talked about two possible considerations under that section of the bill as possibilities.

Senator Sylvia B. Larsen, D. 15: Further question. Can you explain to me the language starting basically in the new paragraph 3, line 27? You seem to be putting new language in relating to statewide testing but I can't tell. You're looking for ranking. It looks like you're looking for a way to understand ranking methodology for state wide test results.

Representative Alger: Yes.

Senator Sylvia B. Larsen, D. 15: Why?

Representative Alger: Simple. I mean that's what No Child Left Behind is about, high stakes testing. I call it that.

Senator Sylvia B. Larsen, D. 15: You don't believe that there's a proper revealing of the methodology in you're afraid there won't be adequate information on the methodology of ranking.

Representative Alger: This whole thing about testing and ranking, I put a bill in to do a study on that but that was overridden by our committee because they thought that legislative oversight committee would pursue it. I sure how so because that group has not been that dynamic in the past. I'd open this up, now Representative Kurk who is here, we talked about that and he strongly thought we ought to do this and I agree with him because we wanted to make sure that the results of this stuff would be out there. Now I know that in the accountability bill coming along we do have this same sort of thing. So you see and this is like an orange inside an apple. This bill is basically associated with not spending the state money versus the other so if this in my view, if this ranking thing should be folded into the accountability bill or something else, that's fine with me. But I would defer to Representative Kurk to talk about that a little more. The main point we were making is that the results of this he felt we were not being able to see it in the past so he wanted to be able to see it.

Senator Sylvia B. Larsen, D. 15: That leads me to a question. What if a school district opts out, are they still in the ranking system?

Representative Alger: Yes. In my discussions with the commissioner to as far as I got in all this time there are some implications that I understood and they are that they would have to report data. We would then pay them under the unfunded mandate thing, 28-A to keep the whole state reporting because you have to have to have a single accountability system. Now there's a little confusion in my mind between Title 1 schools and title, there are 400 and some schools and there is 251 title 1 I guess. But basically I think you have to have a total for the whole thing.

Senator Jane E. O'Hearn, D. 12: Further questions of the committee? Senator Foster.

Senator Joseph A. Foster, D. 13: I'm sort of wondering how you see this happening. This is a federal statute so there is federal preemption presumably and if the community opts out are they still subject to the penalty provisions of what happens to the schools in the district. If it's failing, I'm trying to remember that there's sort of step (inaudible) in the statute about having to offer I think to have students go to other places within the district. Perhaps the money is to go out. I mean can you opt out of that if it's a federal statute or are you just opting out of the obligation to comply with the remedial aspects, which I think, are what's going to cost the money. It is partially what it would cost.

Representative Alger: That's part of what we've all been trying to find out since January in the federal. I understand them to not have the last 40

years, not have reneged on stuff even though he did do something except from an administrative. They might take some of the administrative money. But as far as I know you can opt out but the implications are that you're not going to get any further federal support for that particular activity No Child Left Behind and you don't have an obligation and you're not going to get penalized. But we've asked that question and I haven't heard back. Maybe you guys too I think.

Senator Joseph A. Foster, D. 13: So when you say not penalized, so in other words if I'm a parent living in that district and my school is found to be a failing school, you're suggesting I wouldn't have the rights to assert the remedies under the statute for my kids that the statute has.

Representative Alger: Well if you kept going more. If you kept going you would.

Senator Joseph A. Foster, D. 13: When you say kept going meaning the community still being a part of the system.

Representative Alger: State's, yes right.

Senator Joseph A. Foster, D. 13: If you're thinking they're not part of the system my community couldn't use the remedies of the federal law to provide.

Representative Alger: When you say remedies.

Senator Joseph A. Foster, D. 13: The rights may be a better way to say it.

Representative Alger: I doubt it. I don't think you would but you certainly could sue and find out. But your question is if I'm a parent and I'm a failing school and the district has voted to vote out of this then the question is would you have any rights under this bill? I don't think so.

Senator Joseph A. Foster, D. 13: I'm still a citizen of the US though. Federal law would apply.

Representative Alger: Yes. It's another whole. As I say this a brand new, as I say a large experiment. It was applied in Texas, it was brought up to Washington and now it's being applied to the whole country all at once. So to what right do we have flexibility? How much local authority in the states and towns do we have versus the federal power? That's an interesting question and I'm putting this forward only simply because it seems to me that we ought to preserve as much freedom as we can obtain while we still have it. Some will say well this bill is premature, we don't need it now. If

we're going to do something like this we need to do it now before we get ourselves immersed deeply into this like the question you raised. Whereas if we wait two years and we say, "they're going to war, they're doing other things and the senators have gone on to other things, they tend to move on:" But the question you raise about federal rights they probably cannot be preempted however if a district votes out then they're not in. Now you have choice provisions under our state law. Best interest of the child, manifest hardship and those options are always open because in this law you can't under public choice you cannot move a kid from one school to another one if you only have one school in the district. That's one of its problems. That's why when Rumney was declared a failing school what did we do? They gave us money for reading recovery. Well, where did that come from? State and federal. That's awkward but that's there.

Senator Sylvia B. Larsen, D. 15: What happens if over several years a large number of school districts decide to opt out. At what point are we threatened with federal funds ending to the state as federal sanctions?

Representative Alger: Well, as I said before, if a district opts out there are obligations to stay within the reporting system, as I understand it from the commissioner. That's all. So that would continue. If we get to the point where we're getting quite a few and the money is not coming then I'd think we would have a real discussion down here. We'd be sitting in this room again. What are we going to do? Because if it is in fact becoming an unfunded federal mandate which contrary to what we're told by the undersecretary I think all of us are going to be interested that all of our school rates instead of going up 8-9% a year are going to 12-15% per year. Some may say that's fine but I say my nursing home needs help.

So your question is a very good question. I think all your questions are good questions but now is the time in my view to take a stand on this and get it laid out there and start getting some answers from the feds and the state because we've been, I don't like to use the word stonewalled but since January if a district opts out can we opt out and under what conditions. As a practical matter and I don't think...

You know Governor Benny Wentworth, Vermont didn't exist so he went and put towns in what is now Vermont. Bennington Vermont and the Governor of New York was mad as hell at him and went to the king and tried to get him out of there. It wasn't until 1764, he put 100 towns in Vermont. I'm saying unless the federal law is clear, clear, clear do what we think as legislators is the right thing to do. I think the right thing to do is to give us as much freedom as we can have and then find out as we go along what the

obligations and rights as Senator Foster says, "what' is going to happen to me under federal rights?"

Senator Jane E. O'Hearn, D. 12: Further questions? Representative Alger, we have had a number of debates on school choice. Kids that aren't doing well in one particular school and are stuck there and yet this particular piece of legislation that you bring forward and you're talking about freedom for our school districts to do as they choose. Does that include the freedom to let a child fail because the school district is not performing?

Representative Alger: Senator, I think I told you about the girl that is graduating from the naval academy and the fact that her SAT's are 3rd in the nation and the important thing that we just talked about with 2 superintendents today is not this but what is important to most parents is whether their kids are qualified to go to college and whether they'll be accepted and what they'll do on the SAT's. These tests that you're talking about have no validity. The 10th grade tests, one of our principles was here this morning and said, "how can I get the kids to take it?" So when you said failing, the NHEIP's that we're doing right now have no meaning to the students. As a result they're not a good indicator in my view. They're called high stakes as to what's going on with the kids. So when you say is it our right, what should we do about a failing school? Of course we want to take action. It starts at the local level and it does continue to here and we are trying to do that.

Senator Jane E. O'Hearn, D. 12: I thank you for the action you're taking for accountability because we need to do something about school's that are failing. I remind you that whatever costs that is that what put in by house education and not by the senate for what type of reviews that have to be done. So when it comes to cost we'll be dealing with that but I'm just going to then question you then if general funds are not to be expended on No Child Left Behind, then No Child Left Behind money should not be expended on adequacy and our requirements under Claremont. Do you agree with that?

Representative Alger: Well that's what I said here.

Senator Jane E. O'Hearn, D. 12: So thereby the testing for 3rd, 6th and 10th grade, that testing, money should not be taken for that testing under No Child Left Behind.

Representative Alger: We're spending about $3.5 million a year which I would say if you take the whole thing which is twice as much just half of it's going to be federal. We're going to have to say that this much we're doing ourselves. I agree with you. There's an audit here of what's state and what's

federal. I'm not behind that. That's part of what we're saying here about this financial statement. Because we are doing 3,6 and 10. Now we're going to do 3,4,5,6,7,8 and 10 and then this national test. That's about twice as much. So I figure in 6 years which we're going to get roughly, it's going to cost us roughly $40 some million, 3.5 times 6 so $45 million and about half of that will be ours or a little less than half of that. So I agree with you that there's an (inaudible) of what's ours and what's federal. No question in my mind. If that gets a little bit complicated, let it get complicated in my view. Others behind me may have other views of that. But it's not a simple matter because Claremont brought this and as I said to you earlier we're spending $1.2 billion in public tax money this biennium, non-property tax for public education. It was only $340 million back in 1996-1997 plus the fact that we're going up 8-9% a year. So my observation is that we ought to be very careful about taking on this No Child Left Behind without clear understanding about what that's going to pay for and whether we get the money or not and then whether we're obligated to do it if we don't get the money. I swear that in 4 or 5 years, I've been around 50 years I doubt we'll be sitting here and we'll be worrying about the exact question that Senator Larsen raised. We aren't getting the money for half a dozen or two dozen or all of our districts from the feds and we now know it and what are we going to do about it. Senator Gregg is gone, done something else, he's a commissioner or whatever. The other people that are up there, they loose interest. They have other interests. Look at medicaid. Look at the environmental. Pardon me for going on. I apologize.

Senator Jane E. O'Hearn, D. 12: Do we have any proof that the money is not going to be available? Hard proof that it is not going to be available to us.

Representative Alger: The only way that I can say that is how much has been appropriated versus what they've asked for. I believe that what they appropriated is less than what they asked for. I believe you'll find that is the case. I think one of the folks behind me can help you with that but I believe we are not already appropriating. For example, we're going from $65 million to 64 according to the numbers I got from our finance committee. Special Ed is going up from 35 to 43 and then our governor, I voted for our governor and it's interesting that you in the senate, we gave you a budget where $15 million was going to be taken from those two things and used for that thing there.

Ed Rainville's flypaper theory of money. It sticks to the first place it hits. When the money comes from the feds and goes to the state when does it get to the district? Which is another reason we need a very careful thorough knowledge, your committee, and our committee as to where the money is and where it's going. So that Interlakes, we know how much money we're getting

at Interlakes and SAU 48 and not just up here at DOE. I asked Nick Donohue about that the other day and he said to talk to Eissen. I know what I'll get there but ok, I'll try.

Senator Jane E. O'Hearn, D. 12: Any further questions? Thank you Representative Alger. Next I'd like to call Representative Kurk.

Representative Kurk: Thank you Madame Chairman. It's a pleasure to be here. For the record my name is Neal Kurk, representing Hillsborough District 48, the towns of Goffstown and Weare.

In HB 786 of which I'm a co-sponsor we're all waist high in federal, state and local politics and policies. I'm going to leave those issues to others and focus on some technical aspects on the amendment that is being proposed by Senator O'Hearn, 1568.

Senator Jane E. O'Hearn, D. 12: Representative Kurk, I haven't introduced it yet to the committee. Would you like a copy, but I'd rather you refer to the piece of legislation that you've brought forward.

Representative Kurk: That will make my testimony mighty short.

Senator Jane E. O'Hearn, D. 12: Thank you very much. I appreciate that.

Representative Kurk: Will I have an opportunity to comment?

Senator Jane E. O'Hearn, D. 12: Depending on the time. I do have another hearing that I'm probably into the time for it.

Representative Kurk: Then I shall put those comments in writing. The purpose behind HB 786 is very simple. It's to make sure that through inadvertence or otherwise the cost of No Child Left Behind are born by the federal government and not by local property tax payers and not by taxpayers in the State of New Hampshire. That's the essence of it. How that's done is of no particular moment to me but that it be done is very important for the people that I represent. If the federal government is telling us how to run our educational system which they're trying to do through this system, this particular piece of legislation and as well intended as it is, I'm concerned that there is some unintended financial consequences to this. I don't feel that the people of New Hampshire should have to pay for all of this. We got stung when it came to IDEA and a variety of other federal pieces of legislation. I think it's time to say no. The provisions here are designed to achieve that.

Let me make a couple of comments to response to questions. First, on the rankings. The department over the years has made it very clear that philosophically they have a problem with comparing school districts through ranking. I won't get into why they hold that philosophy. I'm sure they can explain it better themselves. The problem is that for many of us in the house at least, the idea of competition producing improvements is ingrained into our philosophy.

Rankings is a way of allowing districts to compare themselves to other districts and make those value judgements. It shines a spotlight on the particular areas that we provide rankings in and in effect because of the nature of American's sort of inspires us to climb that ladder to improve ourselves. That's what this is all about. Improvement.

So it's very important that rankings be available. Particularly not just in some general sense that the department feels is desirable but in individual school and grade level performance. Otherwise we'll have rankings that don't permit comparability and that's the point of this. We want rankings that allow the individual user of the rankings to select the system of rankings that make sense to them and be able to develop the considerations that they think are important.

Hence because there are many different ways to rank these, is it percentage improvement over last year, is it absolute? Hence the provision that the rankings not go into effect until the commissioner consulted with house and senate education.

The other question that was raised by Senator Foster I believe on section 2, lines 15-18 of the bill. The idea here was not that a school district could by it's own action exempt itself from federal law. As much as we might like that we are in a federal republic and there is a constitution. But it does allow and I think on line 16 it is very specific, "a district to exempt itself from all state administrative rules and regulations." Not federal. Where the result of those state regulations are an increase in general fund costs to the district. That's what they are exempting themselves from. They can't exempt themselves from the No Child Left Behind act. But only those parts of the act that through our state rules and regulations would impose additional burdens on the district.

With that Madame Chairman I will put my other comments to writing.

Senator Jane E. O'Hearn, D. 12: Any questions from the committee? Senator Foster.

Senator Joseph A. Foster, D. 13: So if that's so maybe you can enlighten me on the other part of the question. If the federal law still applies and some of the I'll call them penalty provisions for failing schools apply, the folks in that district would still be able to avail themselves of the rights and I can't remember what they are right now because I don't have the bill before me, the other bill that we went through. But tuition rights, opting out of a particular school and I think the penalties sort of ramp up for failing schools.

