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Contains: Governor's Veto Messages and Bills Laid on Table

HOUSE CALENDAR RECESSED SESSION OF SEPTEMBER 4, 2003

GOVERNOR'S VETO MESSAGE ON HB 60

May 14, 2003

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 60, an Act changing the name of the advisory committee on shore fisheries and relative to the definition of shellfish and a rulemaking exemption for certain rules relating to marine species.

I have vetoed this bill only because I object to its last section, which limits the exemption from the provisions of RSA 541-A granted by current law for rules pertaining to marine species managed under the Atlantic States Marine Fisheries Compact. As far as I can tell, the current exemption has generated no problems, and the limitation proposed by H.B. 60 is neither necessary nor warranted. Until there is significant reform of the rulemaking process as currently implemented under RSA 541-A, I am hesitant to extend, even slightly, the rulemaking to which that statute applies. Where as here, the current exemption seems to be working well, there is no reason to limit it.

There has been no claim by anyone that the Department has abused the current exemption or passed rules under the exemption that overstep the authority delegated to the Department by the General Court. Even if I had no concerns about the implementation of RSA 541-A, I would object to the last section H.B. 60 as a solution in search of a problem. The change to the rulemaking exemption proposed in H.B. 60 was not initiated by the Advisory Committee on Shore Fisheries, by the Fish and Game Department, by the commercial fishermen subject to rules passed by the department under the exemption, or by any environmental group. The change was initiated by the Joint Legislative Committee on Administrative Rules.

Since becoming Governor, I have heard from a wide variety of sources, including agency heads, the Attorney General, members of the public and members of the General Court that the rule-making process is in serious need of revision. The fact that administrative agencies should be able to move more nimbly and quickly in adopting detailed rules than can the General Court in adopting legislation, is one of the advantages of rules over statutes and presumably one of the reasons why the legislature has delegated rulemaking power to agencies. This advantage has been deeply eroded by the fact that the process for adopting rules has become in many instances more complex, time-consuming and burdensome than the process for passing legislation.

Another reason why the General Court delegates administrative rulemaking power is to allow an administrative agency with significant expertise in a particular regulatory area to craft regulations within a set legislative mandate. In delegating this power, the legislature has correctly required that agencies seek public input, and follow an orderly and open process in creating rules. At the end of that process, legislative involvement appropriately includes oversight to assure that the rules do not exceed

the original legislative intent or the scope of the delegation of authority and includes suggestions on non-substantive drafting issues. My concern stems from the increasing complexity of the process and my belief that substantive decisions made after full public input by the administrative departments to which the legislature has entrusted them, and legal judgments which are properly under the jurisdiction of the Attorney General should not be second-guessed or interfered with during the legislative oversight portion of the rulemaking process. When we ask our agencies to cut unnecessary red tape and to make their procedures as friendly to the public as possible, we should not make the agency, in adopting its own rules, jump through unnecessary bureaucratic hurdles and subject the agency to overly complex and cumbersome process.

I know that many legislators share the view that has been expressed to me by the Attorney General, numerous department heads and members of the public that the rulemaking process must be governed not only by a desire for due process and public input, but also by common sense and good judgment. While I believe in appropriate legislative oversight of the administrative rulemaking process, I am concerned that the RSA 541-A rulemaking process for executive branch agencies is becoming increasingly cumbersome and unnecessarily complex. Legislative red tape during the rulemaking process leads to administrative red tape that defies common sense and disservices the public. The legislative procedures implementing RSA 541-A need to be reformed. Until that happens, I strongly will consider a veto of any bill that extends the reach of RSA 541-A or limits an existing exemption. Because H.B. 60 limits a current exemption from the RSA 541-A rulemaking process, I have vetoed it.

Respectfully submitted,
Craig R. Benson
Governor

GOVERNOR'S VETO MESSAGE ON HB 164

June 17, 2003

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 164, an Act increasing the gross premium tax on insurance provided by certain unlicensed companies.

H.B. 164 raises the premium tax paid by certain companies from 2% to 3%. I have made it clear that I will veto any bill that comes to my desk that raises taxes. The people of the State have made it clear that government should live within its means without increasing taxes. I have made a commitment to honor their mandate.

One justification offered for the tax increase contained in H.B. 164 is that it will bring the tax into line with neighboring states. If we were to follow that logic, we would adopt a sales and income tax and would suffer, like our neighbors, some of the highest taxes in the country. This is not the New Hampshire way.

Another argument made in favor of the tax increase contained in H.B. 164 is that it only affects out-of-state companies. This argument is unpersuasive because premium taxes are inevitably passed on to New Hampshire consumers.

Because this bill increases taxes, I have vetoed it.

Respectfully submitted,
Craig R. Benson
Governor

GOVERNOR'S VETO MESSAGE ON HB 278

June 11, 2003

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 278, an act reducing the crime of sexual assault from a class B felony to a class A misdemeanor in cases where the victim is between 13 and 15 years old and where the defendant is up to 4 years older than the victim.

I have vetoed this bill because I believe that the penalty for sexual crimes committed against our children should not be reduced. The specific objection I have to this bill is that the age gap between the victim and perpetrator is too great. For example, this bill would reduce the penalty for sexual assault in cases where the victim is only 13 years of age and the defendant is 17 years of age. That age gap represents the considerable developmental difference between a seventh grader and a junior in high school. Likewise, a sexual assault committed on a victim that is only 15 years of age by a defendant who is 19 years of age would receive a reduced penalty under the terms of this bill. Just as there is a significant difference between a 13 year old and a 17 year old, there is a considerable disparity in maturity between an average 15 year old who is still a high school student and a 19 year old who may be living on his or her own. Given the unequal influence an older perpetrator can have on a younger victim in these types of cases and the mental anguish such victims often endure, I do not feel that we should reduce the consequences for committing the crime of sexual assault in these types of cases.

Respectfully submitted,
Craig R. Benson
Governor

GOVERNOR'S VETO MESSAGE ON HB 724

July 8, 2003

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 724, an Act extending the effective date of the Skyhaven airport transfer plan and the period for completing work under the wetlands permit.

H.B. 724 extends for an additional three years the date by which Skyhaven airport will be transferred from the State. We could extend the deadline in three-year increments forever. Instead, we ought to signal to all involved that the time has come to transfer the airport. I object to H.B. 724 because it sends the opposite signal.

The FBO at the airport is now profitable. The operation of the airport uses resources of the Department of Transportation that could be used for other projects.

The State has lived up to its commitments. If Skyhaven provides a valuable service to the pilots who use it and to the local communities, then Skyhaven should be able to operate without State help. Because this bill would extend Skyhaven's dependence on the State for another three years, I have vetoed it.

Respectfully submitted,
Craig R. Benson
Governor

GOVERNOR'S VETO MESSAGE ON HB 737

July 8, 2003

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 737, an Act relative to the state conservation committee.

At a time when the budget is very tight, H.B. 737 creates a new unclassified state position. The bill then appropriates \$1 to fund this position and carry out the other purposes of the bill.

As a general matter, I will not support adding new State positions, if we do not have the money to fund them. It is for this reason that I have vetoed this bill.

Respectfully submitted,
Craig R. Benson
Governor

GOVERNOR'S VETO MESSAGE ON HB 796

July 21, 2003

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 796, an Act relative to the taxation of manufactured housing and relative to the notice required prior to the sale of a recreational campground.

I do not object to the sections of this bill that provide that manufactured housing shall be taxed and treated as real estate, that eliminate the separate manufactured housing tax lien system and that change the definition of security interest. These sections were subject to hearing and were the result of much legislative effort. They make appropriate changes to current law. I object only to the final section of the bill, which was added during the committee of conference process and which makes a change to current law that is unnecessary and unfair to recreational campground owners.

Section 8 of H.B. 796, requires that before a recreational campground owner may sell her campground, she must first give 60 days notice and a right of first refusal to any owner within the campground of a recreational trailer or manufactured home who pays property taxes to the town. Manufactured housing parks are separately regulated by RSA chapter 205-A, and the regulation of manufactured homes is outside the scope of the current RSA chapter 216-I. With respect to manufactured housing parks, a right of first refusal is in the current law, and makes more sense, since tenants have their primary residences within these parks. See RSA 205-A:21. A right of first refusal does not make sense in the context of a recreational campground,

however.

By definition, a recreational campground contains campsites “intended for temporary occupancy for recreational dwelling purposes only, and not for permanent, year-round residency.” RSA 216-I:1, VII. Still, some within a recreational campground may leave their recreational trailers in the recreational campground and may pay personal property taxes to the town. If H.B. 796 were to become law, these recreational trailer owners would be entitled to 60 days notice and a right of first refusal. H.B. 796 would give this important property right to the recreational trailer owners at the expense of the recreational campground owners.

The legislative history of this bill fails to show why this change is necessary or even why it would be generally beneficial to recreational trailer owners. On the other hand, since this bill passed, I have been contacted by numerous recreational campground owners who have expressed their concerns that section 8 of this bill would interfere with their property rights, make selling their property more difficult and reduce the value of their property.

Because section 8 of this bill would take away important property rights of campground owners and because there has been no demonstration of a compelling state interest in doing so, I have vetoed this bill.

Respectfully submitted,
Craig R. Benson
Governor

LAI D ON TABLE

HB 836, certifying that John Coughlin was elected as county attorney for Hillsborough county at the 2002 general election. (Pending question is the adoption of the majority committee report of ought to pass.)

HR 12, affirming revenue estimates for fiscal years 2003, 2004 and 2005. (Pending question is third reading and final passage.)

SB 29-FN-A-L, refunding certain meals and rooms taxes paid by the city of Manchester. (Pending question is the adoption of the committee report of inexpedient to legislate.)

SB 59-FN, relative to administrative license suspension hearings. (Pending question is the adoption of the committee report of ought to pass with amendment.)

OFFICIAL NOTICES

REVISED FISCAL NOTES

The following HBs and SBs have revised fiscal notes: HBs 25, 65, 66, 69, 79, 81, 91, 104, 105, 109, 135, 177, 185, 198, 205, 210, 258, 274, 280, 302, 311, 316, 332, 353, 357, 360, 387, 447, 483, 517, 521, 524, 528, 533, 543, 577, 578, 593, 598, 603, 605, 607, 608, 609, 610, 611, 612, 613, 614, 615, 617, 618, 619, 620, 621, 622, 623, 624, 626, 627, 628, 629, 630, 631, 632, 633, 634, 636, 637, 638, 639, 640, 644, 645, 646, 649, 654, 659, 661, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 687, 688, 689, 690, 691, 693, 694, 695, 696, 697, 698, 699, 701, 702, 703, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 728, 730, 732, 733, 735, 737, 738, 739, 741, 743, 746, 751, 758, 760, 763, 770, 772, 783, 784, 785, 787, 788, 791, 796, 798, 802, 803, 807, 810, 813, 814, 816, 823, 824, 826, 828, 830 and 835. SBs 14, 29, 33, 34, 35, 36, 46, 47, 54, 58, 63, 69, 70, 71, 78, 79, 94, 95, 96, 97, 98, 101, 107, 115, 120, 132, 152, 159, 161, 169, 197, 210, 215 and 222.

Karen O. Wadsworth, Clerk of the House