March 18, 1999

No. 14

STATE OF NEW HAMPSHIRE

Legislative

SENATE CALENDAR

REPORTS, HEARINGS, MEETINGS & NOTICES

THE SENATE WILL MEET IN SESSION TUESDAY, MARCH 23, 1999 AT 9:00 A.M.

LAID ON THE TABLE

SB 20, limiting the price for resale of tickets to motor sports events at the New Hampshire International Speedway to the original purchase price.

SB 50, relative to the state's responsibility to provide an adequate education.

SB 82, relative to the termination of employees.

REPORTS

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 113, establishing a division of travel and tourism development within the department of resources and economic development. Vote 5-2

Ought to Pass, Senator Cohen for the committee.

SB 136-FN, allowing certain state employees to take paid leave to participate in disaster relief service work. Vote 7-0

Rereferred to Committee, Senator Larsen for the committee.

SB 180, establishing a committee to study the improvement of employment opportunities offered by the state of New Hampshire for persons with disabilities. Vote 7-0

Ought to Pass, Senator Cohen for the committee.

SB 181-FN, relative to the licensure of geologists. Vote 7-0

Rereferred to Committee, Senator Roberge for the committee.

INSURANCE

SB 107, relative to fees for examination of domestic societies. Vote 8-0

Ought to pass with amendment, Senator J. King for the committee.

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES

SB 128, replacing the housing assistance fund trust fund with a homeless prevention fund. Vote 4-0

Ought to Pass, Senator Squires for the committee.

SB 140, relative to ear piercing. Vote 3-0

Ought to pass with amendment, Senator Squires for the committee.

TRANSPORTATION

SB 34, requiring at least two crew members on trains. Vote 3-1

Inexpedient to Legislate, Senator Gordon for the committee.

SB 35, establishing a study committee to investigate motor vehicle inspection requirements. Vote 4-0

Ought to Pass, Senator Trombly for the committee.

SB 42-L, establishing a committee to study safety improvements at the U.S. Route 1 traffic circle in the city of Portsmouth. Vote 4-0

Ought to Pass, Senator Pignatelli for the committee.

SB 75, relative to out-of-state boats. Vote 4-0

Ought to Pass, Senator Gordon for the committee.

SB 87, relative to the authority of the auxiliary marine patrol. Vote 4-0

Inexpedient to Legislate, Senator Trombly for the committee.

SB 155, relative to the naming of certain bridges in the city of Concord. Vote 4-0

Ought to Pass, Senator Roberge for the committee.

AMENDMENTS

Insurance

March 17, 1999

1999-0420s

01/09

Amendment to SB 107

Amend the title of the bill by replacing it with the following:

AN ACT relative to fees for examination of domestic societies and foreign societies.

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

1 Examination of Domestic Societies; Gender Neutral. Amend RSA 418:27 to read as follows:

418:27 Examination of Domestic Societies. The commissioner of insurance, or any person [~~he~~] ***the commissioner*** may appoint, shall have the power of visitation and examination into the affairs of any domestic society. [~~He~~] ***The commissioner*** shall cause such an examination to be made at least once in [~~3~~] ***5*** years. [~~He~~] ***The commissioner*** may employ assistants for the purpose of such examination, and he ***or she***, or any person he ***or she*** may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify

as witness under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society. The expense of such examination and all valuations, including compensation and actual expense of examiners, shall be paid by the society examined, or whose contracts are valued upon statements furnished by the commissioner of insurance. The compensation of examiners shall in each case be fixed by the commissioner of insurance according to current standard rates. Whenever, after examination, the commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or in a way hazardous to its members, creditors, or the public, or whenever any domestic society, after the existence of one year or more, shall have membership of less than 400 (or shall determine to discontinue business), the commissioner may present the facts relating thereto to the attorney general, who shall, if [~~he~~] ***the attorney general*** deems the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business, and some person may be appointed receiver of such society, and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto. No such proceedings shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceedings should not be commenced.

2 Foreign Societies. Amend RSA 418:29 to read as follows:

418:29 Examination of Foreign Societies. The commissioner of insurance, or any person whom [~~he~~] ***the commissioner*** may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The [~~said~~] commissioner may employ assistants, and [~~he~~] ***the commissioner***, or any person he ***or she*** may appoint, shall have free access to all books, papers and documents that relate to the business of the society. [~~He~~] ***The commissioner*** may, in his ***or her*** discretion, accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province or country where such society is organized. The compensation and actual expenses of the examiners making any such examination, and for all general or special valuations, shall be paid by the society examined, or whose contract obligations have been valued upon statements furnished by the commissioner of insurance[~~, provided, the fees of the examiners shall not exceed $25 per day for each examiner~~]. If any such society, or its officers, refuse to submit to such examination, or to comply with the provisions of the section relative thereto, the authority of such society to write new business in the state shall be suspended or license refused until satisfactory evidence is furnished the commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write new business in this state.

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

1999-0420s

AMENDED ANALYSIS

This bill changes the requirement for examination of domestic societies to at least once every 5 years.

The bill also deletes the requirement that fees for examination of foreign societies shall not exceed $25 per day for each examiner.

Public Institutions, Health and Human Services

March 18, 1999

1999-0453s

03/10

Amendment to SB 140

Amend the title of the bill by replacing it with the following:

AN ACT relative to ear and body piercing.

Amend the bill by replacing section 1 with the following:

1 New Chapter; Ear and Body Piercing. Amend RSA by inserting after chapter 141-H the following new chapter:

CHAPTER 141-I

EAR AND BODY PIERCING

141-I:1 Ear and Body Piercing. Persons engaged in the practice of piercing the ear or any other part of the human body shall use disposable single-use needles and instruments for such purpose. Any person violating the provisions of this chapter shall be guilty of a violation. Nothing in this chapter shall be construed to affect persons operating in compliance with New Hampshire code of administrative rules , HE-P 1103.02.

1999-0453s

AMENDED ANALYSIS

This bill requires persons engaged in piercing the ear or any other part of the human body to use disposable single-use needles.

HEARINGS

MONDAY, MARCH 22, 1999

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES, Room 102, LOB

1:00 p.m. **SB 206-FN-A-L**, establishing the tobacco use prevention fund and continually appropriating a special fund.

WILDLIFE & RECREATION

PLEASE NOTE THE FOLLOWING HEARING WILL BE HELD IN REPRESENTATIVES HALL IN THE STATE HOUSE:

9:00 a.m. **sb 61**, relative to the definition of ski craft.

TUESDAY, MARCH 23, 1999

● PLEASE NOTE THE INSURANCE HEARING SCHEDULED FOR THIS DATE HAS BEEN RESCHEDULED TO MARCH 25TH

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

1:00 p.m. **HB 60**, relative to meetings of the ballot law commission.

1:20 p.m. **HB 75**, changing the number required for a quorum on the commission for human rights.

1:40 p.m. **HB 248**, relative to the Monadnock advisory commission.

2:00 p.m. **SB 193**, relative to holiday pay for certain state employees.