Representative Kurk: It's my understanding that if those are in fact federally imposed, the answer is yes. They would be able to take advantage of those. It's only if the state rules and regulations require expenditures beyond what we're covered for then there could be an opt out. There are areas where I suspect there will be conflicts and problems. I think those would be addressed in a whole variety of legal settings as well as legislative settings in the future because it's very difficult to predict now what they might be. This sets the basic policy and the standards. It's just in line with what I've said before. If the feds have told us what to do and the feds as in No Child Left Behind, that they will pay for what they tell us to, 786 simply holds the federal feet to the federally set fires.

Senator Joseph A. Foster, D. 13: Do you view to the extent that a school feels it needs additional funds to improve and no longer become a failing school. Is that a federal imposed obligation to improve or is it? In other words improving may cost money, it may not cost money. So how do we know whether the obligation either from the feds and/ or the state to in fact improve carries with it a cost?

Representative Kurk: If there's a cost of improving or any other cost imposed in my view, directly or indirectly by the federal requirements under the federal self imposed fully funded section of the federal legislation, the federal government must pay for that.

Now the problem that we're going to have is that in order to allow the state's flexibility the federal government has in effect released the states from restrictions on the use of the $65 million that we had. Roughly $48 million is to cover things that have been in the law for many years under the traditional elementary and secondary education acts. We still have the obligation to do those things plus the no child left behind obligations but the feds have said that the funding restrictions that used to say the traditional elementary education act requirements could be funded by this much money and the additional money for No Child Left Behind, they've taken away those internal divisions. So now we're going to get into arguments as to whether or not there is enough money to fund No Child Left Behind. The feds are going to say that "hey, you had $65 million, what's your problem." We're going to

say, "yes, but $40-48 million of that was to deal with obligations that we previously had that you haven't removed from us. You've just said we can use this funding for No Child Left Behind." So it may be that from a technical point of view there is always enough federal money to comply with No Child Left Behind but there isn't any federal money to comply with the other parts of the Elementary and Secondary Education Act. So we're going to find ourselves in a technical morass that may have to be sorted out by the courts but I find potentially confusing the situation. So I'm not sure how to deal with that.

Senator Sylvia B. Larsen, D. 15: Do you see a potential consequence that we will loose federal funding if we pass this and a number of school districts opted out?

Representative Kurk: No I don't because the school districts cannot opt out of the federal requirements. They can only opt out of the state requirements that impose additional responsibilities on them so I don't see any issue there. If they are not fulfilling the federal requirements then of course the feds can take action against them whether this legislation was passed or not.

Senator Jane E. O'Hearn, D. 12: Representative Kurk, when it comes to administrative rules aren't departments required the same as we under 28:A they cannot write a rule that will cost a school extra money?

Representative Kurk: That's partially correct senator but I don't believe a general rule as you stated it is accurate. Apparently and I think you need to check with legal counsel on this, apparently if a policy has been in effect before 1984 you can vary that policy or update it without violating 28:A. It's imposing something new. The answer depends upon what the change is that the rule does. Some of those changes could conceivably could violate 28:A but I suspect that many of them would not but for legislation would not be challengeable in Administrative Rules. This tells the department, it goes beyond 28:A in terms of protecting property tax payers.

Senator Jane E. O'Hearn, D. 12: Does this section on Administrative Rules and Regulations refer specifically to what is written from our state agency pertaining to No Child Left Behind?

Representative Kurk: Yes. In order, you're talking about section 3, roman 3 on lines 19-23?

Senator Jane E. O'Hearn, D. 12: I'm talking about, no that's their time frame of compliance. I'm talking about line 16-17. Exempt from any state

administrative rules adopted for the purposes of No Child Left Behind if the compliance is not fully covered by federal funds.

Representative Kurk: By the additional federal funds. I've distinguished using the word additional, excuse me Representative Alger has distinguished between the basic grant that we get and the additional $18 million of No Child Left Behind money by that word. But the way this is written it would only apply to administrative rules specifically designed to implement No Child Left Behind. It would not apply to the ordinary business that the department undertakes.

Senator Jane E. O'Hearn, D. 12: Under the accountability piece of legislation that has an oversight committee, all the administrative rules have to be approved by the oversight committee before they can be brought to JLCAR. Does that then have a different objective? This piece?

Representative Kurk: It certainly brings the legislature into the process at an earlier stage. I might say a very desirable change that is. However, there is nothing that would require the legislature or this particular committee to act in a certain way. How it acts would depend upon the particular views of its members at the particular time that the proposal was taken up. If this were in effect this would govern those individuals on that committee as well as their own views. So I think this is an essential support for that group to make sure that for whatever reason they do not pass on additional cost to local property taxpayers or to the states general fund.

Senator Jane E. O'Hearn, D. 12: My next question is from the budget that was passed by the House over to us is there a guarantee that none of the general funds, none of the federal funds are being used for any purposes of our Claremont requirements.

Representative Kurk: Section 10 in House Bill 1-A has some problems in this area. It requires the commissioner to take $5 million of No Child Left Behind money in '04 and $10 million in '05 and use them to offset general fund expenditures. My understanding is that the commissioner has done this with the $5 million in a way that comports with No Child Left Behind. As for the $10 million, the last that I had spoken with him he hadn't figured out how to do that yet and the problem that I have with that requirement is that it would appear to take money that would go to the localities or could be used by the localities to cover their additional No Child Left Behind costs. It takes that and uses it to balance the budget, which is troublesome. So I think you're raising a very important point that needs to be addressed.

Senator Jane E. O'Hearn, D. 12: Are you agreeing with that philosophy of using federal dollars to balance our budget and our requirements on adequacy in Claremont? By passing the budget the budget that you've passed.

Representative Kurk: You've switched from No Child Left Behind to adequacy. I don't believe that what is in the budget has any effect on that, this section has any effect on adequacy. I do believe that it has an effect on No Child Left Behind.

Senator Jane E. O'Hearn, D. 12: Then I'll phrase it another way. Do you think that we should be using federal No Child Left Behind dollars to fund our shortfalls in our general fund to meet our requirements for adequacy?

Representative Kurk: I was one of the two sponsors of HB 1 and voted in favor of it in the house and so you're putting me in a rather awkward position. I do have problems with that section and you've focused on them. Very good question Senator.

Senator Jane E. O'Hearn, D. 12: The next thing is when people are using IDEA as their guideline and from all the work that's been done on IDEA under my work in both the House and the Senate, the federal government never said they were going to fully fund 40% of special education. They said they would fund *up* to 40% of the education costs for special education students so there's a misnomer in IDEA. Do you agree that using IDEA compared to No Child Left Behind is the same thing?

Representative Kurk: I was not aware the language was "up to." Thank you for clarifying that. My understanding is that No Child Left Behind, the language is not "up to." The language is fully fund. So there is a significant difference between those two. The other point that needs to be made is that I'm sure that the argument will come later on. The feds will say that "we've fully funded it" and we'll say that they didn't. The distinction will be between the direct costs and the indirect costs. For example, if there's a requirement that a paraprofessional get certified in some way and that costs $200 but as a result of certification these paraprofessionals are now more desirable in the job market and to retain them all of the school districts raise their pay by 20% and that's happened in Weare. I don't know if the numbers are 20% but there is a significant pay increase for that class of employee. It's clear to most folks that the reason for the pay increase has to do with the certification. But is that a cost attributable to No Child Left Behind. I would say yes. It's an indirect cost. Others would say, "no, no, no. The only thing we required was certification." The same thing applies to regular classroom teachers who are now going to have to be, I've forgotten the technical

language, extremely qualified. It's relatively inexpensive to get them extremely qualified because basically that's a one-time expense. The additional salaries that those higher qualifications are likely to command is an indirect cost which is not going to be covered as I understand it and was not intended to be covered by No child Left Behind and yet local taxpayers are going to have to pick up the extra costs of that kind of education. Those are the two primary examples of costs that folks in your towns and mine are going to have to pay that the federal government is not going to in any way step up to the plate and own.

Senator Jane E. O'Hearn, D. 12: That's an assumption that highly qualified

Tape Change

Representative Kurk: It's a prediction on my part and I have some evidence in my own town from this year's school board meeting. I can only tell you in my opinion that this is likely to happen.

Senator Jane E. O'Hearn, D. 12: That's a choice of your local town.

Representative Kurk: No, it's not a choice to have these folks certified. That you have to do to comply with No Child Left Behind. What is a choice is to how much to pay them. If the feeling on the school board was "we're not going to be able to retain these people and they'll run to the neighboring towns unless we pay higher wages. That to me is a No Child Left Behind cost.

Senator Jane E. O'Hearn, D. 12: I think I will carry my arguments with you on that particular piece at another time. My final question to you is the first section, line 13, "no general funds shall be appropriated, expended or encumbered to implement the federal No Child Left Behind." What if we found something that we liked in No Child Left Behind that we wanted to expand in this state such as early childhood and we couldn't because of this?

Representative Kurk: I don't think this precludes the legislature from taking subsequent action that would carve out an exception to this. Because please not that this not only talks about the state it also talks about political subdivisions. So if this were to pass, Senator O'Hearn and the legislature were to adopt some early childhood initiatives which was intended to go beyond or implement No Child Left Behind I think it could do so. Just as we always believe the later action supercedes to the extent necessary the earlier action we could do that.

Senator Jane E. O'Hearn, D. 12: Thank you. Any further questions? Thank you.

Representative Kurk: I appreciate the pointedness of that question. Thank you. It's always a pleasure.

Senator Jane E. O'Hearn, D. 12: Thank you Representative Kurk. Next I'd like to call Representative Dickinson. I'm going to start to ask people to keep their remarks to the subject and please not to repeat ourselves because we're already into our next hearing and I want to give everyone the opportunity to speak.

Representative Dickinson: Thank you Madame Chairman and members of the Senate Education Committee. My name is Howard Dickinson and I'm from Carroll County District #4. I appear before you this afternoon in very, very strong support of HB 786. I will not attempt to repeat the testimony of those who went before even though I agree with them entirely. I'm here partly on behalf of the many, many towns in the State of New Hampshire who have passed warrant articles for spring which reflect what you find in this bill.

In fact I do not know of any warrant articles that did not pass. What we have in the State of New Hampshire whether or not the special education is up to 40% there is a very strong conviction that we have been left hanging by the federal government in respect to federal, the cost of the special education. We do not want to repeat this boondoggle. Therefore I was delighted when Representative Alger asked me to co-sponsor this bill because I think the whole and I might add the analysis found on the front page of the House Bill is remarkably accurate and it's not generally so. This is in fact.

The whole heart of the subject is to be found between lines 13-18 in the bill basically roman 1 & 2. The other parts of the bill bolster up those concepts, which you can find there. That's all I have to say but I truly hope this committee will see fit to support what is in this bill. I have read your amendment and I will only refer to it in a tangential way by saying that there are different aspects in that amendment which could be, rather than being instead of some these provisions could be in addition to. I'll leave it right there. In fact I think a couple are great. I won't refer to them because at some point that will be taken up.

That's all I have to say.

Senator Jane E. O'Hearn, D. 12: Thank you very much. Senator Johnson.

Senator Carl R. Johnson, D. 2: Would you agree that there are a lot of untested scenarios out there and if we continue to debate those untested scenarios we'll be here for another month.

Representative Dickinson: I couldn't agree with you more. I try to avoid those except in my nightmares because you can play these what if games forever. I think this is a perfectly straightforward concept. Basically the people in Washington who support this, some of whom I've talked to are concerned about this bill and for the life of me I can't understand why. All we're doing is saying we agree with No Child Left Behind. We agree that it should be fully funded. We're only concerned that perhaps 5, 6, 10 maybe 12, 15 or 20 years down the road the whole different group of people and a whole different group of priorities will exist in Washington and the rug may be pulled out from under us. Just as we can change state law to modify what we have here on this paper today the feds can change federal law and that's what we're after.

Senator Carl R. Johnson, D. 2: You support what it's intent is

Representative Dickinson: I do it all the time.

Senator Jane E. O'Hearn, D. 12: Further questions. Thank you very much. Next I'd like to call Representative Mark Carter who is in support of the bill. While Mark is coming up, Representative Weyler is in favor but not wishing to speak and Representative Dodge is in favor but not wishing to speak. Welcome to Senate Education.

Representative Carter: Thank you Madame Chair, good to see you, distinguished members of Senate Education Committee. I would like to say that I'm speaking in opposition to the bill. For the record my name is Representative Mark Carter from Peterborough, I represent House District 44 made up of Peterborough, Sharon, Greenville and New Ipswich. I am also a father of 4 publicly educated children. Before I begin my testimony in earnest I would like to say that I know Commissioner Mike Donahue, commissioner Nick Donahue is a friend of mine and he's far more articulate than the testimony we've heard here today. Given this committee's extensive knowledge on the subject of education in New Hampshire and in the interest of brevity I have chosen to give my testimony today in the form of a parliamentary inquiry in opposition to 786.

So if you know as I do that HB 786 was never debated on the House floor in exchange for a negotiated last minute floor amendment that drastically reduced the scope of subdivision 21 and 12 Roman 2 which is the key provision of this bill. So that a school district may only exempt themselves

from No Child Left Behind by majority vote if the act is not fully funded. If you know as I do that it's stated in the purpose clause of HB 786 itself that federal law 104-4 of 1995 which is post IDEA expressly prohibits the imposition of unfunded mandates upon the states and that further section 9527 of the No Child Left Behind Act indicates if the provisions of the act are not fully funded then a state may not be required to comply with it. If you know as I do that the House Finance Committee chair who just testified today and bill sponsor Representative Neil Kurk has testified to the House Education Committee that No Child Left Behind is fully funded for at least the next two years and the Josiah Bartlett Center has studied No Child Left Behind and found it to be fully funded. The federal budget office has signed off on No Child Left Behind as being fully funded as required under the federal law.

That United States Senator Judd Gregg has said and I quote, "one of the biggest misconceptions is that No Child Left Behind does not have sufficient funding." The New Hampshire School Administrators Association have studied the bill and have found that it's entirely fully funded. If you know as I do that there is no debate that No Child Left Behind is fully funded for at least the next two years and the fact is that it contains a $6 million surplus for New Hampshire this year and a $3 million surplus for next year. If you believe as I believe that we should act from a basis of knowledge and reason in two years if we need to act at all at that point and not from suspicion and speculation now. Above all if you believe as I believe that standardized testing and school accountability in New Hampshire are long overdue in our schools and that even if we did need to provide some funding at the state level to enhance the effectiveness of No Child Left Behind at some point in the future then that money will be a truly worthwhile investment in our children and I haven't heard that mentioned during any of the prior testimony.

