

HOUSE RECORD

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Contains: Governor's Veto Messages

HOUSE CALENDAR

LAIID ON TABLE

CACR 7, relating to the state's responsibility to provide to all citizens the opportunity for a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education. (Pending question is the adoption of the majority committee amendment.)

HB 730, establishing a committee to study the transfer of the Goffstown district court to a new location. (Pending question is adoption of the committee report of Ought to Pass with Amendment.)

HR 24, affirming revenue estimates for fiscal years 2002 and 2003. (Pending question is adoption of Ought to Pass with Amendment.)

GOVERNOR'S VETO MESSAGE ON hb 298

May 15, 2002

To the Honorable Members of the General Court:

By the authority vested in me as Governor of New Hampshire, pursuant to Part II, Article 44 of the Constitution of New Hampshire, I have this day vetoed House Bill 298, an Act relative to charter schools.

As a state senator, I voted for New Hampshire's existing charter school law and I believe that well designed and operated charter schools can complement the education now provided in our public school systems. Unfortunately, House Bill 298 is not a constructive step toward the goal of opening charter schools in New Hampshire.

By cutting local voters out of the approval process for charter schools, H.B. 298 violates our long tradition of local control of public schools. By draining money from our existing public schools, H.B. 298 jeopardizes the progress our communities are making in improving their schools. Moreover, as drafted, H.B. 298 may violate part I, article 28-a of the New Hampshire Constitution, which prohibits the imposition by the State of unfunded mandates on local governments. And, by repealing the statutory right of citizens to bring complaints about the operations of a charter school to the State Board of Education, H.B. 298 leaves aggrieved parents and taxpayers without any effective remedy.

Most of the bill's problems stem from the removal of local voters from the charter school approval process. Under our existing charter school law and under H.B. 298, most of the money that will support a charter school comes from the transfer of funds from local school districts to the charter school. Under current law, before such a school is created, the voters in the charter school's community have to vote to approve the school's plans. Under H.B. 298, however, local voters are cut out of the process completely. Charter school applicants can bypass local voters and proceed directly to the State Board of Education for approval. Furthermore, the State Board of Education is not required under H.B. 298 to notify the local school board of a charter school application, and the local school board is not given an opportunity to participate in any hearings on an application pending before the State Board.

The bill's supporters have argued that the money being transferred to a charter school under H.B. 298 is the State's "adequacy" money, not money raised by local tax dollars, and, therefore, local voters are not entitled to have a role. I disagree. Removing a student from a school's rolls does not automatically lower a school's operating costs. While there may be modest savings in supplies, such as paper and pencils, most of the school's fixed costs will stay the same. The reallocation of adequacy money to a charter school will force school districts to choose between increasing local school property taxes or decreasing the resources available to their existing public schools.

It is one thing to establish a charter school that has these types of financial implications for local school districts if the local voters approve the charter school. It is quite another to impose such a school on local property taxpayers without giving them any say at all. I simply cannot support such a complete subversion of local control.

Because local school districts have no say in the approval of charter schools under H.B. 298, two sections of the bill may violate part I, article 28-a of the New Hampshire Constitution, which prohibits the imposition by the State of unfunded mandates on local governments.

While the bill's supporters assert that the transfer of funds from the local school district to the charter school will be limited to the State's per pupil adequacy allocation, the language in H.B. 298 actually would allow the State Board of Education to approve a charter school's request that the local school districts pay a higher amount to the charter school. This language reads: "the pupil's resident district shall pay to such [charter] school tuition in an amount *not less than* the base cost per pupil as determined in RSA 198:40 as adjusted for grade level weights as determined in RSA 198:38." Any "tuition" approved by the State Board *greater than* the adequacy cost would be paid from local property taxes.

The second constitutional defect in H.B. 298 centers on its requirement that a local school district pay the special education costs for a student attending a charter school. This puts local school districts in the position of being forced to duplicate costly special education programs.