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES, Room 102, LOB

1:00 p.m. **SB 169-FN-A**, establishing a commission to study the department of health and human services and making an appropriation therefor.

1:20 p.m. **SB 150**, making certain reference changes to the department of youth development services.

1:40 p.m. **SB 164**, relative to persons exempted from the registration of ophthalmic dispensers.

1:55 p.m. **SB 149-FN**, regulating the practice of hypnotherapy.

● PLEASE NOTE THE FOLLOWING HEARING HAS A ROOM CHANGE:

TRANSPORTATION, Room 201-203, LOB

2:45 p.m. **sb 156**, granting the commissioner of transportation authority to layout and approve the construction of a restricted use driveway onto a public highway.

WEDNESDAY, MARCH 24, 1999

- **PLEASE NOTE THE FOLLOWING TWO HEARINGS HAVE BEEN RESCHEDULED FROM MARCH 17TH.**

- **PLEASE NOTE SB 27 WAS ORIGINALLY SCHEDULED FOR MARCH 10TH BUT RESCHEDULED TO THIS DATE.**

BANKS, Room 103, LOB

8:30 a.m. **SB 27**, relative to assessment fee schedules for trust companies and banks.

9:00 a.m. **SB 79**, requiring vendors who operate electronic customer service terminals to disclose to customers if they place floor holds on or charge other fees to the bank accounts of customers using ATM cards at such terminals.

EDUCATION, Room 105-A, SH

8:30 a.m. **SB 191**, relative to the New Hampshire higher educational and health facilities authority.

9:00 a.m. **SB 204**, establishing the New Hampshire excellence in higher education endowment trust fund.

9:30 a.m. **SB 207-FN**, relative to authorizing bonds for the construction and renovation of regional vocational education centers.

10:00 a.m. **SB 210-FN-L**, relative to payment by the state for certain court-ordered placements of special education students.

10:30 a.m. **CACR 23**, relating to the responsibility and authority of the general court to determine the content, extent, and funding of a public education.

11:00 a.m. **HB 262-L,** relative to emergency expenditures and overexpenditures by school boards.

JUDICIARY, Room 102, LOB

10:15 a.m. **SB 93**, relative to self-service storage facility liens.

10:30 a.m. **SB 133-FN**, establishing a process for reviewing judges.

11:00 a.m. **SB 138**, relative to joint tenancy with rights of survivorship.

11:15 a.m. **SB 139**, relative to self-proved wills and making reference changes.

11:30 a.m. **SB 141**, relative to information not subject to the right-to-know law.

11:45 a.m. **SB 143-FN**, relative to penalties for incest.

WILDLIFE & RECREATION, Room 101, LOB

2:45 p.m. **SB 194-FN-A**, dedicating certain sums in the moose management fund for the payment for damage done by moose to certain trees.

3:15 p.m. **HB 364**, relative to expenditure of funds received from the United States on account of national forest lands in this state.

3:30 p.m. **HB 73**, extending the reporting date of the commission to study the effects of and jurisdiction over alternative agricultural products.

THURSDAY, MARCH 25, 1999

Executive session to follow on pending legislation

● PLEASE NOTE THE ADDITION OF SB 159 TO THE FOLLOWING HEARING:

ENVIRONMENT, Room 104, LOB

1:00 p.m. **SB 215**, transferring certain responsibilities for shellfish harvesting and regulation.

1:30 p.m. **SB 218-FN-L**, regulating the land application of sewage sludge.

2:00 p.m. **SB 159**, relative to early reduction of greenhouse gases.

● PLEASE NOTE THE FOLLOWING HEARING IS RESCHEDULED FROM MARCH 23RD

INSURANCE, Room 103, SH

8:30 a.m. **SB 182-FN**, relative to eligibility for ordinary death benefits under the New Hampshire retirement system.

9:00 a.m. **SB 186-FN**, relative to additional cost of living adjustments for certain retired group II firemen.

9:30 a.m. **SB 173-FN**, relative to optional allowances for beneficiaries of the New Hampshire retirement system members.

10:00 a.m. **SB 187-FN-L**, relative to payment of group health insurance premiums for eligible retired teachers in the New Hampshire retirement system.

10:30 a.m. **SB 33**, requiring workers' compensation indemnity benefits to be paid on the same date each month.

11:00 a.m. **SB 106**, relative to continuing education for insurance adjusters.

Executive session to follow on pending legislation

MONDAY, MARCH 29, 1999

- **PLEASE NOTE THE FOLLOWING HEARING WILL BE HELD IN REPRESENTATIVES HALL**

INSURANCE,

9:00 a.m. **SB 175-FN**, requiring insurance coverage for prescription contraceptive drugs and devices and for contraceptive services.

10:00 a.m. **SB 205-FN**, expanding medical coverage to pay dental assistance for adults on medicaid.

11:00 a.m. **SB 212-FN**, requiring the insurance department to develop a plan to address the needs of persons with chronic illnesses and disabilities.

- **PLEASE NOTE THE ROOM OF THE FOLLOWING HEARING:**

WILDLIFE & RECREATION, Room 306-308, LOB

9:30 a.m. **HJR 1,** requesting that the federal government prohibit the U.S. Fish and Wildlife Service or other federal agency from introducing wolf populations to the northeastern United States, especially New Hampshire.

10:15 a.m. **HB 240**, prohibiting the reintroduction of wolf populations to the state of New Hampshire.

TUESDAY, MARCH 30, 1999

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

1:00 p.m. **SB 198-FN**, relative to certification of persons installing and servicing propane gas and heating oil equipment.

1:20 p.m. **SB 202-FN**, relative to collective bargaining rights of public employees.

1:40 p.m. **SB 217-FN**, relative to nonresident real estate brokers doing business in this state.

2:00 p.m. **SB 224**, relative to stenographic records of adjudicative hearings before licensing boards.

INSURANCE, Room 103, SH

8:30 a.m. **SB 167**, relative to off-label prescription drugs.

9:15 a.m. **SB 147**, relative to self-referrals for chiropractic care under managed care organizations.

10:45 a.m. **SB 95**, relative to uninsured motor vehicle coverage.

● PLEASE NOTE SB 176-FN-A WILL NOT BE HEARD ON THIS DATE AS ORIGINALLY SCHEDULED:

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES, Room 102, LOB

1:00 p.m. **SB 171-FN**, relative to homelessness in New Hampshire.

1:45 p.m. **SB 69-L**, relative to healthcare charitable trusts and community benefits.

2:15 p.m. **SB 108**, relative to the dispensing of medications by optometrists.

WEDNESDAY, MARCH 31, 1999

PLEASE NOTE THE FOLLOWING HEARINGS HAVE BEEN RESCHEDULED FROM MARCH 17TH:

PUBLIC AFFAIRS, Room 104, LOB

1:00 p.m. **SB 116**, eliminating straight ticket voting.

1:30 p.m. **SB 157**, clarifying that a prisoner's right to vote absentee is in his or her town or city of former residence.

2:00 p.m. **HB 227**, establishing a committee to study the maintenance of voter checklists.