Would you not vote that HB 786 is inexpedient to legislate or at least would you not amend HB 786 so that it will work in complete concert with No Child Left Behind and thus remove from jeopardy up to $65 million in federal funds currently utilized by New Hampshire under No Child Left Behind.

A few brief remarks, very brief based on prior testimony. Representative Alger who I greatly respect and admire, he's my vice-chairman said, "what is the prudent thing to do?" Well, reasonable people can disagree but to me the prudent thing is not to jeopardize federal funding until and unless it's necessary.

Senator Larsen questioned about Roman 2, defining compliance with No Child Left Behind is indeed going to be problematic and often subjective and

thus it's potentially troublesome. Doctor Joyce if he holds true to form and he's going to hold a 1200 page copy of the No Child Left Behind Act for you to see. The constitution of the United States would be 1200 pages if it were drafted in today's legal environment so don't penalize the No Child Left Behind Act for being comprehensive.

Finally, in my view we should be testing our children and holding our schools and parents accountable already in New Hampshire. If you look at it that way, No Child Left Behind is a federal grant program that makes what we should already be doing more affordable.

So I thank you for the opportunity to testify here today. I will in the next day or two provide you with a copy of my remarks. If I can answer any questions I will do so.

Senator Jane E. O'Hearn, D. 12: Questions of Representative Carter? Thank you very much. Next I'd like to call Mark Joyce.

Dr. Joyce: Is it all right if our team comes up together?

Senator Jane E. O'Hearn, D. 12: Yes, it's all right. It would be Scott AndersEn, Nate Greenberg, Dr. Chuck Ott. I also have a Dr. Anne Jacoby wishing to speak. Dr. Jacoby I will call you as soon as these people finish.

Dr. Mark Joyce: Thank you Senator O'Hearn and members of the committee. It is my pleasure to be here. I would never want to disappoint Representative Carter to demonstrate a copy of his favorite law and that is Public Law, No Child Left Behind.

The issue that is pertinent to our discussion today is this is an example of just one section of the regulations that have been promulgated since the law was developed. Already by estimate 3,000 pages of administrative rules from the federal government guiding the practices of the State of New Hampshire and every other state. We have a team of 3 school superintendents here today whom we're going to work on a 2 minute rule and try to cut our time to make best use of your time.

But their challenge is to demonstrate to you from their communities how they see the impact of the No Child Left Behind law.

See Attachment C

You have a packet that covers our general testimony on that subject together with a copy of school districts that have voted under warrants of this year's

meeting. 83 school districts nearly unanimously voted their endorsement of a warrant article encouraging you, our state reps and our federal reps to limit any impact of unfunded mandates on communities.

We do not quibble with the provision of universal literacy for all kids. We believe that's more important and more appropriately your role in the state and our role in individual school districts. I would like to add just one point regarding questions that Senator Foster raised earlier. That is regarding public law 104-4,5 US Code. It does indeed restrict the federal government from imposing new unfunded mandates and states and municipalities. However, that law does not apply, does not apply to federal grant statutes. That has been decided by US courts as it applies to IDEA. So the much talked about, much publicized prohibition that this law cannot carry conditional funding mandates is not true because it is similar to other grant statutes. In fact, unlike statutes enacted under the interstate commerce clause or the 14th amendment, federal grant statutes apply only to states and municipalities that elect to receive the applicable dollars.

So in answer to your specific question, it's our understanding and that of the Council of School Attorneys that the provisions are not universally applicable to all school districts but only to those who receive, who choose to apply for and receive the federal grant. That's what makes No Child Left Behind so troublesome. It in fact applies if adopted by you the state to all school districts not by federal authority but by your authority. In that regard will invoke the unfunded mandates statutes of New Hampshire law providing a much different definition of educational adequacy for our schools and our communities and in turn for you as the providers of educational adequacy for all school districts.

I'd like to turn it over to Dr. Scott AndersEn from the Interlakes School District to highlight some examples from his community.

Dr. Scott AndersEn: Thank you. I'm glad to have the opportunity to speak with you today. I'm glad to hear that Representative Carter spoke about the students. That was nice to hear that word brought up once during this discussion today. I'm going to attempt to focus a good portion of my discussion on students and then respond to some previous testimony.

I also have a copy of my full testimony, which I have amended to try to meet the 2-minute rule, which I do not promise by the way, but I'll do my best.

See Attachment D

I think everybody here, everybody in the State of New Hampshire, we're all about improving education. Everybody wants our students to learn to their best, that's a given. We agree upon that. That's wonderful common ground. We also talk about, I've heard some discussion today about the assessment program. We spent a lot of time speaking about the assessment components of No Child Left Behind, there are many other components that we have not spoken about and I'm not going to get into those but I just highlight that.

I know in my district and Senator Johnson can attest to this, we are just about finishing a 3 year plan, project that we have been working on designing a new K-12 assessment program. It's comprehensive and not solely focused on test scores. That is a much stronger component of success and student achievement than the NHEIP is ever going to be. I read in the paper today that Senators Gregg and Sununu and everybody here can also agree that there is more dollars coming to the State of New Hampshire based upon No Child Left Behind. No one's arguing that. We are getting more dollars.

However, by saying that we're getting more money does not mean that the money we're getting does not cover what we're being asked to do. I mentioned my district Interlakes. For the past three years we have been running an integrated early intervention program in grades K-3. This takes Title 1 dollars combined with IDEA dollars combined with our own local resources that taxpayers opted to spend in an integrated program to help with early intervention. We have seen a 3-year trend of increased test scores at 3rd grade level and I think partly due to this program. The concern I have now is in meeting the regulations of No Child Left Behind, our district is going to be forced with 3 decisions. Cut the early intervention program so we can meet the requirements of No Child Left Behind or use local dollars to fully fund the early intervention program, which is then putting a burden on the local taxpayers. Or 3, not comply with No Child Left Behind. I'm not comfortable with any of those options and I don't think they present a very good scenario for my school district. My preference obviously as currently funded and then also to have sufficient dollars to implement the No Child Left Behind legislation.

We're also being asked by the feds to comply with their mandates under No Child Left Behind. Also with the short-funded IDEA, special ed law and now under No Child Left Behind to put the icing on the cake our state is considering short changing us even further through the budget process and footnote 10. I can't see the wisdom in any of this.

When No Child Left Behind was signed we were told that the bill would receive $8 billion of additional new money this year. The federal government passed $1.8 billion. Now the $8 billion was there number and they

shortchanged it to less than 25% of what they said they needed. So that begs the question, the question was asked today by the chairman is do we have proof that the money is not available. My question is, do we have any type of formula that was used to calculate how they determine how much money we are to get. If we're getting fully funded, how do they determine that we're fully funded? That's a very good question. I've not had anybody be able to answer that. How do we know that we are fully funded? What formula? What matrixes? What ever? What was used to determine that the State of New Hampshire is getting the dollars they need?

Finally there was a question about the students having the freedom to fail. Students have the freedom to fail in any environment whether it's No Child Left Behind, our current system or anything else we have. The problem with No Child Left Behind is that it is measuring groups of students. Measuring groups of students does not indicate success or failure. We can't say a group was successful or unsuccessful based upon measuring different groups of students. If we're really concerned about not leaving a child left behind, let's start looking at both group scores combined with individual student growth. That's the only reasonable, intelligent way to determine whether we're actually failing or not failing.

Then there was some discussion today the language of IDEA saying up to 40%. The key is not whether we're at 40%. We've never even been close to 40%. The key is that there is a mandate from the federal government. We have to comply. We don't have the dollars to do so it's fallen upon the local taxpayer. No Child Left Behind is the exact same animal. We have an opportunity now to make a difference and I urge your support of this bill. Thank you.

Dr. Nate Greenberg: I'm the Superintendent of Schools in Londonderry. Madame Chairman and members of the committee it's a pleasure to have the opportunity to speak to you today. I want to spend a little bit of time up front briefly trying to frame my argument. We are looking at a grant program, federal government. If we accept the money then we're obligated to comply with the rules and regulations of the grant. The stipulation on the federal government's part is to fully fund that grant. But we can't look at No Child Left Behind in isolation in the funding for title 1 through 6. It has to be coupled with IDEA then it also has to be coupled with the state's response to the reports to the plan that we submit to receive funding for No Child Left Behind. So by extension the state action does really respond to No Child Left Behind. So all the actions combined form a comprehensive plan. Just looking at one particular piece of legislation I think, diminishes the impact that this will have. So if I look at IDEA, I look at No Child Left Behind, I look at parts to the state's plan that have been submitted in response to No

Child Left Behind and also some components of the upcoming accountability bill I can say to you without equivocation we are significantly behind in dollars.

Let me give you some specifics. In 1992 we had received the full allotment for IDEA. My school district would have received $1 million in additional funds. This year after the budget process we found out that we were no longer eligible for Title 1 money so therefore I've lost another $160,000. My school board encouraged me too and said go back and find your money, reconfigure it so you can provide your services. The technology plan alone submitted by the state in response to No Child Left Behind will cost my district and I'm fairly well (inaudible) an additional $1.1 million dollars. So by my math I'm already $2.7 million in the hole as far as No Child Left Behind is concerned.

So when I look at the funding package that we're talking about and I look at the whole funding package, what I see is an angel food cake. When I walked into the bakery for the first time and looked at an angel food cake, you say that's substantial, that's substantive. But the first time you put a knife into it you discover that it's mostly air. That's where we are.

There are 450 schools in this state. 199 of them are no longer receiving Title 1 money. There is a net decrease in the amount of money we're getting for Title 1 services. Am I saying that we shouldn't provide it? I honestly think we should because we're using local dollars to do it. When we look at No Child Left Behind we have to look at it's extension and the extension of No Child Left Behind legislation. Is the concept there? Yes. We can argue from now to when the cows come home on the implementation. I think there are significant areas that have to be discussed regarding implementation. But I think the past has showed, when I was teaching, I explained to my children, study history not to repeat the mistakes of the past. We have seen 25 years of the federal government not appropriating money that they have authorized.

Unfortunately I am here to say that if I look at the connections here, a very good assumption is that we will not receive the money that is authorized. We will not receive the money to make the corrective action.

One more comment. If the accountability bill moves forward which is tied directly into No Child Left Behind and I am not receiving Title 1 money, what money am I going to use for corrective action in the development of the plan?

Thank you very much for the opportunity to speak to you.

Dr. Chuck Ott, SAU 56: Thank you Madame Chair and senators. Thank you for your attention. I'll try to be very brief. I support HB 786. I complement its sponsors for taking what I believe is a principal stand. I think the values underlying this bill are related to the integrity of the federal republican system of government. I think that is of immeasurable worth. But I want to address one specific area of No Child Left Behind. We've invoked the virtue of prudence here today. I think it is prudent for us all to be aware of the implications of the acceptable yearly progress stipulations in No Child Left Behind. With the inception of this bill the congressional research service estimated that the adequate yearly progress provisions of No Child Left Behind would classify over 90% of our schools as failing. You will recall that in the original bill the designation was "failing schools" not schools in need of improvement. This is contained by the way in a report from your very colleagues in the national conference of state legislatures.

Now lest you think this is an exaggeration and I know that some people have argued that it is consider this. Succeeding on acceptable yearly progress means that not only the students at each grade level taken as a whole meet a cut score for proficiency but also each of 9 subgroups. Now considering a very typical elementary school in New Hampshire, quite conservatively there could be 45 ways to fail to meet acceptable yearly progress. If you look at students with disabilities alone currently less than 25% of that subgroup would meet the cut score that's been offered by the state Department of Education. Interestingly....

Senator Jane E. O'Hearn, D. 12: I'm going to have to ask you since we're really getting into our, it's getting late. I'd ask you to please keep to the bill itself rather than getting into where the No Child Left Behind legislation really is.

Dr. Ott: Thank you Madame Chairman. The connection I would make there is that if we have 90% of our schools failing is the State of New Hampshire and the Department of Education prepared to move in and take over those schools as one of the corrective actions calls for in year 4. I think that does have a direct impact on the cost of No Child Left Behind.

I will rest at that point.

Senator Jane E. O'Hearn, D. 12: Before I get to Dr. Jacoby are there any questions for this gentleman? Senator Foster.

Senator Joseph A. Foster, D. 13: I wanted to follow-up on your answer to me because I'm not sure I understood it. In fact, I know I didn't understand it but I think it's me. Are you, were you saying if it's the state's decision to

become part of this and by accepting any No Child Left Behind money the state is in effect imposing on the local communities, the application of the bill whether or not they opt out.

Dr. Joyce: That is one assertion and we have written to Secretary Page, Senator Gregg and then responded to 2 months later that the question needs to be answered by our commissioner. We wrote to our commissioner 2 months ago and have yet to receive a response. That question is a core question. How does the state interpret that? According to Secretary Page and Senator Gregg that's a state decision, not a federal decision. It's seminal to this issue however. From the Council of School Attorney's opinion clearly because this is a federal grant statute provision it is not the same as a statute approved by the federal government applicable to all citizens of our state but rather it's contingent upon the state or the municipality accepting the grant. All 786 at a core is asking for is a clear pathway for a community to articulate that it is not interested in this grant. As a result should not be subjected to the cost impact of it. If the state wishes to do it as state policy then obviously New Hampshire constitution would say that the state would pay it. What we fear happening is a trip wire. You're being walked into a trap where the state will be responsible for when that answer comes it may be after the application is completely done implying that yes in fact you have now obligated every community. The federal government is clear they're free of obligation of cost.

Senator Joseph A. Foster, D. 13: To follow up on this gentlemen to comment if you had 90%, let's not even say it's that many, let's say 20% failing schools and some of those communities had opted out, you're saying that the state would have locked itself into the obligation because the application of the federal law and remedies would still apply but the community itself wouldn't have the obligation to pay to make the remedial actions necessary to make the school no longer a school in need of improvement is the actual term.

Dr. Joyce: There are too many ifs there for me to follow that argument. But I think if in fact the state chose to reject 786, let's say they approved it, gave the ability for school districts to opt out. Mr. Greenberg identified there were nearly 200 schools that get no Title 1 money. They logically would opt out because it's all cost to them. They're not getting any whereas Manchester and Nashua are getting a large amount of resource. So they opt out. The interventions of No Child Left Behind would not apply to that community.

Senator Joseph A. Foster, D. 13: At all?

Dr. Joyce: At all. Unless the state adopts those as requirements in it's own laws like SB 107. SB 107 obviously as it becomes a final form and approved

is applicable to all school districts in this state because it is an action by the state government. So if the interventions were there they would apply still to the community that opted out.

Senator Joseph A. Foster, D. 13: But only the interventions there?

Dr. Joyce: Yes.