Finally, H.B. 298 eliminates the right of a parent or taxpayer to bring a complaint about the operations of a charter school to the State Board of Education. Under H.B. 298, a person dissatisfied with a charter school is limited to bringing a complaint to the charter school's "board of trustees." While many charter schools that have been established in other states have been successful, unfortunately, there also have been many instances of financial and operational mismanagement of charter schools. The extremely limited grievance process provided for in H.B. 298 is unacceptable in matters involving the education of our children and the expenditure of taxpayers' dollars.

I am today signing House Bill 1281, which establishes a commission to study public educational choice initiatives. I hope that this commission will develop a proposal that will encourage the creation of charter schools without the serious flaws contained in H.B. 298.

Respectfully submitted,

Jeanne Shaheen

Governor

GOVERNOR'S VETO MESSAGE ON hb 420

April 3, 2002

To the Honorable Members of the General Court:

By the authority vested in me as Governor of New Hampshire, pursuant to Part II, Article 44 of the Constitution of New Hampshire, I have this day vetoed House Bill 420, an act apportioning state representative districts.

I am vetoing this bill because it grossly deviates from the constitutional requirement that districts be as equal in population as possible; it is internally inconsistent in its treatment of different areas in the state; and it unnecessarily changes the form and boundaries of existing districts.

House Bill 420 violates Part II, Article 9 of the New Hampshire Constitution, which requires districts in the House of Representatives to "be as equal as circumstances shall admit." For citizens in a representative democracy like ours, the right to vote is a precious right, but that right is empty unless we ensure that each vote is counted and counted equally. Unfortunately, H.B. 420 sets up districts that are far from any measure of equality and thus are unconstitutional.

The population of the State is 1,235,786 according to the census conducted in 2000. A straight division of the State into 400 single-member districts would have each district contain 3,089 people. H.B. 420 would create a redistricting scheme of House districts that vary in population to such a degree that they would represent serious threats to the voting rights of thousands of New Hampshire citizens. Far from creating districts in which each member of the House would represent 3,089 people, H.B. 420 would create districts with large differences in the number of people represented by each House member. The smallest of H.B. 420's districts falls 14.4% below the ideal and the largest exceeds the ideal by 8%.

The difference between the high and low is called the "range of deviation" and the 22.4% range of deviation created by H.B. 420 is unacceptably high. It is substantially higher than the 14.5% total range of deviation in the current House redistricting statute at the time it was adopted ten years ago. It is also significantly higher than the ranges of deviation for alternative plans that were presented to the House Redistricting Committee and the House Election Law Committee, as well as an amendment offered on the floor of the Senate. Unfortunately, the majority party rejected all of the lower-deviation alternatives.

The United States Supreme Court has, on more than one occasion, held that redistricting plans with deviations of greater than ten percent represent prima facie cases of unconstitutional voting rights violations, unless the deviations are required by the need to advance rational state policies. There is no legitimate state policy that requires deviations of such magnitude. Indeed, as stated above, there are a number of alternative plans that would create districts with much smaller ranges of deviation.

Floterial districts lie at the heart of many of the problems with H.B. 420. A floterial district is one that crosses municipal or ward lines and allows one community to share representation with one or more contiguous places. In some counties, H.B. 420 creates unnecessary floterial districts. In others, House Bill 420 fails to create floterial districts where they clearly are warranted. There are 32 floterial districts in current law and H.B. 420 would increase that number to 43. In one extreme example, H.B. 420 lays a floterial district on top of the entire City of Nashua, creating a district in which one House member will have more than 86,000 constituents. Thus, that single House district is one-and-one-half times greater in size than the population of a state senate district.