2:10 p.m. **HB 228**, clarifying permissible political expenditures.

WILDLIFE & RECREATION, Room 101, LOB

2:45 p.m. **SB 160**, establishing a committee to study and identify or establish the duties of the fish and game commission.

3:00 p.m. **SB 213-FN**, changing the name of the fish and game department to the wildlife department.

FRIDAY, APRIL 2, 1999

● PLEASE NOTE THE FINANCE COMMITTEE HEARINGS FOR THIS DATE HAVE BEEN CANCELLED

MONDAY, APRIL 5, 1999

● PLEASE NOTE THE FOLLOWING HEARING HAS A ROOM CHANGE:

INSURANCE, Room 306-308, LOB

9:00 a.m. **SB 162**, establishing the voluntary small employer health insurance purchasing alliance.

10:30 a.m. **SB 199**, establishing certain standards of accountability for health maintenance organizations and other entities providing health insurance through a managed care system.

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES, Room 102, LOB

1:00 p.m. **SB 208-FN**, establishing a "parents as scholars" program.

1:30 p.m. **SB 214-FN**, establishing new procedures under the certificate of need law for certain ambulatory surgical facilities.

2:10 p.m. **SB 220-FN**, relative to the disclosure of child abuse and neglect information.

2:50 p.m. **SB 223-FN-A**, establishing a wellness and primary prevention council and making an appropriation therefor.

TUESDAY, APRIL 6, 1999

INSURANCE, Room 103, SH

8:30 a.m. **SB 190-FN**, relative to grievance procedures of managed care entities.

9:15 a.m. **SB 166**, requiring insurance coverage for certain physical, occupational, and speech therapies.

● PLEASE NOTE SB 176-FN-A HAS BEEN RESCHEDULED FROM MARCH 30TH AND ADDED TO THE FOLLOWING HEARING:

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES, Room 102, LOB

1:00 p.m. **SB 192**, relative to vital records.

1:20 p.m. **SB 200**, relative to child care licensing procedures.

1:50 p.m. **SB 197-FN-A,** authorizing a pilot program for methadone maintenance treatment and making an appropriation therefor.

2:30 p.m. **SB 176-FN-A**, relative to technology support for individuals and making an appropriation therefor.

TRANSPORTATION, Room 104, LOB

2:45 p.m. **HB 245-FN**, relative to fees and appropriations to the division of safety services.

3:00 p.m. **SB 179-FN**, allowing for motor vehicle license suspension or revocation for certain minors.

MONDAY, APRIL 12, 1999

● **PLEASE NOTE THE FOLLOWING HEARING WAS RECESSED ON MARCH 15TH AND RESCHEDULED TO THIS DATE:**

WILDLIFE & RECREATION

THE FOLLOWING HEARING WILL BE HELD IN ROOM 306-308, LOB

9:00 a.m. **SB 46**, relative to the applicability of mooring permit requirements

TUESDAY, APRIL 13, 1999

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES, Room 102, LOB

1:00 p.m. **SB 183-FN-A**, implementing recommendations developed through a statewide health care planning process and continually appropriating a special fund.

TRANSPORTATION, Room 104, LOB

2:45 p.m. **HB 92**, exempting permanently disabled veterans from the requirement of reestablishing their disability status for the division of motor vehicles every 4 years to prove eligibility for special license plates.

3:00 p.m. **HB 244**, relative to the corporate charter of the Laconia Airport Authority.

MEETINGS

WEDNESDAY, MARCH 17, 1999

LONG RANGE CAPITAL PLANNING AND UTILIZATION COMMITTEE (RSA 17-M:1) Room 201, LOB

8:30 a.m. Regular Meeting

FISCAL COMMITTEE OF THE GENERAL COURT (RSA 14:30-a, I) Room 210-211, LOB

9:00 a.m. Regular Business

9:30 a.m. Audits: State of New Hampshire Year 2000 Computing Crisis Special Report March 1999, Management Letter for State of New Hampshire for the Year Ended June 30, 1998

FRIDAY, MARCH 19, 1999

- **PLEASE NOTE THE WORKERS COMPENSATION ADVISORY COUNCIL HAS BEEN RESCHEDULED TO MARCH 26TH.**

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

WEDNESDAY, MARCH 24, 1999

THE DEPARTMENT OF TRANSPORTATION, Strafford Town Hall, Downstairs, Route 3, Stratford

7:00 p.m. Public Informational Meeting (US Route 3)

FRIDAY, MARCH 26, 1999

- **PLEASE NOTE THE FOLLOWING MEETING HAS BEEN RESCHEDULED FROM MARCH 19TH.**

WORKERS COMPENSATION ADVISORY COUNCIL (RSA 281-A:62) Room 306, LOB

9:00 a.m. Meeting

MONDAY, MARCH 29, 1999

OIL FUND DISBURSEMENT, (RSA 146-D:4) Room 305, LOB

9:30 a.m. Meeting

THE DEPARTMENT OF TRANSPORTATION New Boston Town Office, Grange Hall, 7 Meetinghouse Hill Road

7:00 p.m. Public Informational Meeting (New Boston ,NH 13 at Molly Stark Lane Intersection)

FRIDAY, APRIL 2, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

MONDAY, APRIL 5, 1999

NEW Hampshire COLLEGE TUITION SAVINGS PLAN ADVISORY COMMISSION (RSA 195-H:2) Room 103, SH

9:30-12:00 Regular Meeting

THE DEPARTMENT OF TRANSPORTATION Franklin City Hall, 316 Center Street, Franklin

7:30 p.m. Franklin City Council (Discussion of Ten Year Plan & Bridge 127/ Route 3 Project)

TUESDAY, APRIL 6, 1999

NEW Hampshire COMMISSION ON THE SMITHSONIAN FESTIVAL OF AMERICAN FOLKLIFE (SJR 20, Chapter 204, 1996) 30 Park Street, Concord

3:00 p.m. Regular Meeting

FRIDAY, APRIL 16, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

MONDAY, APRIL 19, 1999

NATURAL, CULTURAL & HISTORICAL RESOURCE CONSERVATION COMMISSION (SB 493, Chapter 161:2, 1998) Room 308, LOB

1:00-4:00 p.m. Meeting

WEDNESDAY, APRIL 21, 1999

FISCAL COMMITTEE OF THE GENERAL COURT (RSA 14:30-a, I) Room 210-211, LOB

9:00 a.m. Regular Business

9:30 a.m. Audit: (State Of New Hampshire, Sweepstakes Commission, Management Letter, For The Year Ended June 30, 1998)

WEDNESDAY, MAY 5, 1999

THE DEPARTMENT OF TRANSPORTATION Griffin Memorial School, Litchfield

4:00-8:00 Scoping Workshop (Nashua-Hudson, Circumferential Highway)

THURSDAY, MAY 6, 1999

THE DEPARTMENT OF TRANSPORTATION Town Hall court Room, Merrimack

4:00-8:00 Scoping Workshop (Nashua-Hudson Circumferential Highway)