Senator Jane E. O'Hearn, D. 12: Dr. Joyce you know we have a Claremont suit that has required sanctions and school administrators have supported sanctions and intervention from the Department of Ed.

Dr. Joyce: Absolutely.

Senator Jane E. O'Hearn, D. 12: It is not a matter of title 1, non-title 1 schools opting out. They are already out of No Child Left Behind sanctions. Non-title 1 schools are not required to follow the sanctions that are federally required because they are title 1 Vs non-title 1 deals with the wealth of the district.

Dr. Joyce: That's not my understanding. After 2005 these standards become applicable to all school districts whether or not they get Title 1 money or not. A certain supplemental resource intervention, the fact that you need to use excess Title 1 money, that one is exempt but the other provisions of AYP and requirements apply to all.

Senator Jane E. O'Hearn, D. 12: You have a problem with the children that are below basic level on our tests, should not have an obligation with the $900 million that the state is spending now and the additional $60-70 million in just non-title 1 dollars that the feds are spending that there shouldn't be some attempt to take care of those children that are left behind.

Dr. Joyce: Absolutely. Every day our work is for those kids. The question is should a federal government that is supplying at the most 6% of the resource author 3000 pages of rules. I say no. The community that spends 75% should say yes.

Senator Jane E. O'Hearn, D. 12: When it comes to past administrations that have offered more money for more teachers in the classroom and school boards and school administrators are welcoming this money from the federal government recognizing that there is another follow-up which is the cost of building aide to put those teachers in the classroom, there is no complaints then?

Dr. Joyce: Are you speaking of President Bush's initiative and goals 2000. I'm talking President Clinton's administration who wanted to reduce class sizes, put more teachers in the classroom, yet there's another mandate on the states then to build more classrooms so these teachers can be used.

Dr. Joyce: I don't know that it was a mandate because local communities chose to abide by it.

Senator Jane E. O'Hearn, D. 12: A mandate on the state to then build more classrooms in order to fit the needs of the local community.

Dr. Joyce: I wouldn't see a vote of a district meeting under state law as a mandate. That's local voters making a decision about capacity. But the mandate that class size reduction was a great advantage to learners. That is part of this money that is addressed in titles 1-6 now.

Senator Jane E. O'Hearn, D. 12: But wouldn't you agree that it also cost the state more money because we then had to provide building aide?

Dr. Joyce: I don't think so.

Senator Jane E. O'Hearn, D. 12: Any further questions? Thank you very much. Dr. Jacoby. Please don't repeat anything that's already been said.

Dr. Anne Jacoby, SAU #12: I thought Dr. Greenberg was going to stay up here because I'm one member of the school board that he keeps referring to, as vice-chairperson of the Londonderry School Board. My comments will be brief because I would like to respond to your comments about the teachers. One of the things I have not heard addressed and I think is central to the legislation of No Child Left Behind being extremely difficult to enforce, therefore I strongly support this bill, is the teacher shortage that is only getting worse. We're asking our middle school teachers who are not certified.

Senator Jane E. O'Hearn, D. 12: I would ask you please to refer to the bill 786 and not to other.

Dr. Jacoby: I will refer to that but you asked us to respond as issues that we're also addressing and why we support this bill as members of the school board. We are facing a teacher shortage and that has not been addressed anywhere in No Child Left Behind. In addition to it asking for increased certification. I think what happened also in looking at the single criterion is that there will always be those student who test novice but they will be successful.

In Texas with this very same legislation.

Senator Jane E. O'Hearn, D. 12: Dr. Jacoby, this does not relate to what this bill is about and I would ask that you relate to what this bill is trying to address.

Dr. Jacoby: I will summarize then by saying that as a member of the school board these are issues that I will be dealing with daily. Teaching students which I think needs to be mentioned more and I think that if to strongly support this legislation will do our students and teachers a great service with the challenges they face in the future.

Senator Jane E. O'Hearn, D. 12: Any other questions of the committee? Thank you very much. Dean Michener.

Dean Michener, New Hampshire School Boards Association: Thank you Madame Chair. I'm very cognizant of the time and how long you've been here. I have written testimony that I will leave with the committee. I would just like to briefly highlight a couple of items.

See Attachment E

First of all, it's already been brought up but I would like to clarify the fact that the No Child Left Behind Act is a federal grant statute and the Congressional Budget office report of May 9, 2001 did refer to the fact that the bill contains no mandates as defined in the unfunded mandates reform act. The cost incurred by state and local governments would only result from complying with the conditions of aide.

So I think that does clarify that.

The other point that I think I'd like to raise is basically who pays and who controls. The federal government spends only 1.5% of its budget on K-12 education. New Hampshire's share is about 6% of the total revenues that support our K-12 education programs. I would just admit that this level of federal financial participation does not come close to justifying the extraordinary level of control that is sought in the No Child Left Behind Act.

I think much has already been made and I won't repeat on the issue of promised federal dollars. It is true that the IDEA was up to 40% but the implications and the acknowledgement at the time was not that we would be talking about 10, 12 or getting close to 18% now. The issue was up to 40% in terms of in the 30's.

Footnote 10 of the state budget also really concerns me with the state's attempt to intercept money that would be flowing through to local school districts.

Finally, I just want to make sure that you are aware that well over 80 school districts around the state at their local school district meetings just last March adopted a warrant article stating their opposition to the un and under funded mandates contained in the No Child Left Behind Act.

So in the light of time, I'll close my comments there and leave my written testimony.

Senator Jane E. O'Hearn, D. 12: Questions? Thank you very much.

Mr. Michener: Thank you for your time.

Senator Jane E. O'Hearn, D. 12: Next I'd like to call Sarah Browning from the Department of Ed.

Sarah Browning, Department of Education: My name is Sarah Browning. I am special assistant to the commissioner for the Department of Education. But I'm tempted to introduce myself as Paul Harvey because I'm here to tell you the rest of the story.

I think that we're here today with very serious concerns about HB 786 as it sits before you. I think you've identified that there are 2 overriding concerns that school districts have. One has to do with the unfunded mandates and the other has to do with abiding by administrative rules. The school administrators association has set up a wonderful syllogism for you whereby they've told you that the unfunded mandate law at the federal level doesn't apply to grant programs. That No Child Left Behind is a grant program and therefore No Child Left Behind may mandate to states and locals that they perform certain activities without funding them. The rest of the story is that No Child Left Behind in section 9527 contains language that says nothing in this act shall be construed to authorize the federal government to mandate state or subdivisions to expend funds or incur costs not paid for under the SAC. So I think that the bill itself contains the language that I think takes care of the unfunded federal mandate language. Our concern with the exemption from the administrative rules promulgated at the state level is again multiple questions. One raised already by Senator Larsen. Who decides? I think that reasonable people doing reasonable things in different districts will come with different approaches to resolve any problem. What it may cost one district because of its decisions may be far more or far less than another district based on its decisions. So there's no language in this bill that

sets up a mechanism for who decides when an administrative rule was promulgated by the department in response to No Child Left Behind or for some other reason. There's no mechanism for identifying whether or not that rule will cost the local districts additional money or how much money or whether there's money going back to them at the federal or state level to support that.

I'd like to ask you to look at section 3 of the bill in which there is language that requires that the results of any state wide testing done under No Child Left Behind be ranked. I would ask you to tell me whether you think that's a No Child Left Behind requirement or a state requirement. No Child Left Behind requires that all states have a single accountability system which through SB 107 we're in the process of doing. But the state of New Hampshire also has a requirement set out by the state supreme court that it have an accountability system. So are the provisions in SB 107 No Child Left Behind provisions or are they state provisions? Therefore any rules promulgated under that bill should it become law, would it become state regulations or No Child Left Behind regulations? Who's going to make that call and what does the department do when a district says we're not going to abide by this because we believe it's promulgated as a result of No Child Left Behind and not as a result of a state requirement. It creates an administrative nightmare beyond belief for the department to try and administer.

So with that I would be happy to answer any of your questions and ask that you find this bill Inexpedient to Legislate because it's not necessary. Thank you.

Senator Jane E. O'Hearn, D. 12: Thank you. Questions of Sarah? Senator Larsen.

Senator Sylvia B. Larsen, D. 15: Your reference to the language about being exempt from state administrative rules. I feel like I'm in this circuitous thought process because so many of the administrative rules and authorization we've given you recently, for example, in the accountability to set targeted performance for school districts by administrative rule is for the implementation of an accountability system required by No Child Left Behind. If a school district is able to be exempt from those targets I guess that gets to your statement that these administrative rules, many of them are No Child Left Behind rules but they're also state rules. I'm just wondering how you're going to sort through what are state rules and what's a No Child Left Behind rule.

Ms. Browning: What I'm trying to tell you is that I don't know. It's a nightmare and that's why I'm saying we have great concerns about passing this bill. Because it will set up an incomplete system over which we will have no guidance in terms of how to identify those, who gets to make the call, what happens if a school district votes to take a position that they're exempt from a particular body of administrative rules and the department disagrees with that position. There's no mechanism in this bill to resolve those disputes. There's no arbiter. There's no one who says that you're right and you're wrong, this is a No Child Left Behind rule, this is a state rule.

Senator Sylvia B. Larsen, D. 15: In line 19, Roman numeral 3 where the state board is prohibited from adopting new administrative rules there again the language of the accountability system that the Senate just passed suggested that you adopt new administrative rules within the next year. This would appear to prohibit that unless you brought them all back to the House and Senate within 60 days.

Ms. Browning: It does make a muddle of the delegation issue. I think while that is troublesome it's probably not our most, our highest concern. I think that 60 days if we were to have to submit a written report to the House and Senate Education Committees we could certainly do that while we were preparing the language of the rules. The language of the bill doesn't say that the House and Senate Education Committee gets to approve the submission, just that you have 60 days notice that we're about to enter rulemaking. I think we could accomplish that. It would be troublesome but not as troublesome as some of the other provisions. It doesn't take into account that the Senate and House Education Committees aren't in session for significant periods of time during the year, say July 1 to January 1.

Senator Sylvia B. Larsen, D. 15: Say 80 school districts who have adopted this opt out were to in fact opt out under this, what would be the consequence of that? They'd still be ranked. There would be no follow through in terms of accountability.

Ms. Browning: I think it's going to be dicey. They will, if you make the assumption that the accountability bill as it left the Senate becomes law, we now have a system in which now students are going to be measured. We have prior to the accountability bill have a system which students were measured annually in 3 grades based on their NHIEP tests. Some of those things aren't going to change. I think if a school district... First of all we're not convinced that an individual district can opt out. I guess you can give them permission to opt out of administrative rules promulgated by the state but they're still going to, as Representative Kurk said, be subject to the federal regulations. So if they opt out of the administrative rules that are

generated to enhance the program I don't know what the downside of that would be. Most of the rules that we're going to make are not going to have anything to do with for example the Title 1 provisions because that's already set out in federal statute and federal regulation. So if we were to include those just to have a comprehensive package of rules we would simply be saying for Title 1 schools this is what happens. But that has already been determined. We're not going to do anything that's going to change that determination. I can't imagine that they would want to be if they were Title 1 school to have that designation and not have the money but I guess if they decided if it were possible, they would still have to comply on the federal side.

Senator Jane E. O'Hearn, D. 12: Any further questions? Thank you.

Does everyone have a copy of the amendment?

Good afternoon members of the committee. For the record, I am Senator Jane O'Hearn and I am representing District 12. I debated on whether to come forward and speak on this piece of legislation or wait until we get into executive session but I think with what I've heard today I'm going to offer my amendment to House Bill 786. I think the questions that this committee raised on HB 786 indicates that this bill as written is not something that is worthy of passing. There are too many questions, too many problems and too many complications. I know that the prime sponsor said you would probably hear from someone that will say that they embrace No Child Left Behind. Well you're hearing it from me.

I embrace No Child Left Behind because I believe in just what it says. No child should be left behind. We are specifically talking with the work we've done, we are specifically talking those subgroups who have not been able to reach basic in our state assessment program. It's time that we looked at how to change that.

Federal government has brought forward this piece of legislation and has brought forward this with a significant purpose. They have been funding education for a long time to the state and with no accountability, no action required of the state to perform. We have instituted our $900 million Claremont suit and we have not gotten an accountability system yet in place and yet all the arguments over the past 6 years and the debate we've had has talked about providing accountability. I think that No Child Left Behind and the Senate Bill 107 is providing that accountability that we need to do. I remind you that there is a real connection with what we've done under Claremont 2 and what we're required under Claremont 2 to do is quite similar to where No Child Left Behind is.

To take you just quickly through this and we can continue our debate on the amendment when we exec it this afternoon because this has to go out because it has a fiscal note. I would just like to refer to line 6. We're talking all children in New Hampshire receive a fair and significant opportunity to obtain a high quality education and reach proficiency. I don't think this is anything different than what we already had debated when we worked on Claremont, worked on funding and worked on accountability. We're also looking for student achievement, this is line 9, student achievement and increased teacher quality. I next refer you to line 18 which is section 9527 of the federal law that provides that nothing in this act shall be construed to mandate a state or subdivision to spend any funds or incur any costs no paid for under this act. During executive session if you'd like I have a copy of that piece of the federal law.

The second piece, line 21, this is prohibiting the state board and the Department of Education from adopting any rules or regulations that deal with No Child Left Behind that will require funding from general funds.

Line 25, that federal funds used by the state shall not be used in calculating the cost of an adequate education. This is the question that I posed to Representative Kurk and using federal dollars to supplant the dollars that are required to us under our requirements of Claremont that there has to be some type of division that is required if No Child Left Behind is federal dollars to use for their funds than we shouldn't be using it to supplant what is our obligation by our state statutes.

Line 28, section 4. That money from the federal dollars shall be used exclusively for No Child Left Behind. The next section is some of the questions that we had dealing with how the money is used, where the federal dollars are going and this is just requiring that there be statements made to House and Senate Education committees, Finance committees on the expenditures by the state that are necessitated by No Child Left Behind.

I think through this we have had enough information on dollars, the paperwork we've had on the number of dollars that are coming back to us. This is not about IDEA, this is about ESEA re-instituted as No Child Left Behind. Non-title 1 schools are accountable to the state under the state accountability system. There is money appropriated for our accountability system and the sanctions put into federal law do not apply to non-title 1 schools.

With that I will end my testimony and hopefully be able to answer quick questions or wait until we go into executive session this afternoon.

Senator Carl R. Johnson, D. 2: Thank you Senator O'Hearn. Any questions? Senator Larsen.

Senator Sylvia B. Larsen, D. 15: This appears to address the concerns of state funding. I'm wondering how a local school district feels the protection to them of No Child Left Behind costing them additional funds. I think it's good in the sense of state funding and general fund protection. I don't know how a local school district would feel about it.