H.B. 420 unnecessarily treats similar situations in different parts of the State quite differently. For example, under H.B. 420 the citizens of the cities of Claremont and Laconia will be under-represented because those two cities are treated differently than similarly situated towns. Claremont, with a population of 13,151, is given four representatives in H.B. 420, despite the fact Claremont's population is 795 above the ideal population for four representatives. Laconia, with a population of 16,411, is given five representatives, despite the fact its population is 966 above the ideal population for five representatives. H.B. 420 creates no floterial districts to deal with those two clear situations of under-representation, despite the fact that the majority created floterial districts for similarly situated citizens in Hollis and Raymond. Nor can the majority party's rationale for denying full representation to the citizens of Claremont and Laconia withstand any objective scrutiny. The majority contended that Claremont and Laconia would dominate surrounding smaller towns in a floterial district. However, H.B. 420 places the following large towns in floterial districts with much smaller neighbors: Milford (population 13,535 in a floterial with a total of 18,575); Goffstown (16,929 out of 24,705); Amherst (10,769 out of 12,803); and Londonderry (23,236 out of 33,945).

H.B. 420 unnecessarily changes the form and boundaries of existing districts. This is especially a problem in Cheshire County. Despite the fact that population shifts over the last 10 years only cause Cheshire County to lose one seat in the House of Representatives, H.B. 420 changes the representation of every single community in Cheshire County, with new combinations in every multi-town and floterial district.

Moreover, H.B. 420 targets certain incumbents, despite the fact one of the criteria for redistricting set forth in the House Redistricting Committee was to avoid altering incumbent districts if possible. For example, H.B. 420 targets a member of House Democratic Leadership and one of the only four Democrats in the Hillsborough County delegation outside of the cities of Manchester and Nashua by placing her home town of Mont Vernon in two overlapping floterial districts – one with the town of

Amherst, which is five times the size of Mont Vernon; the other with the towns of New Boston and Lyndeborough.

The creation of this particular overlapping floterial district was done despite the fact there were better alternatives and despite the fact the Republican leadership of the House Redistricting Committee on more than one occasion questioned the constitutionality of overlapping floterial districts. Indeed, the House Redistricting Committee rejected a proposal for overlapping floterial districts in the City of Laconia and a proposal for overlapping floterial districts in the City of Claremont, both offered by members of the minority party. Such inconsistency in redistricting is unacceptable. It highlights the willingness of the majority to bend a supposed rule when it suits the purpose of limiting minority party representation.

In Coos County, despite the fact that that there is a sufficient number of people to support a single-member district in greater Northumberland ("Groveton") and a single-member district in Lancaster, H.B. 420 would combine Groveton with Lancaster in a two-seat district. This combination is designed to force a Democratic incumbent to run against two Republican incumbents.

Because H.B. 420 is unconstitutional, fundamentally unfair, and internally inconsistent, I am compelled to veto this legislation.

I urge the House to take up my veto quickly. Alternatives that would satisfy the requirement for equal representation and fairness have been presented, and can be considered once again. There is still time before the June candidate filing period to pass redistricting legislation that will preserve the voting rights of all New Hampshire citizens.

Respectfully submitted,

Jeanne Shaheen

Governor

GOVERNOR'S VETO MESSAGE ON hb 465

May 18, 2002

To the Honorable Members of the General Court:

By the authority vested in me as Governor of New Hampshire, pursuant to Part II, Article 44 of the Constitution of New Hampshire, I have this day vetoed House Bill 465, an Act relative to lobbying activities of the New Hampshire Bar Association, establishing a committee to study issues related to the unified bar, and requiring the association to poll its members on the question of de-unification.

All attorneys who wish to practice law in New Hampshire must be members of the New Hampshire Bar Association pursuant to a 1972 decision of the New Hampshire Supreme Court, *In re Unified New Hampshire Bar*, and Supreme Court Rule 42A. In a majority of states attorneys are similarly required to be members of the state bar association. These types of bar associations are commonly referred to as unified bars.