FRIDAY, MAY 7, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 103, LOB

9:00-12:00 Meeting

TUESDAY, MAY 11, 1999

THE DEPARTMENT OF TRANSPORTATION Alvirine High School, Hudson

4:00-8:00 Scoping Workshop (Nashua-Hudson Circumferential Highway)

THURSDAY, MAY 13, 1999

THE DEPARTMENT OF TRANSPORTATION City Hall Auditorium, Nashua

4:00-8:00 Scoping Workshop (Nashua-Hudson Circumferential Highway)

FRIDAY, MAY 21, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

MONDAY, MAY 24, 1999

NATURAL, CULTURAL & HISTORICAL RESOURCE CONSERVATION COMMISSION (SB 493, Chapter 161:2, 1998) Room 308, LOB

1:00-4:00 p.m. Meeting

FRIDAY, JUNE 4, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

MONDAY, JUNE 14, 1999

NATURAL, CULTURAL & HISTORICAL RESOURCE CONSERVATION COMMISSION (SB 493, Chapter 161:2, 1998) Room 308, LOB

1:00-4:00 p.m. Meeting

FRIDAY, JUNE 18, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

FRIDAY, JULY 2, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

FRIDAY, JULY 16, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

FRIDAY, AUGUST 6, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

FRIDAY, AUGUST 20, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

FRIDAY, SEPTEMBER 3, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

FRIDAY, SEPTEMBER 17, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

FRIDAY, OCTOBER 1, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

FRIDAY, OCTOBER 15, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

FRIDAY, NOVEMBER 5, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

FRIDAY, NOVEMBER 19, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

FRIDAY, DECEMBER 3, 1999

OSTEOPOROSIS EDUCATION & ADVISORY COUNCIL (RSA 126-I:3) Room 205, LOB

9:00-12:00 Meeting

FRIDAY, DECEMBER 17, 1999

JOINT LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES (RSA 541-A:2) Room 306-308, LOB

9:00 a.m. Meeting

FISCAL NOTES NOW AVAILABLE IN THE SENATE CLERK'S OFFICE:

SB 15, SB 46, SB 48, SB 49, SB 50

NOTICES

New Hampshire/Ceara Chapter Of Partners Of The Americas Will Sponsor A Display In The Visitors Center Of Photographic Works Of Brazil By Tim Gaudreau.

The Photos Are The Continuation Of An Ongoing Ecological Education Program Which Last Year Brought The Endangered Fauna And Flora Environmental Photo Exhibit Of Mauricio Albano To New Hampshire. Gaudreau's Work Is The Follow-up To This Exhibit And Will Be In The Visitor's Center From March 16th Through April 9th, 1999.

Senator Lou D'Allesandro

Legislators For Limited Spending Will Meet At 8:30 a.m. At The Upham Walker House on: Tuesday, Tuesday, March 16th, and Tuesday, March 30th.

Senator Mary Brown

MONDAY, MARCH 23, 1999

All Senators And Staff Are Invited To Attend The Keep Kids S.A.F.E. Breakfast Meeting On March 23, 1999, At 8:30 a.m. In The Ordway Hall Of St. Paul's Church, 21 Centre Street, Concord. Please RSVP TO Jean Conlon At 224-2369.

Senator Clesson Blaisdell

THURSDAY, APRIL 8, 1999

The New Hampshire Public Health Association Would like TO Invite All Interested Legislators TO Attend An Important Educational Forum On Alcohol Policies For The Coming Years. This Presentation Will Be Made By George A. Hacker, Director, Alcohol Project Center For Science In The Public Interest And A Nationally Known Authority In This Area. Because The Association Feels This Is Such An Important Issue They Have Agreed To Waive The Registration Fee For All Legislators.

The Meeting Will Be Held At Blue Cross & Blue Shield Of New Hampshire, 3000 Goffs Falls Road, Manchester Form 4:00 p.m. to 7:00 p.m. On Thursday, April 8, 1999

If You Have Any Questions Concerning Location, Directions Or Other Questions Please Fell Free TO Contact The Association At (603) 228-2983 Or Representative Haettenschwiller, Health & Human Services Committee, Room 205 Or Seat 2-21.

Senator Katherine Wheeler

THE SUPREME COURT OF NEW HAMPSHIRE

Request of the Senate

No. 99-086

OPINION OF THE JUSTICES

(Tax Plan Referendum)

March 11, 1999

The following Resolution No. 1, requesting an opinion of the justices, was adopted by the Senate on February 11, 1999, and filed with the supreme court that day:

"Whereas, Senate Bill 51-FN-A-LOCAL, `An act establishing a referendum for a new taxation plan to fund public education,' is presently pending in the senate; and

"Whereas, Part I, Article 28 of the Constitution of New Hampshire states: `No subsidy, charge, tax, impost, or duty, shall be established, fixed, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body,' N.H. CONST. pt. I, art. 28 (emphasis added); and

"Whereas, in Claremont School District v. Governor, 142 N.H. 462 (1997) (Claremont II), the New Hampshire Supreme Court held that the current school tax as presently structured is disproportionate and unreasonable in violation of the Constitution of New Hampshire; and

"Whereas, the decision in Claremont II necessitates a major change in the tax structure of the state of New Hampshire that will have a substantial impact on the people of New Hampshire; and

"Whereas, Senate Bill 51-FN-A-LOCAL establishes a procedure whereby the legislature may submit a question regarding the imposition of statewide taxes for the funding of a constitutionally adequate education to the vote of the people by ballot and would allow the New Hampshire people to choose among tax plans enacted by the legislature; and

"Whereas, that portion of Part I, Article 28 stating `without the consent of the people, or their representatives' appears to reserve a right for the people of New Hampshire to consent to taxation, and that this right is distinct from and in addition to the authority of the legislature to establish taxes; and

"Whereas, Part II, Articles 2 and 5 of the Constitution of New Hampshire generally vest the power and authority to enact laws in the New Hampshire Senate and House of Representatives; and

"Whereas, a public hearing has been held before the senate committee on public affairs on SB 51-FN-A-LOCAL, and a question has been raised as to whether a referendum to secure the consent of the people as to a tax plan enacted by the legislature, offered under the apparent right vested in the people in Part I, Article 28, is precluded by the power and authority vested in the legislature under Part II, Articles 2 and 5; and

"Whereas, SB 51-FN-A-LOCAL raises an important question of law awaiting further consideration and action in the New Hampshire Senate; now, therefore, be it

"Resolved by the Senate:

"That the Justices of the Supreme Court be respectfully requested to give their opinion as expeditiously as possible on the following questions of law:

1. Would the process contained in SB 51-FN-A-LOCAL, providing for a referendum enabling the New Hampshire people to choose a tax plan enacted by the legislature to fund a constitutionally adequate public education, based on the authority and right of Part I, Article 28, be in any way repugnant or contrary to the Constitution of New Hampshire?

2. Would the process contained in SB 51-FN-A-LOCAL, providing for a referendum enabling the New Hampshire people to choose a tax plan enacted by the legislature to fund a constitutionally adequate public education be an unconstitutional delegation of legislative authority that is repugnant or contrary to the Constitution of New Hampshire?