Senator Jane E. O'Hearn, D. 12: First of all, my understanding, a local school district cannot opt out. I think this committee needs to recognize that even if that were even allowed, what would happen. For instance, my community has applied for and received 21st century grants. $6-8 million of federal dollars for after school programs in our non-title 1 schools. Homework with the children, activities with the children and a place for these non-title 1 children to go after school. If one of my schools in my district opted out those title 1 funds would be lost. So there's a ramification. We receive federal dollars under No Child Left Behind and such things as improving teacher quality grants, class size reduction, Eisenhower professional development grants, safe and drug free schools state and community state grants, 21st century grants, educational technology grants, state grants for innovative programs, funds for improvement of education, rural and low income schools program and language acquisition grants, reading first grants. All that would be jeopardized by one school in your district pulling out. That's something that we shouldn't take lightly and I don't think that's something we can afford in our budget to replace. When we're talking about $75 million or if I look at the numbers I have here we're talking title 1 schools in 2003, $62.4 million in grants which our state cannot afford to replace.

Senator Carl R. Johnson, D. 2: Any further questions for Senator O'Hearn? Thank you Senator.

Senator Jane E. O'Hearn, D. 12: With that I'll close the hearing on HB 786.

Hearing closed at 3:20 p.m.

Recorded by Meredith Chandler

Respectfully submitted

Pamela Manocchi

Pamela Manocchi
August 26, 2003

Attachments

Attachment A

The Senate of the State of New Hampshire

107 N. Main Street, Room 302, Concord, N.H. 03301-4951

JOHN T. GALLUS
District 1

Office 271-2111

TTY/TDD
1-800-735-2964

May 14, 2003

Senator Jane O'Hearn
Chairman Education Committee
State Senate
Concord, NH 033301

Dear Chairman O'Hearn and members of the Committee:

I am unable to be with you today but I wish to go on record as being in favor of HB786-FN-L.

This Bill was designed to assure our constituents, schools and towns that there are no hidden costs involved in the Federal No Child Left Behind Program.

I think we can use this bill to assure the non-believers among us.

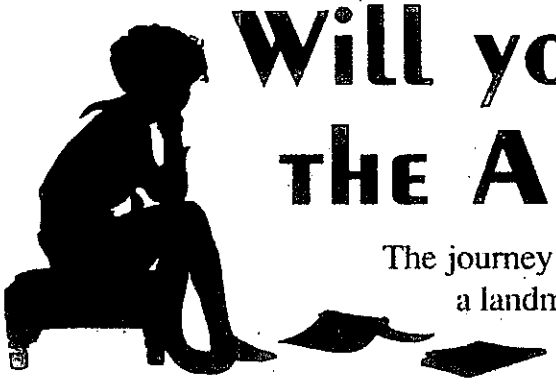
Thank you for your support, I ask that you pass HB786-FN-L.

Sincerely,

Senator John Gallus
District 1

JG/sab

Attachment B



Will your child achieve the American Dream?

The journey to success begins in school. "**No Child Left Behind**" is a landmark law that sets the foundation for education reform, **but real improvement will occur only if it is supported by community leaders like you.**

Accountability: Is your child's school making the grade?

The goal of No Child Left Behind is for **every student to be proficient in reading and math** by the 2013-2014 school year. Schools will have greater flexibility in determining how to use resources to achieve this goal.

Under the new law, schools will be held responsible for raising student achievement. All students in grades 3-8 will be tested to measure their reading and math skills. New Hampshire will be able to design and use its own tests, and the results will be disclosed in an easy-to-understand format that allows comparisons among schools and student groups.

Helping teachers make the critical difference.

Whether or not children learn, often depends on how they are taught. Parents and educators can use the information derived from annual test results to help our teachers be even more effective in the classroom.

No Child Left Behind provides New Hampshire and other states with more funding for professional development to **help teachers enhance their skills and expand their subject-matter knowledge**. All teachers will need to be fully qualified in the subjects they teach by the end of the 2005-2006 school year. In addition, the law supports New Hampshire's efforts to aggressively **pursue innovative ways to recruit and retain talented teachers in math, science, and other critical subjects.**

Continuous improvements will help every child.

Under the No Child Left Behind law, **students who are already doing well will do better, and students in schools that need improvement will get the help they need.**

Students in poorly performing schools will have **access to tutoring, after-school programs, and summer school programs.** They also will have the option of attending another public school in their district, with transportation provided.

Spending more—more wisely—based on local priorities.

The No Child Left Behind law combines historic increases in funding with more local control. Under the new law, New Hampshire has already received a funding increase of over 27 percent for school programs. **Schools can now move money among several programs, based exclusively on local priorities, without having to ask a State or Federal bureaucrat for approval.** Funding under the new law is more focused on helping schools with disadvantaged students, and on improving schools that do not make progress within two years of receiving test results. **The new provisions in the law are paid for. This is not an unfunded mandate.**

No Child Left Behind was created to make sure that every American child has a real chance at success in life—by establishing an educational foundation that provides children with the skills for success. **Please let your school board, school administrators, and teachers know that you support this important initiative.**



Leave No Child Behind—NH
208 Market Street • Suite 300 • Portsmouth, NH 03801

CHIEF DEPUTY WHIP

COMMITTEES:
BUDGET
APPROPRIATIONS
HEALTH, EDUCATION, LABOR AND PENSIONS

United States Senate
WASHINGTON, DC 20510-2904
(202) 224-3324

CONCORD, NH 03301
(603) 225-7115

28 WEBSTER STREET
MANCHESTER, NH 03104
(603) 622-7979

60 PLEASANT STREET
BERLIN, NH 03570
(603) 752-2004

18 PEASE BOULEVARD
PORTSMOUTH, NH 03801
(603) 431-2171

September 19, 2002

The Honorable John Alger
935 East Rumney Rd.
Rumney, NH 03266-3037

Dear John:

As the new school year begins, I expect that you may have questions regarding the impact the new Federal education law, No Child Left Behind Act (NCLBA), will have on New Hampshire. Given New Hampshire's rich history of local control, I wanted to take this opportunity to address any concerns you may have regarding the new legislation.

No Child Left Behind provides a roadmap -- and the resources -- to improve all our schools, and it does so without any unfunded mandates. Since 1995, Congress has been prohibited from passing any legislation that contains an unfunded mandate. Each piece of legislation that goes through Congress must be assessed by the nonpartisan Congressional Budget Office (CBO), who in turn specifically analyze legislation to determine if the legislation contains an unfunded mandate. CBO determined that the NCLBA does not contain any unfunded mandates.

2 PAGES

I hope you have found this information helpful in assisting your school districts in the implementation of NCLBA and answering any questions your constituents may have on this matter. I believe that with your leadership, the critical reforms included in the No Child Left Behind Act coupled with the increased resources will help our New Hampshire schools provide an excellent education to all our children. Please let me know if you need any further information on this or any other issue involving the federal government.

Sincerely,

Judd Gregg
U.S. Senator

JG/jmg

Public Law 104-4
104th Congress

An Act

To curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations, and for other purposes. <<NOTE: Mar. 22, 1995 - [S. 1]>>

The purposes of this Act are--

(1) to strengthen the partnership between the Federal Government and State, local, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and tribal governments, and the private sector by--

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors; [[Page 109 STAT. 49]]

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates;

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments, by--

(A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments and the private sector before adopting such regulations, and ensuring that small governments are given special consideration in that process; and

(8) to begin consideration of the effect of previously imposed Federal mandates, including the impact on State, local, and tribal governments of Federal court interpretations of Federal statutes and regulations that impose Federal intergovernmental mandates.

"(4) create any legally enforceable right.

"SEC. 9527. PROHIBITIONS ON FEDERAL GOVERNMENT AND USE OF FEDERAL FUNDS. 20 USC 7907.

"(a) GENERAL PROHIBITION.—Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

"(b) PROHIBITION ON ENDORSEMENT OF CURRICULUM.—Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department to endorse, approve, or sanction any curriculum designed to be used in an elementary school or secondary school.

"(c) PROHIBITION ON REQUIRING FEDERAL APPROVAL OR CERTIFICATION OF STANDARDS.—

"(1) IN GENERAL.—Notwithstanding any other provision of Federal law, no State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to affect requirements under title I or part A of title VI.

"(d) RULE OF CONSTRUCTION ON BUILDING STANDARDS.—Nothing in this Act shall be construed to mandate national school building standards for a State, local educational agency, or school.

To: Editor, The Citizen
From: State Representative John Alger

March 9, 2003
Tel/Fax: 786-9562/9463

Dear Editor:
Please place this letter in your paper as soon as possible in response to the very mis-leading editorial about the Federal law "No Child Left Behind."

The Sunday, March 9, editorial in Foster's Sunday Citizen is very mis-leading concerning the new, billion dollar, federal law entitled "No Child Left Behind"(NCLB) and legislation to restrict State resources spent on that federal law. House bill 786, which will be voted on by the State House of Representatives next Thursday, does NOT restrict in any way acceptance and implementation of that federal law, contrary to insinuation of the editorial. In fact, implementation of that law is underway at a rapid pace in the State as we speak. If someone wants to stop implementation of "No Child Left Behind" in this state they will have to introduce some other bill. President Bush and our own Senator Gregg have brought forward a very important new initiative to improve the education of all our children. What HB 786 does do is restrict spending of State and local dollars on this federal program. That is what any prudent person would do at this time. Senator Gregg has advised he believes NCLB is fully funded with federal dollars. If so, then restricting state expenditures should be no deterrent to applying the law to New Hampshire schools. If not completely true, it is very important NOW to understand the nature of this law so that we carefully ascertain our commitment to spending state and local dollars in this federal program. History and experience have shown time and again that the federal government regularly introduces exciting new programs in which they gradually lose interest as time goes by. The so-called special education law is case in point. In the case of student testing, for example, each of our New Hampshire public school pupils is tested annually in grades 3, 6, and 10 for an annual cost to the state of about $3 million. The NCLB law requires such tests in grades 3,4,5,6,7, and 8 or twice as many grades. Maybe that's a good thing to do; but, in any case, it will likely cost nearly twice as much, as demanded by the NCLB law. I believe the development, and early implementation, of that additional testing will be paid by the feds; but in some three or four or more years, will the Feds still pay? It's very important now to organize our work such that we choose to do and pay for what we as a state want to do; and that we also do what the Feds ask us to do when they are paying the bill. Our NH Constitution requires the State to pay for any mandates to the towns and so the same must apply to the feds: no federal mandate in NCLB without federal resources. This state now spends nearly $2 billion on public education in total, with $1 billion of that raised from state taxes. Even those large amounts are considered by some as too few! It behooves us as a state to very carefully husband those dollars as the federal government enters in a big way into public education. Please support HB 786. It offers guidelines badly needed for state versus federal expenditures.

Editorial Response

The 'No Child Left Behind' law will be of benefit to everyone in New Hampshire

By Rep. John Alger
Rumney

The Sunday, March 9, editorial in Foster's Sunday Citizen is very misleading concerning the new, billion dollar, federal law entitled "No Child Left Behind" (NCLB) and legislation to restrict state resources spent on that federal law. House Bill 786, which will be voted on by the state House of Representatives next Thursday, does not restrict in any way acceptance and implementation of that federal law, contrary to insinuation of the editorial. In fact, implementation of that law is under way at a rapid pace in the state as we speak.

If someone wants to stop implementation of "No Child Left Behind" in this state they will have to introduce some other bill. President Bush and our own Senator Gregg have brought forward a very important new initiative to improve the education of all our children. What HB 786 does do is restrict spending of state and local dollars on this federal program. That is what any prudent person would do at this time. Senator Gregg has advised he believes NCLB is fully funded with federal dollars. If so, then restricting state expenditures should be no deterrent to applying the law to New Hampshire schools. If not completely true, it is very important now to understand the nature of this law so that we carefully ascertain our commitment to spending state and local dollars in this federal program.

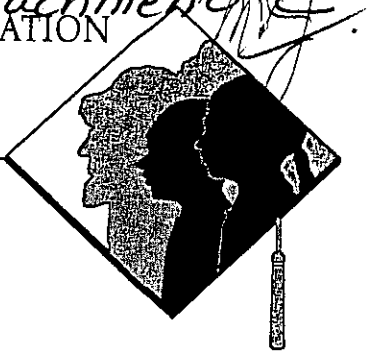
History and experience have shown time and again that the federal government regularly introduces exciting new programs in which they gradually lose interest as time goes by. The so-called special education law is case in point. In the case of student testing, for example, each of our New Hampshire public school pupils is tested annually in grades 3, 6, and 10 for an annual cost to the state of about $3 million. The NCLB law requires such tests in grades 3,4,5,6,7, and 8 or twice as many grades. Maybe that's a good thing to do; but, in any case, it will likely cost nearly twice as much, as demanded by the NCLB law.

I believe the development, and early implementation, of that additional testing will be paid by the feds; but in some three or four or more years, will the feds still pay? It's very important now to organize our work such that we choose to do and pay for what we as a state want to do; and that we also do what the feds ask us to do when they are paying the bill. Our New Hampshire Constitution requires the state to pay for any mandates to the towns and so the same must apply to the fed no federal mandate in NCL without federal resources. Thi state now spends nearly $2 bi lion on public education in tota with $1 billion of that raise from state taxes. Even thos large amounts are considere by some as too few! It behoove us as a state to very carefull husband those dollars as th federal government enters in big way into public education Please support HB 786. It offer guidelines badly needed fo state versus federal expendi tures.

NEW HAMPSHIRE SCHOOL ADMINISTRATORS ASSOCIATION

Attachment #4

CHAMPIONS FOR CHILDREN



February 18, 2003

Re: HB786

Dear Members of the New Hampshire Legislature:

I am testifying in support of House Bill 786, on behalf of the members of the New Hampshire School Administrators Association and the New Hampshire Special Education Administrators.

As previously mentioned, it is not NHSAA's intention to be in an adversarial position with elected representatives from New Hampshire or our appointed government employees in Washington and Concord. Rather, it is the association's sincere purpose to highlight some of the serious shortcomings of the recently approved No Child Left Behind Act, and to seek remedies before it is too late.

In brief, our concern is that this law is full of unfunded and under-funded mandates from the federal government that will cause significant cost increases to local taxpayers, now and increasingly in the future. These increased demands for new local tax dollars will have adverse effects on children and taxpayers alike.

It is important to note that the law itself is 1,200 pages long and to date, there are thousands of pages of published rules and regulations. It is clearly the growing opinion of citizens in New Hampshire and throughout the country, that the rule-makers who are defining this law are creating costly, under-funded mandates and regulations for school communities that far outstretch the intention of the authors of the legislation and the spirit of this important law.