Since the Supreme Court in 1968 first required membership in the Bar Association on a trial basis, the Supreme Court expressly has limited the New Hampshire Bar Association's legislative lobbying activities to "legislation dealing with administration of justice, the operation of the courts, the practice of law, and the legal profession." The Supreme Court has shown that it is quite willing to enforce that limitation on legislative activity. For example, in 1986 the Supreme Court in its *Chapman* decision made it clear that the Bar Association's lobbying activity against so-called tort reform legislation was out of bounds.

House Bill 465 is an unnecessary, inappropriate and frivolous piece of legislation.

H.B. 465 requires that the Bar Association create a mechanism to allow members to opt out of paying that portion of their dues used for lobbying activities. It requires that by October 1 of this year the Bar Association must conduct a poll of Bar members on whether they think mandatory membership in the Bar Association should be continued. It further requires that the Bar Association count the ballots in public and that the ballots must be preserved so they can be physically examined by a study committee of the legislature.

The Bar Association's constitution and bylaws provide a democratic process for member directed reform, and I trust that lawyers are quite capable of protecting their own rights.

I know that there are some legislators who are unhappy with positions taken and statements made by some in the Bar Association leadership during the last few years. This legislation is motivated by a desire for revenge. It is petty. It is frivolous. It is beneath the House and Senate.

Respectfully submitted,

Jeanne Shaheen

Governor

GOVERNOR'S VETO MESSAGE ON hb 622

March 26, 2002

To the Honorable Members of the General Court:

By the authority vested in me as Governor of New Hampshire, pursuant to Part II, Article 44 of the Constitution of New Hampshire, I have this day vetoed House Bill 622, an act relative to the time period for the Executive Council to confirm nominees to the supreme court.

I have vetoed H.B. 622 because I believe it violates the New Hampshire Constitution's specific provision concerning the nomination and appointment of judges, Part II, Article 46, as well as the separation of powers provision in our state Constitution, Part I, Article 37. I note that this veto of H.B. 622 is made with the approval of its sole sponsor, who is a strong proponent of the Constitution's careful separation of powers between the three branches.

Under Part II, Article 46 of the New Hampshire Constitution, the authority to nominate judges is granted exclusively to the Governor and the authority to confirm judges is granted exclusively to the Executive Council: "All judicial officers ... shall be nominated and appointed by the governor and council; and every such nomination shall be made at least three days prior to such appointment." *See Opinion of the Justices*, 117 N.H. 398 (1977).

H.B. 622 would encroach on the powers granted by our Constitution exclusively to the Executive Council by requiring the Council to wait at least 60 days and to hold two public hearings before confirming a nominee to the Supreme Court.

I strongly support the holding of thorough and open public hearings on judicial nominees and believe the members of the Executive Council should take whatever time they deem necessary to consider a Governor's nomination to the Supreme Court. However, under our Constitution, it is the members of the Council, and not the legislature, who should determine how many hearings the Council should hold and the appropriate waiting period before acting on any judicial nominee.

The separation of powers provided for in our State Constitution is an important check on the powers of any one branch. It is a principle that must be protected. Thus, regardless of the public policy merits of H.B. 622, I am compelled to veto this bill.

Respectfully submitted,

Jeanne Shaheen

Governor

GOVERNOR'S VETO MESSAGE ON hb 1366

May 18, 2002

To the Honorable Members of the General Court:

By the authority vested in me as Governor of New Hampshire, pursuant to Part II, Article 44 of the Constitution of New Hampshire, I have vetoed House Bill 1366, an Act establishing a state employee recognition and award program.

House Bill 1366 replaces the existing state employee incentive awards program with an overly bureaucratic program that interjects members of the Legislative Branch in an inherently Executive Branch function in violation of Part I, Article 37, Part II, Article 41 and Part II, Article 62 of the New Hampshire Constitution. Because I believe strongly in the separation of powers principles that underlie our government, I am vetoing H.B. 1366.

If H.B. 1366 became law, a committee that would include two members of the Legislature would be given the discretion to decide 1) which employees of the Executive Branch would receive monetary bonuses for suggestions to improve the operations of the Executive Branch and 2) which employees of the Executive Branch would receive special recognition for a "suggestion or service which is outside or beyond the employee's regular responsibilities or performance standards."