"That the clerk of the senate transmit copies of this resolution and SB 51-FN-A-LOCAL, as introduced, to the Justices of the New Hampshire Supreme Court."

The following response is respectfully returned:

To the Honorable Senate:

The undersigned justices of the supreme court now submit the following replies to your questions of February 11, 1999. Following our receipt of your questions, we invited interested parties to file memoranda with the court on or before March 1, 1999.

SB 51-FN-A-LOCAL (the bill) contains a preamble declaring:

1 Findings and Purpose. The general court finds that:

I. In light of the New Hampshire Supreme Court's holding that providing an adequate education is a duty of state government expressly created by the New Hampshire constitution and its finding that the current property tax system is unconstitutional for funding public education and may not be collected after March 31, 1999, it is necessary for the general court to enact a new and constitutional taxation plan to fund public education.

II. A new taxation plan to fund public education may take the form of a tax assessed throughout the entire state, payable by all citizens, all income-earners, or all property owners.

III. The general court has been granted general power to enact all manner of wholesome and reasonable laws by the constitution, but this general power is limited by specific provisions of the constitution. Among the limitations on legislative authority is the power to tax in a manner that is other than proportional and reasonable. See, e.g., Opinion of the Justices, 4 N.H. 565, 567 (1829).

IV. The power of taxation is an attribute of sovereignty inherent in the people. See State v. Express Co., 60 N.H. 219, 236 (1880) (Stanley, J.); Mack v. Jones, 21 N.H. 393, 395 (1850); see also Brewster v. Hough, 10 N.H. 138, 143 (1839).

V. By its express terms, the New Hampshire constitution provides that "No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body." Pt. 1, Art. 28. This provision should be construed to authorize the legislature to seek the consent of the people, through a binding referendum, for a newly established tax.

VI. The general court should not attempt to avoid its responsibility for enacting wholesome and reasonable laws. Therefore, the consent of the people should be sought only after the

general court has determined that more than one new form of taxation is consistent with constitutional authority and limitations and in pursuit of the public good. The consent of the people would therefore be to one of 2 constitutionally permissible plans of taxation. The binding referendum should be used only for approval of the imposition of constitutionally enacted taxation, and not as a mechanism to defer or re-delegate the legislative authority delegated from the people to the general court by the constitution.

The bill proposes to amend RSA chapter 663 (1996) by inserting after section 8 a new subdivision to read:

2 New Subdivision; Imposition of Statewide Taxes for Funding of Constitutionally Adequate Education. Amend RSA 663 by inserting after section 8 the following new subdivision:

Imposition of Statewide Taxes for Funding of Constitutionally Adequate Education

663:9 Question.

I. The legislature may, by general law, submit a question regarding the imposition of statewide taxes for funding of constitutionally adequate education to the vote of the people by ballot. The question shall be printed on the ballot to be used at the state general election next following enactment by the legislature, or at a special referendum called by the legislature for the purpose of voting on the question which shall be held in a manner and at a time determined by the legislature.

II. The legislature may submit a question pursuant to paragraph I only upon enacting into law 2 different tax plans for funding of constitutionally adequate education in the same session. One such tax plan shall be designated the "statutory plan" and the other shall be designated the "ballot option plan."

III. The secretary of state shall prepare and distribute a voter's guide providing details and analysis of the 2 tax plans that is reasonably balanced in its presentation. A committee of 6 legislators shall assist the secretary of state in preparing the voter's guide. The committee shall consist of 3 senators appointed by the senate president and 3 representatives appointed by the speaker of the house of representatives; the appointments shall include at least one member of the minority party from each body and at least one proponent of each plan.

IV. The question on the ballot shall be: "Shall the ballot option plan described below be levied for the funding of constitutionally adequate education instead of the statutory plan described below?" Following the question shall be printed: "The (description of statutory plan) has been designated the `statutory plan.' The (description of statutory plan) shall be levied beginning (effective date of statutory plan) unless a majority of voters vote in favor of the ballot option plan by marking `yes' below." Following this statement shall be printed the following: "a detailed description of the tax plans is available in the voter's guide at your polling place." The question shall be printed again, followed by 2 squares, one with the word "yes" beside it and another with the word "no" beside it. If no cross or mark is made in either of the squares, or if a mark is made in both of the squares, then the ballot shall not be counted on the question.

663:10 Results.

I. If a majority of those voting on the question vote for the ballot option plan, the ballot option plan shall be enforced instead of the statutory plan. If a majority do not vote for the ballot option plan, the statutory plan shall be enforced.

II. The secretary of state shall certify the results to the legislature.

663:11 Recount. Upon receipt of petitions of 500 voters made no later than the second Friday following the date of the election, the secretary of state shall recount the ballots cast on the question regarding the imposition of statewide taxes for funding of constitutionally adequate education if the question was approved or failed by no more than one percent of the vote cast. The recount shall take place at any suitable state facility in the city of Concord as may be designated by the secretary of state and under such rules of procedure as the secretary of state shall determine and at such time as the secretary of state may appoint.

Your first question asks, "Would the process contained in [the bill], providing for a referendum enabling the New Hampshire people to choose a tax plan enacted by the legislature to fund a constitutionally adequate public education, based on the authority and right of Part I, Article 28, be in any way repugnant or contrary to the Constitution of New Hampshire?" We answer in the affirmative.

Part I, Article 28 provides that "[n]o subsidy, charge, tax, impost, or duty, shall be established, fixed, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body." The resolution states that "that portion of Part I, Article 28 stating `without the consent of the people, or their representatives' appears to reserve a right for the people of New Hampshire to consent to taxation, and that this right is distinct from and in addition to the authority of the legislature to establish

taxes." As explained below, however, both case law and historical evidence lead us to conclude that Part I, Article 28 does not reserve a right in the people of this State to consent by binding referendum to the establishment and levy of general taxes.

The State Constitution provides that "[t]he supreme legislative power, within this state, shall be vested in the senate and house of representatives, each of which shall have a negative on the other." N.H. CONST. pt. II, art. 2. "And further, full power and authority are hereby given and granted to said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable . . . laws

. . . and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state." N.H. CONST. pt. II, art. 5. "The power of taxation is an attribute of sovereignty belonging to the people; and this power, so far as it has been granted at all, has been delegated under our constitution to the legislature. Bill of Rights, article 28." Mack v. Jones, 21 N.H. 393, 395 (1850); see Hampton v. Marvin, 105 N.H. 34, 36, 193 A.2d 441, 443 (1963); Morrison v. Manchester, 58 N.H. 538, 549 (1879).