Our concerns are grouped into five (5) major areas:

Concern #1: <u>There are unfunded or under-funded mandates contained in the law.</u> At the early stages of NHSAA's investigation, we were able to identify that there are significant cost increases being mandated by the voluminous rules and regulations that accompany the 1,200-page law. It is our assertion that for every $77.00 of new aid, there are in fact over $575.00 of new costs per student that must be borne by the State of New Hampshire and/or the local taxpayers of school districts. This cost is a conservative estimate since it does not include costs associated with the necessary required targeted assistance for schools identified as schools in need of improvement. See our website (http://www.nhsaa.org) for more information.

Concern #2: <u>The total amount of federal aid that is allocated to schools cannot be redirected to cover all the costs of new regulations without impacting existing services.</u> In fact, current and historic federal aid has been constructively used by schools for over 30 years to fund important services to students (e.g. tutoring in math or reading or reducing class sizes). These are not "free" or "discretionary" resources. This money is not currently sitting idle. If schools are required to "move" these resources to cover new regulations, there will be an unavoidable loss of services to children who are currently benefiting from these programs.

Concern #3: <u>The NCLB Act erodes local control of public education.</u> It is inconceivable to virtually all citizens in New Hampshire that the federal government, which provides only about 6% of these resources for public education, should be controlling a majority of the decisions made, while local taxpayers pay 94% of the bill. The decisions made by federal and state

SUMMER STREET SCHOOL, 12 CROSS STREET • PENACOOK, NH 03303
TEL: (603) 753-4479 • FAX: (603) 753-4611

government employees are currently costing citizens tax dollars and changing local priorities. It is our firm belief that these regulations will result in significant future increases to New Hampshire taxpayers...without their vote, without their approval, without their consent.

Concern #4: The Federal Government fails to fund its special education mandate. We have long been concerned with the federal government's gross neglect in funding its share of the responsibility for special education. In fact, the federal government is funding only a small fraction of the promise it made to citizens of our country over 25 years ago. (A promise not unlike the one that is being made with the NCLB Act.) Citizens everywhere know first hand the tremendous negative impact this lack of funding has had on local school budgets and local taxpayers wallets. Despite two decades of pressure from citizens, the federal government has yet to fulfill its promise to pay 40% of the cost, in an annual guaranteed fashion. It is entirely reasonable for citizens everywhere to be suspicious of this newest attempt at federal control that is accompanied by promises most likely to be unfulfilled. It is important to note that the Federal Government was short $39.5 million in its special education aid to New Hampshire alone, in FY2002.

Note

Concern #5: NCLB Act imposes new costs on local taxpayers. These unfunded and under-funded mandates will have an adverse effect on children and communities alike. Shifting financial obligations onto local taxpayers, who have a fixed capacity to pay, will cause elimination of important local school improvement programs and services. There is only so much money. New Hampshire citizen taxpayers work very hard to raise money to support their school districts. Any person who has ever attended a public meeting knows that communities constantly make difficult choices about what to fund and what to cut from public budgets. The last thing a New Hampshire budget committee or school board member needs is another unfunded mandate from the federal or state government.

As we all work to embrace a new year and build sound public policy in support of public education; we believe that now is the time to correct the deficiencies in this law and to require our federal officials to promise to pay for any increased costs resulting from federal regulations. All we respectfully request is that federal and state elected representatives guarantee to pay for all of the costs that will be required in order to meet the regulations that accompany this law. I am confident that all readers will agree that this is a simple, clear and reasonable request.

For more information and copies of prior reports, please visit our website at (http://www.nhsaa.org).

Sincerely,

Mark V. Joyce

Dr. Mark V. Joyce
Executive Director

No Child Left Behind Act

Resources:

www.nochildleftbehind.gov	=	US Dept. of Education
www.ed.state.nh.us	=	NH Dept. of Education
www.nhsaa.org	=	NH School Admin. Assoc.

What's Right with the Law?:

- ♦ Commitment to Universal Literacy
  - For all children everywhere
- ♦ Increase in Federal Funding for FY03
  - Plus 16 or 17 million
- ♦ Rigorous Accountability
  - Testing in grades 3 - 8 & High School
  - High Standards for All Kids & Groups
- ♦ New Higher Standards for Educators
  - Teachers & Paraprofessionals
- ♦ Greater Focus on the Importance of Public Education

Concerns with the NCLB Act

- ***There are unfunded or under-funded "mandates" contained in the law.***
  - 1200 page law
  - 1000's of pages of rules
  - For every $77 in new money there is $575 p/p in new cost not including improvement costs

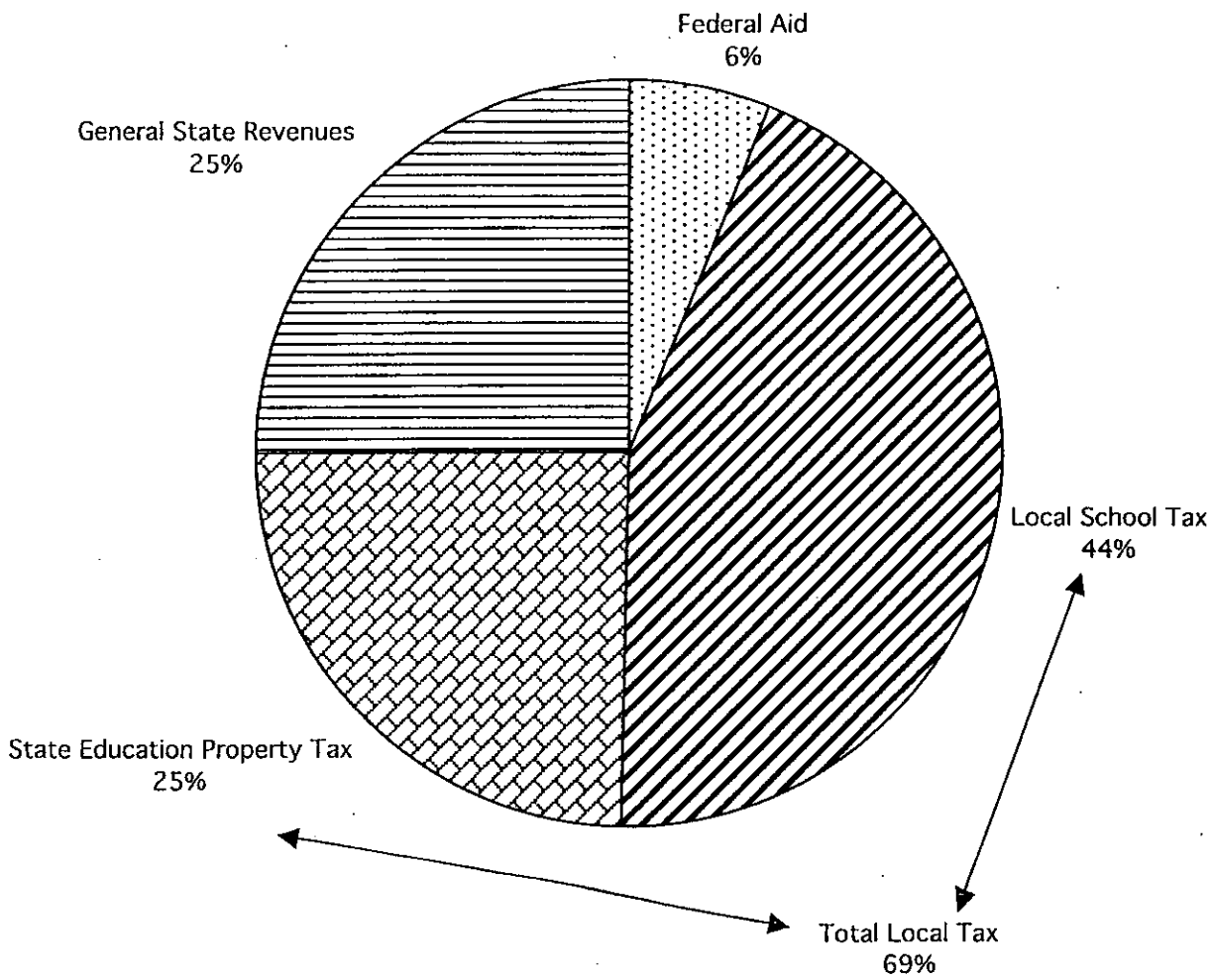
- ***The total amount of federal aid that is allocated to schools cannot be redirected to cover all the costs of new regulations - without impacting existing services.***
  - Currently used for constructive purposes
  - Tutors, lower class sizes, technology

- ***The NCLB Act erodes local control of public education.***
  - Paying 6% of costs (maybe) - exerts over 50% of control

- ***The Federal Government has a poor record of funding & fails to fund its special education mandate.***
  - NH is short up to $39.5 million in FY02 in IDEA

- ***The NCLB Act imposes new costs on local taxpayers.***
  - Increasing costs will be shifted to local school tax
  - Change local priorities and Choices become even harder

Total Revenue to Public Education FY2003



EDUCATION TRUST FUND PAU

LBAO, 11/19/2001

06 Education
'03 Department of Education
'02 Office of the Dep. Commissioner
'02 Financial Aid to Districts
'04 Adequate Education Grants

			FY2002		FY2003
Class 90	Hardship Grants		5,000,000		5,000,000
Class 91	Kindergarten at $1,200 per pupil	1,972,800		2,625,600	
Class 91	Adequate Education Grants	880,657,284	882,630,084	896,869,535	899,495,135
	Total		887,630,084		904,495,135
	Estimated Source of Funds For Adequate Education Grants				
	Education Trust Fund				
	Statewide Property Tax	454,000,000		453,045,000	
	Excess Education Tax	29,100,000		32,680,000	
	Utility Property Tax	18,800,000		20,500,000	
	Cigarette Tax	24,810,000		24,520,000	
	BPT	36,900,000		36,600,000	
	BET	113,500,000		105,500,000	
	Real Estate Transfer Tax	32,830,000		33,830,000	
	Rental Car Tax	8,000,000		8,400,000	
	Tobacco Settlement	40,000,000		40,000,000	
	Sweepstakes	64,000,000		66,000,000	
	Balance forward from ETF		821,940,000		821,075,000
	General Funds				
	Formerly used for Kindergarten	--		--	
	Formerly used for Foundation Aid	--		--	
	Formerly used for Revenue Sharing	--		--	
	Other	65,690,084	65,690,084	83,420,135	83,420,135
	Total		887,630,084		904,495,135

NCLB Warrant Article Activity

March 6, 2003

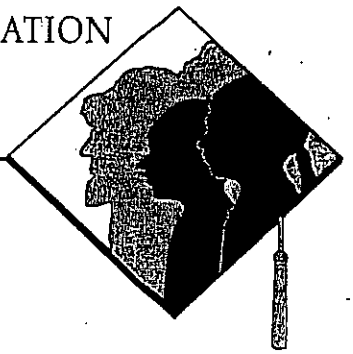
SAU	District	
1	Barrington	*
2	Ashland	*
2	Inter-Lakes	*
5	Durham	
6	Claremont	*
6	Cornish	*
6	Unity	*
12	Londonderry	*
14	Epping	*
14	Fremont	*
18	Franklin	*
18	Hill	*
21	Hampton Falls	*
21	North Hampton	*
21	Seabrook	*
21	South Hampton	*
21	Winnacunnet Coop	*
24	Henniker	*
27	Litchfield	*
29	Chesterfield	*
29	Harrisville	*
29	Keene	*
29	Marlborough	*
29	Marlow	*
29	Nelson	*
29	Westmoreland	*
31	Newmarket	*
33	Raymond	*
34	Hillsboro	*
39	Amherst	*
39	Mont Vernon	*
39	Souhegan Cooperative	*
41	Brookline	
41	Hollis	
41	Hollis/Brookline	
44	Northwood	*
44	Nottingham	*
46	Andover	*
46	Merrimack Valley	*

SAU	District	
48	Campton	*
48	Pemi-Baker Coop	*
48	Plymouth	*
49	Governor Wentworth	*
50	Greenland	*
50	Newcastle	*
50	Newington	*
51	Barnstead	*
51	Pittsfield	*
53	Allenstown	*
53	Chichester	*
53	Deerfield	*
53	Epsom	*
53	Pembroke	*
54	Rochester	
55	Timberlane Reg	*
56	Rollinsford	*
56	Somersworth	*
59	Winnisquam	*
60	Fall Mtn. Reg	*
61	Farmington	*
61	Middleton	*
62	Mascoma Valley Reg	*
64	Milton	*
64	Wakefield	*
66	Hopkinton	*
68	Lincoln/Woodstock	*
70	Dresden	*
70	Hanover	*
70	Norwich,VT	*
71	Goshen-Lempster	*
73	Gilford	*
74	Barrington	*
77	Monroe	
79	Gilmanton	*
80	Shaker Regional	*
88	Lebanon	*

* On Warrant Article

NEW HAMPSHIRE SCHOOL ADMINISTRATORS ASSOCIATION

CHAMPIONS FOR CHILDREN



January 17, 2003

Senator Judd Gregg
c/o Mr. Joel Mailoa, Chief of Staff
125 North Main Street
Concord, NH 03301

Dear Senator Gregg:

I am writing to thank you for the opportunity to have met with your team on Monday, January 13, 2003. I appreciated the opportunity to begin to directly address NHSAA's concerns regarding the NCLB Act.

In addition, I will address all of our further concerns and questions directly to Joel Maiola, at your Concord office, in order to avoid any delay in mail handling in Washington, DC.

Following are seven questions that we respectfully ask of our elected federal representatives. If at all possible, we need these answered in the near future so that we may advise our community members of your response in upcoming community meetings.

1) What is the process for an individual school district to withdraw or opt out of the NCLB Act?

2) What is the penalty for an individual school district to withdraw or opt out of the NCLB Act?

3) What is the process for an individual state to withdraw or opt out of the NCLB Act?

4) What is the penalty for an individual state to withdraw or opt out of the NCLB Act?

5) Realizing that you do not agree with our areas of cost impact, what is your estimate of the cost impact of this act on New Hampshire school districts?

6) Would you agree to support a resolution or law that limits a school district's financial obligation, under the NCLB Act, to the total amount of ESEA funding received by the district?

7) Does the Senator support full mandatory funding of IDEA? If so, in what fiscal year?

SUMMER STREET SCHOOL, 12 CROSS STREET • PENACOOK, NH 03303
TEL: (603) 753-4479 • FAX: (603) 753-4611

I look forward to your response to these questions. I know it is a busy time, but it would be helpful if we received your response within the next fourteen (14) days so that we may inform our participants at upcoming community meetings. If it is not possible to respond within the next two weeks, feel free to let me know your expected response date.