It is a well established principle of constitutional law in this state that, pursuant to Part II, Articles 41 and 62 of the New Hampshire Constitution, "it is the inherent power of the Governor and Council to direct and regulate the internal workings of the executive department." *Opinion of the Justices*, 116 N.H. 406, 360 A.2d 116 (1976). Including legislators in performance reviews of Executive Branch employees and in decision-making on which Executive Branch employees should receive discretionary financial bonuses and other forms of recognition flagrantly violates Part II, Articles 41 and 62 of our Constitution and the separation of powers doctrine established in Part I, Article 37.

In addition, H.B. 1366 would create an overly bureaucratic process for implementing an incentive awards program. Indeed, even the Office of Legislative Budget Assistant acknowledged in the fiscal note to H.B. 1366 that "there may be a reduction of hours available to audit state agency operations if audit time is diverted to reviewing cost saving suggestions."

At the Senate hearing on H.B. 1366, Executive Branch employees suggested amendments to the bill that were designed to improve the existing employee incentive awards program. Unfortunately, the Senate rejected those amendments and instead amended the House version of the bill in a way that is clearly unconstitutional.

I acknowledge that the existing employee incentive awards program was dormant under the administrations of Governors Sununu, Gregg, and Merrill and my administration until this year. This legislation has served the purpose of reinvigorating the program. A new rules framework will move forward after the Legislature takes up my veto of this bill.

But I take exception to the suggestion of certain members of the Legislature that our underpaid and hard-working state employees require special financial incentives to motivate them to bring forward and implement ideas to improve the efficiency of state government. State employees went four years without receiving even cost-of-living salary adjustments before I took office as Governor. I am proud that in each of my three terms as Governor we successfully reached collective bargaining agreements with the State Employees Association that provided our state employees with modest raises. I am particularly proud that last year we reached agreement on a revised career ladder structure that will help retain experienced employees in state service. Our state employees day-in and day-out are creative in providing quality services to the people of New Hampshire. Special recognition of individual state employees for service above and beyond their normal duties is a good thing – but it is not necessary to motivate them.

For all of the above reasons, I am vetoing House Bill 1366.

Respectfully submitted,

Jeanne Shaheen

Governor

GOVERNOR'S VETO MESSAGE ON hb 1393

May 17, 2002

To the Honorable Members of the General Court:

By the authority vested in me as Governor of New Hampshire, pursuant to Part II, Article 44 of the Constitution of New Hampshire, I have this day vetoed House Bill 1393, an Act relative to business replacement costs resulting from government program displacement.

Under current law, a business whose property is taken by eminent domain for a state, county, municipal or school district public works project is entitled to be paid fair market value for its property and up to \$20,000 in relocation costs. Under the ambiguous and poorly crafted language in House Bill 1393, a business would be entitled to receive full replacement costs for its property, "including but not limited to" the cost of building a "comparable" facility or buying a "comparable" facility.

H.B. 1393 would significantly increase the cost of public works projects across the state. Any project involving state or federal

funds, including those at the local level, could see dramatic additional costs as a result of this legislation. The ambiguous and subjective language contained in the bill will lead to frequent litigation, resulting in even higher costs and delays in public works projects. In addition, H.B. 1393 is inconsistent with displaced business payment programs in every other state. While I appreciate the concerns expressed by some in the business community that the statutory cap on relocation costs in current law is low, H.B. 1393 is not the way to address this situation.

The Department of Transportation estimates that costs to DOT projects would increase by approximately \$10 million each year – the equivalent of one year’s worth of projects in the 10-year highway plan – under H.B. 1393. To address this additional cost, the State would have to choose among three unattractive options – significantly increasing the gasoline tax, delaying much needed projects already approved by the legislature in the 10-year plan, or reducing the State support available to other local projects through programs such as the State Bridge Aid Program.