These provisions of our State Constitution establish the balance of power between the people of New Hampshire as sovereigns and the legislature's authority to levy taxes. As the court explained in 1880,

[w]hile the convention which framed and the people who adopted the constitution recognized the absolute necessity of taxation for the support and defence of the government, and in broad and comprehensive terms conferred the power on the legislature to dispose of the sums raised, they did not forget that the power to tax was a delicate and difficult one; that it was always regarded with jealousy by those on whom it was to be exercised; and it was therefore declared in the bill of rights (article 28), "that no subsidy, charge, tax, impost, or duty shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body." This power, inherent in the people, was by them delegated to the general court, subject to the condition that all taxes imposed should be proportional and reasonable upon all the inhabitants of and residents within the state, and upon all the estates within the same. While they granted the power in general terms, they qualified the manner of its execution, and determined the subjects upon which it should operate. . . . This was a restraint upon the power of the legislature to impose the taxes.

State v. Express Co., 60 N.H. 219, 236 (1880) (Stanley, J.) (emphasis added). Thus, the court interpreted Part I, Article 28 as an express delegation of the taxing power from the people to the legislature. In order to place restrictions on the taxing power, the constitution restrained the legislature's authority by requiring that taxes be reasonable and proportional. N.H. CONST. pt. II, art. 5.

Referenda on legislation are unconstitutional in this State. Cf. State v. Hayes, 61 N.H. 264, 315-16 (1881). In Hayes, the court considered the constitutionality of a statute regarding the elections of directors of corporations which provided that "the sense of the voters of the state shall be

taken" and that the law would or would not go into effect and become a law according to the result of such popular vote. Id. at 264. The court distinguished between direct legislation by the people on matters affecting local municipalities -- clearly permitted by the constitution -- and legislation of a general character affecting the whole State -- statutes that only the legislature can enact. "The government organized by the constitution was considered to be, as it undoubtedly is, that of a representative republic, and no power existed in the legislature to convert it, on any occasion, or for any purpose, into a pure democracy." Id. at 328.

"Legislative power can be delegated to towns only in local affairs." Bowles v. Landaff, 59 N.H. 164, 192. "By the constitution, legislative power is vested not in the towns, but in the senate and house of representatives. And without a well established ground of exception, the senate and house are as incapable of delegating their legislative power, as the governor and council are of delegating the power of pardon, or the court of delegating the power of deciding the constitutional question raised in these cases. All power is derived from the people, and all magistrates and officers of government are their agents, and at all times accountable to them. Bill of Rights, art. 8. And these agents have not a general authority to avoid their official responsibility by relegating their duties to their assignees. If the legislative seats were filled with substitutes, it would not be claimed that a bill passed by them was law. The vote of a body of substitutes, assembled in the state-house or elsewhere, is not legislation, unless authorized by a legal construction of the constitution. . . ." Gould v. Raymond, 59 N.H. 260, 276.

Hayes, 61 N.H. at 329 (ellipses omitted).

An exception to the rule in this State that referenda are unconstitutional is the existence of a constitutional provision expressly permitting such delegation. See id. at 325. Proponents of the bill argue that the rule in Hayes does not apply to the taxing power because the plain language of Part I, Article 28 permits "the consent of the people." This argument is problematic, however, because Part I, Article 28 is not the only constitutional provision to refer to the consent of the people. Most significantly, Part I, Article 12 states that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people" and that "[n]or are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent." N.H. CONST. pt. I, art. 12 (emphasis added). Thus, under the construction of Part I, Article 28 that we are urged to accept, any law could be submitted by the legislature to a vote of the people. This is a result clearly prohibited under our case law, Hayes, 61 N.H. at 325-26. Cf. N.H. CONST. pt. I, art. 1 ("all government of right originates from the people, is founded in consent, and instituted for the general good").

The Massachusetts Constitution contains a virtually identical provision to Part I, Article 28. See MA. CONST. pt. I, art. 23 ("[n]o subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature"). Because much of the New Hampshire Constitution was taken from the Massachusetts Constitution, Express Co., 60 N.H. at 239 (Stanley, J.), this court gives weight to interpretations of relevant portions of the Massachusetts Constitution when interpreting similar New Hampshire provisions. See Warburton v. Thomas, 136 N.H. 383, 392, 616 A.2d 495, 500 (1992).

The Massachusetts Supreme Judicial Court similarly interpreted Part I, Article 23 as a complete delegation of taxing authority from the people to the legislature. The court concluded that

by the constitution the right to impose and levy taxes is vested in the legislature in very broad and comprehensive terms. The framers of that instrument were not unmindful of the necessity of providing that the government which they were about to establish should possess, within the sphere in which it was designed to operate, those powers which are essential to sovereignty, and to vigorous and efficient action. They were also well aware, by the experience through which they had passed, that the power of imposing taxes, though inherent and necessary as a means of supporting and carrying on a government, was a difficult and delicate one, always regarded with jealousy by those on whom it is to be exercised, and concerning which there should be clear and explicit provisions in the frame of government, in order that there should be no doubt or dispute, either as to the existence of the power or as to those to whom the authority to use it was delegated. It was therefore deemed important to declare, among the fundamental principles on which the government was to be based, that "no subsidy, charge, tax, impost, or duties ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature." Declaration of Rights, art. 23.

City of Lowell v. Oliver, 90 Mass. (8 Allen) 247, 252 (1864).

In addition, in 1894, the Massachusetts Supreme Judicial Court issued an advisory opinion in response to a request from the legislature whether it would be constitutional for the legislature to pass a law granting women the right to vote provided that "such an act shall take effect throughout the commonwealth upon its acceptance by a majority of the voters of the whole commonwealth." In re Municipal Suffrage To Women, 36 N.E. 488, 488 (1894). After reviewing the provisions of the Massachusetts Constitution, the court stated:

[T]here is nothing in any part of the constitution which tends to show that the people desired that any law should ever be submitted to them for approval or rejection. . . . Apparently, it was thought that the persons selected for the executive, legislative, and judicial offices, in the manner prescribed in the constitution, would be men of good character and intelligence, of some experience in affairs, and of some independence of judgment, and would have a better opportunity of obtaining information, taking part in discussion, and carefully considering conflicting opinions, than the people themselves; and the people therefore put the responsibility of carrying on the government upon their representatives.

Id. at 489. Subsequently, the Massachusetts Constitution was amended to provide for initiative and referendum. See

Massachusetts Constitution, Amendment XLII (1913) (superseded 1918) and Amendment XLVIII (1918).

Finally, we find significance in the debates of the 1912 and 1918-1921 constitutional conventions in New Hampshire. At each convention, the delegates reviewed resolutions proposing to amend the State Constitution to allow for referendum votes on certain bills introduced in the legislature. See Journal of the Convention to Revise the Constitution 28-31 (1912) (Journal of 1912); Journal of the Convention to Revise the Constitution 109-12 (1918) (Journal of 1918). After lengthy debate, see Journal of 1912, supra at 152-99; Journal of the Convention to Revise the Constitution 307-30 (1920) (Journal of 1920), the resolution was rejected in 1912, see Journal of 1912, supra at 199, while the delegates at the later convention voted to indefinitely postpone action on the resolution. See Journal of 1920, supra at 330-32.