In addition, I would be pleased to coordinate a small group of New Hampshire school system leaders to meet with you and your team to further discuss the NCLB Act and its growing, unexpected impact on New Hampshire children and taxpayers.

Thank you again for taking the time from your busy schedule to address these questions.

Sincerely,

Dr. Mark V. Joyce
Executive Director

New Hampshire School Administrators Association
12 Cross St., Penacook, NH 03303
Phone: 603-753-4479 ~ Fax: 603-753-4611

November 26, 2002

To: Members of New Hampshire School Administrators Association and Citizens of New Hampshire

From: New Hampshire School Administrators Association Executive Board

RE: Analysis of Cost Impact of ESEA – No Child Left Behind Act on New Hampshire

Executive Summary:

The members of the New Hampshire School Administrators Association are supportive of the goals and intentions that are reflected in the No Child Left Behind Act. In particular, educators at all levels have, and continue to be, supportive of rigorous and valid accountability practices and initiatives that are designed to improve educational opportunities for all students.

The purpose of this document is to begin an analysis of whether or not there are any unfunded or under-funded impacts or mandates that originate from this law and to identify any that do exist. While this is a beginning effort, we hope that this analysis will cause state and federal policy and political leaders to: think through the complete implementation of the law in NH, generate sufficient resources to support the law's required actions and resist forwarding unfunded or under-funded mandates to local schools, communities and citizens.

There are a number of potential cost items identified in this report and four areas are summarized below. In addition, certain areas are identified as having impacts but specific dollar amounts are not available at this time. This Executive Summary is followed by a complete copy of the analysis including suggested next steps. Readers are invited to share reactions or suggestions with Dr. Mark V. Joyce at mark@nhsaa.org.

In brief, the new law appears to bring about $77 ($17m ÷ 220,000 students) per student on average of new federal money to support education, while creating at a minimum $575.00 ($126.5m ÷ 220,000 students) per student in new financial obligation to local taxpayers. It is important to note that these are very conservative assessments of new costs and actual items will undoubtedly significantly increase local costs. It is our belief that local and state citizens who pay the lions share of cost (See Appendix A), should have the authority to choose how to spend resources and not be subject to mandates from the federal government that change local priorities (e.g., spend on technology rather than reading instruction).

Executive Summary of Major Costs to Date:

2a. Costs to Attract & Retain High Quality Teachers ✓ Higher Pay ✓ Language demands on assessment	$11,716,728.93	Pressure on CB Process to increase pay and negotiate language regarding testing, et. al. (requirements of laws and procedures). If this effort adds only 2% to salaries it would cost $11,716,728.93 (14677.1FTE) (2% x $39,915).
3a. Costs to Attract & Retain High Quality ParaProfessionals ✓ Higher Pay ✓ (CBA) Collective Bargaining Agreements will change because of requirements	$16,558,344	Pressure on CB Process to increase pay and negotiate language regarding testing, et.al. requirements of law - Based on a survey, we estimate there are 7,590 paraprofessionals in NH schools who earn an average of $10.10 hour. We project a 20% increase totaling a new cost of over $16 million for NH schools (1,080 hr/year). Need to raise daily sub pay to attract "high qualified" substitutes
4b. Estimated cost of completing new technology plans	$35,400,000 - ongoing (conservative estimate - $200,000 times 177 NH school districts)	All districts will have to redo plans to meet state guidelines in order to be eligible for Title II-D resources included in total federal resources. While new plans are "goals", they are written plans of compliance based on NCLB
6a. Increase Identification for IDEA ✓ Higher numbers = Higher local cost to citizens ✓ Alternative assessment creation	$62,832,000 - ongoing (4,400 students @ $14,280) 2% increase of identified students at 201% of average cost per pupil @ $6,800	Legally persuasive pressure to increase identification of students under IDEA because of a school's inability to meet AYP standards. It will be easy to push for identification of new students under IDEA using federal law. As a result we expect a 2% increase in IDEA identified students.

New Hampshire School Administrators Association
12 Cross St., Penacook, NH 03303
Phone: 603-753-4479 ~ Fax: 603-753-4611

November 26, 2002

To: Members of New Hampshire School Administrators Association

From: New Hampshire School Administrators Association Executive Board

RE: Analysis of Cost Impact of ESEA – No Child Left Behind Act on New Hampshire

Introduction

The members of the New Hampshire School Administrators Association are supportive of the goals and intentions that are reflected in the No Child Left Behind Act. In particular, educators at all levels have, and continue to be, supportive of rigorous and valid accountability practices and initiatives that are designed to improve educational opportunities for all students.

The purpose of this document is to begin an analysis of whether or not there are any unfunded or under-funded impacts or mandates that originate from this law and to identify any that do exist. While this is a beginning effort, we hope that this analysis will cause state and federal policy and political leaders to: think through the complete implementation of the law in NH, generate sufficient resources to support the law's required actions and resist forwarding unfunded or under-funded mandates to local schools, communities and citizens.

There are a number of potential cost items identified in this report. In addition, certain areas are identified as having impacts but specific dollar amounts are not available at this time. At the end of this report, several recommended next steps are suggested. Readers are invited to share reactions or suggestions with Dr. Mark V. Joyce at mark@nhsaa.org.

In brief, the new law appears to bring about $77 ($17m ÷ 220,000 students) per student on average of new federal money to support education, while creating at a minimum $575.00 ($126.5m ÷ 220,000 students) per student in new financial obligation to local taxpayers. It is important to note that these are very conservative assessments of new costs and actual items will undoubtedly significantly increase local costs. It is our belief that local and state citizens who pay the lions share of cost (See Appendix A), should have the authority to choose how to spend resources and not be subject to mandates from the federal government that change local priorities (e.g., spend on technology rather than reading instruction).

Category of Possible Impact of NCLB	Cost	Impact
1. Assessment		
1a. Buying Tests for Grades 3 - 8 plus high school ✓ Annual Refresh of Test	5.5 million total based on current cost	Annual ongoing costs - currently used to fund NHEIAP is 2.5 million annually. Based on current practices it is projected to be 5.5 million under the requirements of the new law regardless of the test.
1b. Impact on Instructional time in schools ✓ Testing in gr. 4, 5, 7, 8, ++)	Significant loss of instructional time if school currently does not test in all grades	Increase of 130% in federally required testing time - 7 grade levels vs. 3
1c. Scoring Tests ✓ Annual & Long Term Data Analysis ✓ Giving useful information to schools, teachers, parents	See 1a	Part of 1a under current system but will need to be expanded based on increased scope
1d. AYP - Adequate Yearly Progress	Depends on method used.	Major decision that will impact all other aspects of NCLB
1e. Current AYP (Title I) System ✓ Is Fatally flawed	See 1a	Must be replaced because it unfairly compares different cohorts of students
1f. Professional Development ✓ To interpret & use test data for improvement	Significant increase in order to meet broader scope of grades	Need to expand efforts to inform all teachers, staff & parents of new tests, scoring and use of results
1g. Narrows curriculum ✓ State focus rather than local school districts	Loss of local control	Shift away from local priorities and uniqueness
✓ New expenses for books, supplies, et.al. to match new state assessment	More money	Cost of matching instructional materials to new test items
✓ Danger of "dumbing down" curriculum and limiting creativity in instruction and learning	Priceless	Focus will shift to what is measured and probably "only" what is measured
✓ National Assessment of Educational programs (NAPE)	More loss of instructional time	Will require NH participation in national test.
2. High Quality Educators (Teachers)		
2a. Costs to Attract & Retain High Quality Teachers ✓ Higher Pay ✓ Language demands on assessment	$11,716,728.93	Pressure on CB Process to increase pay and negotiate language regarding testing, et. al. (requirements of laws and procedures). If this effort adds only 2% to salaries it would cost $11,716,728.93 (14677.1FTE) [(2% x $39,915)] = 798.30.

Category of Possible Impact of NCLB	Cost	Impact
2b. Impact on substitute pay after 4 weeks	More Money - See 2a	Need to raise daily sub pay to attract "highly qualified" substitutes, especially long-term.
2c. Costs of Alternative Certification Programs	More Money - See 2a	Will we have to increase course reimbursement to support quick conversions of Alt.4 candidates?
2d. Loss of flexibility in placement of staff ✓ Loss of split teaching assignments (e.g., 4 chem, 1 phys) ✓ Increase to CBA benefits	✓ More Money - See 2a ✓ Loss of instructional time for students as courses are reduced	Districts (especially smaller ones) will have to stop practice of "stretching" certification and will result in increased cost and increased concern of parents resulting from notification procedures.
2e. Costs of Increasing Standards ✓ Tuition ✓ Assessments (PRAXIS)	✓ More Money - See 2a ✓ Cost of new testing for employees ✓ Professional development costs to train or retrain to meet new standards	Districts will be pressured to pay for course reimbursement in order to create high quality educators. Over 2,281 teachers received statements of eligibility for alternative certification in 2002-2003.
3. High Quality Educators (ParaProfessionals)		
3a. Costs to Attract & Retain High Quality ParaProfessionals ✓ Higher Pay ✓ (CBA) Collective Bargaining Agreements will change because of requirements	$16,558,344	Pressure on CB Process to increase pay and negotiate language regarding testing, et.al. requirements of law - Based on a survey, we estimate there are 7,590 paraprofessionals in NH schools who earn an average of $10.10 hour. We project a 20% increase totaling a new cost of over $16 million for NH schools. Need to raise daily sub pay to attract "highly qualified" substitutes
3b. Costs of Increasing Standards ✓ Tuition ✓ Assessments (PRAXIS)	$ costs of course reimbursement and career ladder pay adjustments. $ cost of creating and/or administering tests of competency	Will we have to increase course reimbursement to support quick conversions. Districts (especially smaller ones) will have to stop practice of "stretching" certification and will result in increased cost and increased concern of parents. Districts will be pressured to pay for course reimbursement in order to create high quality educators

Category of Possible Impact of NCLB	Cost	Impact
4. *Technology Standards*		
4a. New state standards are "gate" to federal money	See 4b	The state submitted an application to the federal government establishing new rigorous standards in June 2002
4b. Estimated cost of completing new technology plans	$35,400,000 - ongoing cost (conservative estimate - $200,000 times 177 NH school districts)	All districts will have to redo plans to meet state guidelines in order to be eligible for Title II-D resources included in total federal resources. While new plans are "goals", they are written plans of compliance based on NCLB
5. *Impact on local control of community, school board, & educators (they still pay the bill)*		
5a. Shift focus to federal priorities ✓ Tips balance of government ✓ Disconnects decision making from responsibility to pay	More Money	Local citizens will have to bear an inordinate increase in obligation from a federal regulation. It will pressure local budget meetings to shift priority(ies) to meet an unfunded mandate (e.g., IDEA experience)
5b. Empowers federal project and program director to become state based federal agencies (See Tech. Stds, Title I, and more) ✓ No common NH focus ✓ Avoid and/or confuse rule making ✓ Shift $ costs to state and local governments for compliance	More Money Plus growth in regulation and compliance (reporting) costs	Creates state housed "federal agencies" that will advocate for their funding sources against school districts. Loss of cohesive NH based governance and cause fragmented & competitive service
5c. Federal Interventions conflict w/state and local laws, local contracts ++ ✓ Impact on CB's, tenure, school funding laws and more	More Money	Federal based interventions for failing schools will conflict with state laws and local practices (e.g., tenure, local contracts, local control) and increase obligation for providing services (tuition, transportation, etc.)
5d. Empowers state to control primary assessment system ✓ Defacto state-wide curriculum	Loss of local decision making	State (with approval of Federal agencies) will create a defacto curriculum that meets new test requirements

Category of Possible Impact of NCLB	Cost	Impact
6. Special Education		
6a. Increase Identification for IDEA ✓ Higher numbers = Higher local cost to citizens ✓ Alternative assessment creation	$62,832,000 - ongoing (4,400 students @ $14,280) 2% increase of identified students at 201% of average cost per pupil @ $6,800	Legally persuasive pressure to increase identification of students under IDEA because of a school's inability to meet AYP standards. It will be easy to push for identification of new students under IDEA using federal law. As a result we expect a 2% increase in IDEA identified students.
7. Impact on local budgets		
7a. Shift of role, function and control of local budgets	Priceless	The current system of support for public education is a zero sum approach where districts are given a fixed sum of money to do the best they can for all kids. The new system requires in effect a free and appropriate like education (FAPE) for all kids. This shift sets the stage for a significantly increasing obligation for local taxpayers.
7b. Unfunded or under-funded will carry federal mandate & cause shift of local $	Rising local tax rate	Will result in loss of local discretionary decision making and shift obligation to towns. As a result school communities will be forced to shift resources to federal initiatives and away from local programs.
7c. Increase costs of litigation	Rising state aid for schools	Provides the solid platform to challenge state funding as being "inadequate" because of a failure to meet AYP in all schools
8. Requirement to share certain information about students with military services	More money and Increased time	School districts have to recreate local policy and reissue parent and student written notifications regarding "directory information". Since positive assent is required the effort will cause an increased workload for all high school guidance and administrative offices.
9. Requirement to alter residency laws and rules for homeless students	More money and Increased local obligation	Local school districts have the legal obligation to provide transportation costs for homeless students who choose to attend their prior school of attendance.

10. Budget Summary - Total ESEA Funding			
	FY02	**Under Fully Funded FY03**	**Net Increase**
Amount Directly to NH School Districts	101,296,522 (88.8%)		
Amount to NH DOE for Administration	12,666,205 (11.2%)		
Total	$113,962,727.		