Counties, municipalities and school districts would also face millions of dollars in additional costs. Contrary to the information provided by the proponents of H.B. 1393 during the legislative process, H.B. 1393 does apply to local government projects. H.B. 1393 applies to any local government project that receives any state or federal funds of any amount. Thus, for example, additional costs for Nashua’s Broad Street Parkway project could be as much as \$6 million. In Manchester, plans to expand an existing high school would be jeopardized if H.B. 1393 became law because of the costs the City would incur in "replacing" old apartment buildings that would be displaced by the school’s expansion.

Without new funding to cover these additional costs to counties, school districts and municipalities, H.B. 1393 may violate part I, article 28-a of the New Hampshire Constitution, which prohibits the imposition by the State of unfunded mandates on local governments.

The language in H.B. 1393 governing how replacement costs would be determined is ambiguous and open to multiple interpretations, which, undoubtedly, will lead to costly litigation. H.B. 1393 states that "replacement costs shall mean the present value cost," which, in the appraisal industry, means the cost of new construction. The bill then contains a confusing and elusive provision that requires a displacement payment to "include *but not be limited to* the lesser of the following":

- (a) The costs associated with the design and construction of any new buildings which are reasonably suitable for the continuation of the business in a fashion as close as possible to the operation of the business prior to the displacement; or
- (b) The costs associated with the purchase and renovation of any building which is reasonably comparable to the displaced property, is in a reasonably similar location, and is reasonably suitable for the continuation of the business in a fashion as close as possible to the operation of the business prior to the displacement.

As worded, the "lesser of" provision in H.B. 1393 has no meaning. Moreover, what is meant by "reasonably suitable"? Or "reasonably comparable"? Or "reasonably similar"? It is not hard to imagine the lawsuits that could result from the conflicting opinions this language will engender. And, the litigation resulting from this poorly crafted bill will further drive up the cost of public works projects.

If enacted, H.B. 1393 could result in windfall payments to some business owners. For example, it is possible that a business operating in a 20-year old building with a failing roof and sagging floor would be entitled to payment from the state or local governments equal to what is needed to build a brand new facility.

Another problem with H.B. 1393 is that it assures more favorable treatment for businesses being relocated than for displaced homeowners. For example, a person who owns an apartment building with four units, and who lives in one of the units and rents out the other three, would be covered by the business replacement provisions of H.B. 1393. However, the single-family homeowner living in the house next door, who also is being displaced, is not eligible for the same replacement cost benefits.

During the legislature’s consideration of H.B. 1393, the Department of Transportation put forward an alternative proposal in a good faith effort to address concerns that the statutory cap on the compensation currently offered to businesses that must be relocated is low. Unfortunately the language now contained in H.B. 1393 was adopted rather than the DOT proposal.

According to the bill's statement of intent, "displacement of businesses by eminent domain takings can result in the closure of those businesses." While that result is possible, the Department of Transportation has reviewed the last five years of its projects and reports that there were 47 businesses that were displaced during that period. Of those, 44 were successfully relocated, one consolidated its business into another location five miles away, one consolidated its operations at its headquarters in New Jersey, and one closed. That record does not support amending existing law in the sweeping way H.B. 1393 does.

New Hampshire's program for compensating displaced businesses is comparable to that offered by other states around the country because most, including ours, are based on a uniform federal law. Currently a federal inter-agency task force is reviewing the track record of that law and its impact on businesses, and this fall will be holding hearings around the country to get input on what, if any, changes should be made. In addition, I recently signed Senate Bill 187, which created a committee to study the fairness, effectiveness, and public perception of the eminent domain process. The committee is to issue its report by November 1, 2002. Enacting H.B. 1393 and the dramatic new costs it entails for the state and local governments is premature in light of both the ongoing federal review process and the S.B. 187 study.

For all of the above reasons, I am today vetoing House Bill 1393

Respectfully submitted,

Jeanne Shaheen

Governor