Each resolution was extensively debated, and it is readily apparent that the delegates to the early twentieth century constitutional conventions understood that the legislature simply lacked the constitutional power to submit a proposal to the electorate for approval. Some of the delegates argued that the referendum proposal was unnecessary because of the highly representative nature of the legislature, see, e.g., Journal of 1920, supra at 307-09; Journal of 1912, supra at 175, and that adoption of the referendum would "take away the responsibility of members of the Legislature." Journal of 1920, supra at 307; cf. Journal of 1912, supra at 160.

The delegate to the 1912 convention who introduced the referendum resolution stated that the purpose behind the resolution was to ensure that the citizenry have "control" over their representatives "at all times," and under the constitution then in effect "we only have control of them once in two years when they come up for re-election. In the meantime they are subject only to our advice, and we have no way of making them accept the advice of the people." Journal of 1912, supra at 153-54. That same delegate later stated that "[t]he people of New Hampshire should have a reserved opportunity to accept or reject the plans of government which are submitted to them by the legislature." Id. at 157 (emphasis added). Obviously, he understood that under our constitution, the citizens did not reserve any legislative power. Cf. id. at 164, 187 (recognizing that referendum is a change from the original constitution).

Given the democratic nature of town government that has existed in this State from the time the New Hampshire Constitution was adopted, it is reasonable to conclude that it was intended that matters of local legislation and regulation, as enumerated by the legislature, continue to be put directly before the voters of the locality, while State matters be entrusted to the elected representatives in the legislature. Cf. Hayes, 61 N.H. at 315-16 (recognizing that the "custom" of local control of powers conferred by the legislature was tacitly incorporated into "several state constitutions"); cf. IX New Hampshire Town Papers (1638-1784) 411-12 (1875) (petition to provincial government for incorporation of "New Hopkinton"). "The New England town affords, perhaps, an example of as pure a democracy as anywhere exists. All of the qualified inhabitants meet, and directly act upon and manage, or direct the management of, their own local concerns. This form of government was adopted at a very early period, and is firmly adhered to and deeply cherished by the people of the New England states." Hayes, 61 N.H. at 319 (quotation omitted); see DeRochemont v. Holden, 99 N.H. 80, 82, 105 A.2d 43, 45 (1954) (powers of town reside in its inhabitants since town government is democratic and not representative in form). Our entire system of local government

relies on the distinction that "while general statutes must be enacted by the legislature, it is plain the power to make local regulations

. . . may be committed . . . to the people of those districts themselves." Hayes, 61 N.H. at 328. Therefore, it is entirely consistent with the history of the establishment of our State and formation of our constitution that the enumerated local taxing powers were to be exercised through consent of the people while matters concerning State taxation were delegated to their representatives.

We are unable to conclude that the phrase, "the consent of the people" in Part I, Article 28 was intended to establish a right in the people of this State to directly vote on general tax legislation. To the contrary, the weight of case law and other history leads us to conclude that Part I, Article 28 has never been understood as a reservation or exemption from the supreme legislative power granted to the legislature by Part II, Article 2. That the framers of our constitution knew how to employ language providing for a direct vote of the people on an issue of state-wide concern is evidenced by the provision for constitutional amendment. See N.H. CONST. pt. II, art. 100. The Constitution of 1784 provided that "no alteration shall be made in this constitution before the same shall be laid before the towns and unincorporated places, and approved by two thirds of the qualified voters present, and voting upon the question." IX Town Papers, supra at 918.

Your second question asks, "Would the process contained in [the bill], providing for a referendum enabling the New Hampshire people to choose a tax plan enacted by the legislature to fund a constitutionally adequate public education be an unconstitutional delegation of legislative authority that is repugnant or contrary to the Constitution of New Hampshire?" We answer in the affirmative.

The bill establishes a process under which the voters are asked to choose by ballot which of two different tax plans adopted by the legislature to fund a constitutionally adequate education should become law. The bill's statement of findings and purpose provides: "The binding referendum should be used only for approval of the imposition of constitutionally enacted taxation, and not as a mechanism to defer or re-delegate the legislative authority delegated from the people to the general court by the constitution."

As to the constitutionality or unconstitutionality of lawmaking by popular vote in and for the states, always excepting laws for counties, cities, and local districts, there is to-day little difference of opinion. The general principle that a body acting under delegated authority cannot redelegate its powers to some other person or body is a well-settled point in American law.

Brawner v. Curran, 119 A. 250, 252 (Md. 1922) (quotation omitted) (citing State v. Hayes, 61 N.H. 264, as supporting this principle).

Two broad rules of law apply in determining whether, and under what circumstances, the legislature has the authority to delegate its legislative powers to the voters. The first is that the legislature is prohibited from abdicating its legislative power. The second is that the legislature may enact laws to take effect on a future event. See Akin v. Director of Revenue, 934 S.W.2d 295, 299 (Mo. 1996).

The first rule is rooted both in the philosophy of John Locke -- because the power to legislate is a delegated power from the people, the legislature has no power to delegate it to anyone else, see People v. Barnett, 176 N.E. 108, 110 (Ill. 1931) -- and in the separation of powers doctrine -- the power to legislate is an exclusive power granted to the legislature, see Pursley v. City of Ft. Meyers, 100 So. 366, 367 (Fla. 1924). "[W]hile the Legislature may not divest itself of its proper functions, or delegate its general legislative authority, it may still authorize others to do those things which it might properly, yet cannot understandingly or advantageously do itself." Barnett, 176 N.E. at 113.

> The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.

Loving v. United States, 517 U.S. 748, 758-59 (1996) (quotation and ellipsis omitted); see State v. Normand, 76 N.H. 541, 546, 85 A. 899, 901-02 (1913) (while legislature may not delegate the power to make the law, it may confer authority or discretion as to its execution); Ferretti v. Jackson, 88 N.H. 296, 298, 188 A. 474, 476 (1936) (constitution permits legislature to empower executive department to enact legislation of a subordinate nature to a general law). Enacting a law to become effective only upon the approval of the voters is an unconstitutional delegation to make the law. See Akin, 934 S.W.2d at 299 (delegation of general power to enact a general tax for education is unconstitutional); Board of Public Works v. Baltimore County, 421 A.2d 588, 589-90 (Md. 1980) (act authorizing the expenditure of state funds upon popular approval by county voters of matching funds found unconstitutional); Brawner, 119 A. at 251-53; Barnett, 176 N.E. at 113-14.

An exception to this rule exists for localities. Legislatures may "permit the electors of a restricted locality to determine whether the provisions of a completed act . . . shall become operative or shall be taken advantage of." People v. Kennedy, 101 N.E. 442, 447 (N.Y. 1913); see Opinion of the Justices, 115 N.H. 228, 230-31, 338 A.2d 553, 555 (1975) (no unconstitutional delegation of authority when legislature establishes general act but leaves determination of whether it shall have force of law to governing bodies of localities to be affected or to people themselves); Bowles v. Landaff, 59 N.H. 164, 192 (1879) (legislature may delegate power of local legislation to citizens and town). In New Hampshire, this exception is implied from the tradition of local self-government. Gould, 59 N.H. at 276; Hayes, 61 N.H. at 329. Even under this exception, however, the scope of what may be delegated is limited: the legislation must involve matters of local concern. See Barnett, 176 N.E. at 114.

The second rule applicable to these cases is that the legislature may properly enact a law, the effect of which is contingent upon the occurrence of some future event. See Marr v. Fisher, 187 P.2d

966, 968 (Or. 1947). Although "[t]he legislature cannot delegate its power to make a law[,] . . . it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend." Barnett, 176 N.E. at 113 (quotation omitted). The reasoning for this rule is that by conditioning the law's effectiveness upon some future contingency, the legislature has merely exercised its discretion to determine today what might make the law expedient or inexpedient in the future. This is a proper exercise of legislative discretion. See Diversified Inv. Partnership v. DSHS, 775 P.2d 947, 951 (Wash. 1989); Brawner, 119 A. at 253.

The question then becomes whether enacting a law to become effective only upon the approval of the electorate is a proper exercise of legislative discretion, rather than an unconstitutional delegation. In Hayes, 61 N.H. at 329-30, the court considered whether a statute that required the majority of voters to approve before it would go into effect was constitutional. Id. at 338-39. The court held the referendum feature of the law unconstitutional as an impermissible delegation of legislative power. The court concluded that any attempt by the legislature to redelegate the legislative power back to the people to be exercised by a referendum vote would violate the provisions of Part II, Article 2 that invest the senate and the house of representatives with the "supreme legislative power."

One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the state has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.

Id. at 325 (quotation omitted).

In the organization of the state government, for reasons by them deemed sufficient, the people vested the supreme legislative power not in themselves, but in certain agents, as a personal trust to be executed under the obligation of an official oath. By this oath, they bound each senator and representative "accepting the trust" to the support of the constitution, and the constitutional performance of his fiduciary duty. They were of opinion that while there might be good reason for granting to municipalities a limited power of making local law, it was not wise to attempt to carry on the work of state legislation in town-meeting.

Id. at 329 (citations omitted).

The State Constitution has made no general provision for a referendum of any act of the legislature to a vote of the people of the whole State to determine whether or not that act shall become a law.

It is universally agreed that the Legislature cannot delegate its lawmaking power, and in order to evade the force of that rule courts which felt constrained to uphold such a referendum were driven to the necessity of supplying some formula which would at the same time recognize and approve the rule and disapprove and neutralize it, and the "contingency" theory was the result. We cannot follow that course. Desirable as it is to support and uphold the acts of the Legislature, we cannot do so at the expense of the Constitution of the state. Nor can we break old laws to make new ones. And it seems very clear that, if the Legislature cannot delegate to the people the lawmaking power which the people delegated to them, then it cannot pass a valid act which can only become a law in the event that the people of the state approve it.

Brawner, 119 A. at 253. The people of this State delegated to the legislature the power of making its laws. That body cannot redelegate to the people themselves the power and authority thereby conferred upon it by making the validity of a statute affecting the whole State dependent upon a vote of the people.

Had the constitution conferred validity upon every statute made to take effect upon a contingency, the delegation of powers of municipal legislation need not have been authorized by the principle of local government; all law-making power would have been negotiable; and the personal trust of state legislation, inalienably vested in the senate and house by the constitution, could have been divested in one case and in all cases by conditional forms of enactment.

Hayes, 61 N.H. at 338.

We conclude that the bill proposes an unconstitutional delegation of power from the legislature. The purpose of the bill is to "authorize the legislature to seek the consent of the people, through a binding referendum, for a newly established tax." If the people are to say, by way of popular vote, whether or not an act shall become law, they are put in the place of the legislature. The vote of the people becomes the determining factor whether an act shall be the law or not, not simply a contingency upon which certain things are or are not to be done under the law. This would grant the people the "supreme legislative power" that by the constitution is vested in the senate and house of representatives.

It is asserted that because the voters are not choosing whether or not a tax plan would become law, but only which of two plans already enacted into law would be enforced, the voters would not be exercising general legislative power. Although two plans would initially be enacted into law, only one of those plans would have the force and effect of law, and it would be the voters who would have the final say. "The legislature has no power to make a statute dependent on such a contingency, because it would be confiding to others that legislative discretion which they are bound to exercise themselves, and which they cannot delegate or commit to any other man or men to be exercised." Hayes, 61 N.H. at 326-27 (quotation omitted).

It was urged in several of the comments filed in this matter that this court construe the language in Part I, Article 28 so as to allow a referendum as proposed in the bill because of the significance of the issues presented. Such contentions are not properly before us. We reiterate what we said over one hundred years ago:

> [W]e recognize the doctrine, so often expressed, that we have nothing to do with the propriety, expediency, or policy of any law; and that these considerations concern the legislature, and not us; that our sole duty, when the validity of any statute is challenged, is to ascertain and declare whether it conflicts with the constitution as the paramount law, leaving all other considerations with the legislature and people, where they of right belong.

Express Co., 60 N.H. at 234 (Stanley, J.).

David A. Brock

William R. Johnson

W. Stephen Thayer, III

Sherman D. Horton

John T. Broderick, Jr.

March 11, 1999

Alan L. Reische and Jennifer P. Hopkins, of Manchester, filed a memorandum on behalf of Governor Jeanne Shaheen in support of negative answers to the questions.

Philip T. McLaughlin, attorney general (Steven M. Houran, deputy attorney general, Martin P. Honigberg, senior assistant attorney general, Anne M. Edwards, assistant attorney general, and Mary E. Schwarzer, attorney, on the memorandum), filed a memorandum in support of negative answers to the questions.

Dean, Rice & Kane, P.A., of Manchester (Anne Davidson, senate counsel, on the memorandum), filed a memorandum on behalf of President Pro Tempore Senator Sylvia Larsen in support of negative answers to the questions.

Loretta S. Platt, house general counsel, and Betsy B. Miller, house legal counsel, filed a memorandum on behalf of the speaker of the house and other members of the New Hampshire General Court in support of affirmative answers to the questions.

Stein, Volinsky and Callaghan, P.A., of Concord (Scott F. Johnson and Andru H. Volinsky on the memorandum), and John E. Tobin, of Concord, filed a memorandum on behalf of the Claremont petitioners in support of affirmative answers to the questions.

Eugene M. Van Loan III, of Manchester, filed a memorandum in support of affirmative answers to the questions.

Tarbell Professional Association, of Concord (Edward C. Mosca on the memorandum) filed a memorandum on behalf of Granite State Taxpayers, Inc. in support of affirmative answers to the questions.

Representative Frank V. Sapareto, of Derry, filed a memorandum in support of affirmative answers to the questions.

Representative Peter Hoe Burling, of Cornish, filed a memorandum in support of negative answers to the questions presented.

Senator Clifton C. Below, of Lebanon, filed a memorandum in support of negative answers to the questions presented.

Francis M. Henry, of Nashua, filed a memorandum in support of affirmative answers to the questions.

Joseph S. Haas, Jr., of Ashland, filed a memorandum in support of affirmative answers to the questions presented.

Kenneth E. Blevens, of Bow, filed a memorandum.