Planned Actions by the NHSAA Executive Board and members based on analysis as of 11/19/02

Step #1: Share with NHDOE for awareness and revision of data as necessary

Step #2: Share document with:

a.) NHSAA Members and NHSBA to involve members and encourage use of information locally
b.) Broader public in local discussions
c.) Legislature - Federal & State Representatives who are policy leaders in shaping New Hampshire's response and federal rule making
d.) Selected Groups including media

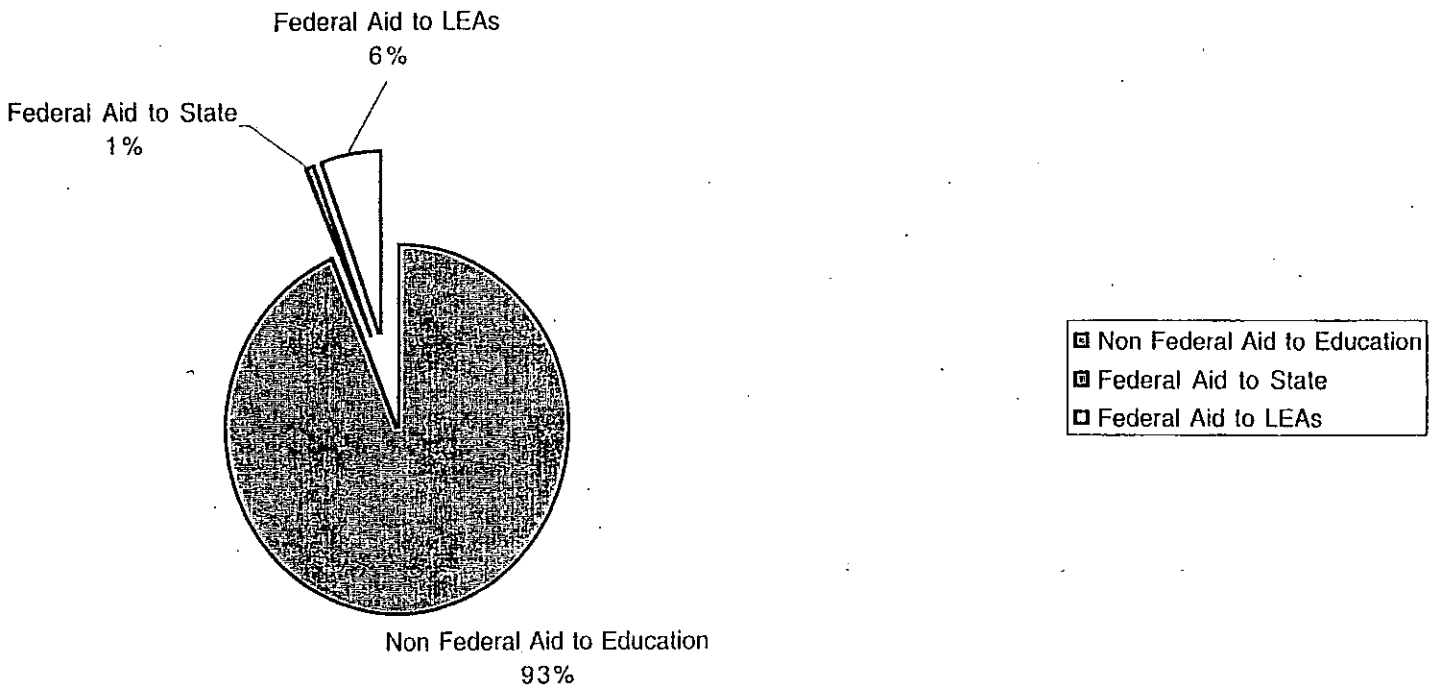
Step #3: Encourage each School District to:

a.) Analyze local impact of costs using the identified areas of impact and share with community.
b.) Post and vote upon a Warrant Article designed to encourage state and federal officials to actively resist any unfunded or under-funded federal mandates (e.g., NCLB and IDEA).

Step #4: Work with federal and local representatives to inform decisions and shape state and federal action that will create rules, laws and applications to the Federal DOE in order to comply with NCLB.

Appendix A

Total Revenue for NH Public Education



Attachment D

TESTIMONY IN FAVOR OF HB 786

Dr. Scott AndersEn, Superintendent of Schools, SAU #2
603-279-7947
sandersen@interlakes.org

I thank you for the opportunity to speak with you today regarding this important piece of legislation. I also thank you for carefully considering my testimony and how it relates to the taxpayers of the state of NH.

I would first like to say that I am in favor of increased accountability for schools, districts and the state as it pertains to ensuring that our students are learning. After all, that is why I chose this career. I love our children and I want them to have the best possible education. I also believe that everyone in this room and those who crafted the NCLBA has that same desire. To be honest, I don't think NCLB goes far enough to ensure that no child is left behind. It only looks at groups of students, not individuals.

If you look at the dollars NH has received from NCLB, you will clearly see that we have received more money than the previous years. This is fact. No one can dispute that. In today's paper, our esteemed Senators Judd and Sununu have reminded us of that fact.

However, just saying we have more money than before is NOT saying that we have the money needed to implement the thousands of pages of regulations that have come with the 1,100 page NCLBA. Yes there is more money. However, we have already been using the federal dollars in very constructive ways.

For instance, in one of my district, Inter-Lakes, we have been running an Early Intervention program for Grades K-3. We have integrated Title 1 dollars with our IDEA (Special Ed) dollars with local district resources to implement this program. During the past three years, we have seen the benefits of this program. Our third-grade NHEIAP scores are steadily improving. We anticipate that to continue. Are we where we need to be? No. Are we heading to where we need to be? Yes.

Here's the catch. We may be faced with the decision to stop an already proven program that is benefiting students right now as we speak, in order to implement and comply with the mandates of NCLB. SO even though we are receiving a few more dollars from NCLB, we are faced with three choices:

1. Cut the successful Early Intervention program
2. Use local dollars to pay for the program
3. Not comply with NCLB

I am not comfortable with any of those options. My preference would be to continue with our successful Early Intervention program and then also have the funds to comply with NCLB.

As if this situation isn't bad enough, I am now aware that Title I dollars are shifting in significant ways. Many districts are now not receiving any but still may fall under NCLB mandates. And if that is bad enough, it is my understanding that Footnote 10 of the Governor's budget is taking $15million dollars of federal money, either through NCLB or IDEA, that is supposed to go to the local districts to help comply with the federal mandates, and is using it to help generate revenue to support the budget.

To characterize it another way, we are being asked by the feds to comply with their mandates, we are already short-funded on IDEA (Special Ed), we are now being under-funded with NCLB, and to put the icing on the cake, our own state government is considering short-funding us even further. I must say, I cannot see the wisdom in any of this.

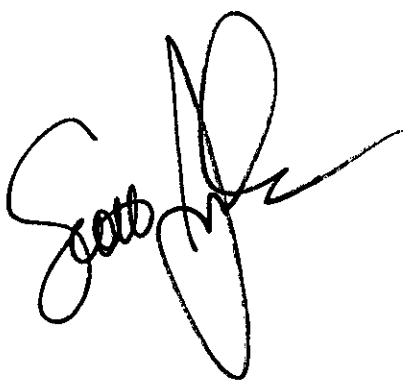
When NCLB was signed, we were told that the bill would receive an additional $8 billion in funding this year to help comply with the costs. As you may know, the feds only funded $1.8 billion. That is less than ¼ of what they said was needed over a year ago.

If the bill is not an unfunded mandate as some has said. If there is indeed plenty of money to cover the costs of NLCB, then why can we not have wording that says, "a district is not required to comply with any regulation of NCLB that is not being funded?" If it is truly fully funded, why not have that language? I ask you to think seriously as to why that language is not in there.

Finally, In response to the criticism of the NHSAA study regarding the estimated costs of NCLB on NH districts, I have this response. I read a good book almost every day. Many people read this book on Sundays. In the Matthew chapter of this book it says, ***"in the mouth of two or three witnesses every word may be established."***[1] If you don't believe the NH study, take a look at the 10 other studies done by other states. It is true they don't agree with our study because, in fact, their cost impacts are even worse than what the NHSAA study has concluded. They project that the unfunded or under funded liabilities of NCLB are even more severe.

I am in full support of HB786 and urge you to pass this legislation expediently and do so with full knowledge that you are fighting on behalf of the taxpayers of NH.

Thank you.



[1] Matthew 18:16

Attachment E

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

Dean Michener
Interim Executive Director

May 14, 2003

To: Senate Education Committee

From: Dean Michener

Subject: NHSBA Support of HB 786

Thank you for the opportunity to express NHSBA's support of HB 786, relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act. NHSBA supports the goals of this federal legislation, which is inspiringly embedded within the title – No Child Left Behind. It is a call to the nation at all levels of government, and to all educators, parents, and citizens, that children and their education matter. However, if the goal of NCLB is to be realized, it will require more than good intentions; it will also require an investment of funds.

In terms of costs, support for testing students is only the tip of the iceberg. If all schools, especially schools in poorer communities, are going to attract and retain the best teachers and paraprofessionals possible, additional resources will be needed for both teacher compensation and professional development. Provisions associated with Adequate Yearly Progress and supplemental services will also require increased expenditures. Our concerns are not whether students should have a rigorous program, be monitored for progress, or have their needs identified. Nor is our issue whether schools and school districts should be held accountable for student achievement. School boards support these achievement strategies. Rather, the issue is whether the current system will over-identify students and schools with the result of undermining the credibility of all public schools while requiring increased expenditures at the local level.

NHSBA cooperated with, and supports the conclusions of, the NH School Administrators Association in its report, "Analysis of the Cost Impact of ESEA – No Child Left Behind Act on New Hampshire." While NHSBA fully supports the spirit of NCLB and the issues of accountability and achievement, the fact remains that this legislation will result in numerous unfunded, and under-funded, mandates that will require an increase in expenditures at the local level. While the federal government has increased funding for education, this amount pales beside the magnitude of the new mandates, especially in the areas of assessment, highly qualified teachers, supplemental services and technology.

The federal government spends only 1.5% of its budget on K-12 education. NH's share of this money accounts for approximately 6 percent of the total revenues that fund our K-12 education programs. This level of federal financial participation does not come close to justifying the extraordinary level of control in the delivery of our local education programs that is contained in NCLB.

Senator Gregg and others continue to affirm that states will receive all the federal money that is necessary to implement NCLB. The NHSAA analysis, and studies conducted in at least nine other states, have all concluded otherwise. Furthermore, if we take a historical perspective, the Federal Government has a very poor record of funding its commitments, most notably its own special education mandate that has been in effect since the mid 1970's. While much has been made of the biggest increase ever in federal aid this year, please remember that this increase is on top of a small commitment that has always been short of promises made. IDEA (special education) will receive an increase of $1.4 billion to reach a total of $8.9 billion in fy '03, but this record new level of funding is still short $10 billion and only brings the federal share to 18%, far less than the promised 40%.

As for NCLB, when the act was passed, it contained an authorization for a $5 billion increase in FY '03. The amount appropriated in the budget is $1.8 billion, or just 36% of what was deemed necessary when the act was passed. Title I was authorized for $16 billion, but will now receive only $11.7 billion. In addition to the federal government's poor record of funding, the state of NH is now intercepting resources targeted for schools. Footnote 10 of the budget takes $15 million of new federal IDEA/NCLB money to supplant current state revenues that are distributed to school districts.

Much has also been made of the increased flexibility we will have in using federal funds and redirecting them to cover costs associated with the new regulations. Somehow the federal government seems to forget that this cannot be done without impacting existing services. Those monies are currently used for programs and services that are benefiting children – redirecting the money elsewhere results in a loss of service to those students. Programs in technology, tutoring and lower class sizes would have to be forfeited. Such a "flexible" use of this money only results in supplanting funds, not supplementing them.

The No Child Left Behind Act imposes new costs on local districts and thus the resident taxpayers. Increasing costs will necessarily be shifted to the local school tax, and decisions on local priorities and choices in the school budget will become ever more difficult. I have never met a school board member who wants to see a child left behind. The issues addressed in this legislation are local control and funding. It is school board members who are on the educational funding and policy front lines, and no one else better understands the competing needs of a community struggling to fund its schools. Please support the intentions of HB 786 and pass this legislation

Speakers

SENATE EDUCATION COMMITTEE

Date 05/14/03 Time 1:15 PM Public Hearing on **HB 786-FN-L**

relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
X	X	☐	Representative Alger	Prime Sponsor
☐	X	☐	Senator John Gallus	Co-sponsor
☒	☐	☒	Rep. Mark Carter	District 44
☒	☒	☐	MARK JOYCE	NHSAA
☒	☒	☐	Scott Andersen	SAU #2
☒	☒	☐	Nate Greenberg	SAU 12
☒	☒	☐	Dr. Chuck Ott	SAU 56
☒	☒	☐	Dean Michener	NHSBA
☒	☐	☒	Sarah Browning	Dept. of Education
☒	☒	☐	JOHN ALGER	Dist. 24
☒	☒	☐	Neal Kurk	DIST 48
☒	☒	☐	Rep. H. C. Dickinson	#4
☒	☒	☐		
☒	☒	☐	Dr. Anne Jacoby	SAU #12
☐	☒	☐	Rep Dody	
☐	☒	☐	Rep. Ken Weyler	Dist 79
☐	☒	☐	GRAHAM CHYNOWETH	SHAKER REGIONAL SCHOOL DISTRICT (SAU 80) SERVING CANTERBURY & BELMONT
☒	☐	☒	Sen O'Hearn	Dist 12
☐	☐	☐		
☐	☐	☐		

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May 15, 2003

THE COMMITTEE ON Education

to which was referred House Bill 786-FN-L

AN ACT relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

VOTE: 5-0

2003-1661s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Joseph A. Foster
For the Committee

HB786 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: relative to the participation of the state and its political subdivisions in the federal No Child Left Behind Act of 2001.

Date	Body	Description
1/30/2003	H	Introduced and ref to Education; HJ 12, p209
1/30/2003	H	Report due 3/6/2003
2/4/2003	H	==CANCELLED(Storm)==Hearing Feb 18 2:00 RM207,LOB
2/18/2003	H	Rescheduled Hearing Mar 4 2:00 RM207,LOB
3/5/2003	H	Maj Report OTP for Mar 12 (Vote 12-5;Reg)
3/5/2003	H	Min Report ITL
3/12/2003	H	Passed and ref to Finance VV; HJ23, p558
3/13/2003	H	Fin DivII Subcom Work & Exec Sess Mar 21 9:00 RM212,LOB
3/24/2003	H	Fin Maj Report OTP for Apr 10 (Vote 18-1;CC)
4/4/2003	H	Reps Alger, Kurk & S L'Heureux Prop Fl Am{1094}; HC31, p1044-1045
4/10/2003	H	Removed from Consent Cal, req Rep Alger; HJ 34, p1089
4/10/2003	H	Rep Alger Fl Am{1094}, AA DIV(310-36); Passed with Am VV; HJ 34, p1139-1140 + 1143
4/24/2003	S	Introduced and Ref. to Education; SJ 14, Pg.342
5/1/2003	S	Hearing; May 14, 2003, Room 105-A, SH, 1:15 p.m.; SC21
5/16/2003	S	Committee Report; Ought to Pass with Amendment{1661}, [05/22/03]; SC23, Pg.42
5/22/2003	S	Committee Amendment{1661}, AA, VV; SJ 17, Pg.436-437
5/22/2003	S	Sen O'Hearn Moved Laid on Table, MA, VV; SJ 17, Pg.437

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations