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Contains: Additional Committee Report and Floor Amendments.

HOUSE CALENDAR

THURSDAY, APRIL 1

ADDITIONAL COMMITTEE REPORT

FINANCE

HB 737, declaring the New Hampshire supreme court's Claremont II decision to be an unconstitutional violation of the separation of powers mandate under part I, article 37 of the New Hampshire constitution. INEXPEDIENT TO LEGISLATE

Rep. Jeffrey C. MacGillivray for Finance: This bill as proposed set forth a legislative declaration, supported by constitutional findings, that the New Hampshire supreme court's Claremont II decision is an unconstitutional violation of separation of powers.

The committee looked at several amendments to modify the wording of this declaration, and heard testimony on one amendment which would have attached the "Homestead Exemption" plan to the bill. The majority of the committee believes that the subject matter of this bill is not appropriate for legislation, that the "Homestead Exemption" does not appropriately address the supreme court's ruling, and that the House should concentrate on addressing the state's immediate problem of how education is to be funded.

Some members of the majority indicated that they believed that the court had made an error, or may have made an error, and that were the subject matter of this bill reintroduced as a House resolution they might vote differently. Other members indicated that they agreed with the court's decision. Vote 21-4.

FLOOR AMENDMENTS

1999-0675h

Floor Amendment to HB 737

Proposed by the Rep. Boyce

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

1 Statement of Findings and Intent; Affirmation by the Legislature of the Constitutionality of the Current Tax Structure.

I. The members of the executive and legislative branches of the state of New Hampshire, having made and subscribed an oath to God and to the state and its constitution, or alternatively, by affirming under the pains and penalties of perjury, their allegiance to the state of New Hampshire and its constitution pursuant to part II, article 84 of said constitution, hereby find that the decision of the New Hampshire supreme court nullifying the use of the current property tax structure as the means for funding public education is erroneous and a violation of the separation of powers mandate under part I, article 37 of the New Hampshire constitution.

II. In furtherance of this position, the legislature finds that under part I, article 29 of the New Hampshire constitution, the legislature possesses the sole authority to create laws, and that under part I, article 29 of said constitution, the legislature possesses the sole authority to suspend laws. Moreover, the legislature finds additional constitutional support for its position as follows:

- (a) Part I, article 1, relative to the origin and object of government.
- (b) Part I, article 2 relative to individual property rights.
- (c) Part I, article 6 relative to local control of education, both religious and secular.
- (d) Part I, article 12, relative to the consent of the governed on taxation.
- (e) Part I, article 28, relative to the consent of the people, or their representatives in the legislature, prior to the establishment or imposition of a tax.
- (f) Part I, article 28-a, relative to the prohibition on unfunded mandates.
- (g) Part I, article 31 and part II, article 2, relative to the authority of the legislature to make laws.
- (h) Part II, article 83, relative to the New Hampshire supreme court's inconsistent and unsupported interpretation of "cherish" to mean "to require payment for" within the context of this article.

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

1999-0677h

Floor Amendment to HB 737

Proposed by the Rep. Pepino

Amend the bill by replacing section 1 with the following:

1 Statement of Findings and Intent; Affirmation by the Legislature of the Constitutionality of the Current Tax Structure.

I. The members of the executive and legislative branches of the state of New Hampshire, having made and subscribed an oath to God and to the state and its constitution, or alternatively, by affirming under the pains and penalties of perjury, their allegiance to the state of New Hampshire and its constitution pursuant to part II, article 84 of said constitution, hereby find that the decision of the New Hampshire supreme court nullifying the use of the current property tax structure as the means for funding public education is an unconstitutional violation of the separation of powers mandate under part I, article 37 of the New Hampshire constitution.

II. In furtherance of this position, the legislature finds that under part I, article 29 of the New Hampshire constitution, the legislature possesses the sole authority to create laws, and that under part I, article 29 of said constitution, the legislature possesses the sole authority to suspend laws. Moreover, the legislature finds additional constitutional support for its position as follows:

- (a) Part I, article 1, relative to the origin and object of government.
- (b) Part I, article 2 relative to individual property rights.
- (c) Part I, article 6 relative to local control of education, both religious and secular.
- (d) Part I, article 12, relative to the consent of the governed on taxation.
- (e) Part I, article 28, relative to the consent of the people, or their representatives in the legislature, prior to the establishment or imposition of a tax.
- (f) Part I, article 28-a, relative to the prohibition on unfunded mandates.
- (g) Part I, article 31 and part II, article 2, relative to the authority of the legislature to make laws.
- (h) Part II, article 83, relative to the New Hampshire supreme court's inconsistent and unsupported interpretation of "cherish" to mean "to require payment for" within the context of this article.

III. The legislature hereby finds and declares that the current tax structure shall be legally binding until such time as the legislature may vote to change it.