April 6, 1999

No. 19

STATE OF NEW HAMPSHIRE

Legislative

SENATE CALENDAR

REPORTS, HEARINGS, MEETINGS & NOTICES

THE SENATE WILL MEET IN SESSION ON THURSDAY, APRIL 8, 1999 AT 10:00 A.M.

LAID ON THE TABLE

CACR 20, relating to the election of governor and senators. Providing that beginning with the 2002 general election, and every 4 years thereafter, the governor and senators shall be elected.

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 72, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws.

SB 82, relative to the termination of employees.

SPECIAL ORDER

12:01 p.m.

PUBLIC AFFAIRS

SB 80, relative to adding the name of Martin Luther King, Jr. to Civil Rights Day. Vote 5-2

Ought to Pass, Senator Russman for the committee.

REPORTS

ENVIRONMENT

SB 215, transferring certain responsibilities for shellfish harvesting and regulation. Vote 4-0

Ought to Pass, Senator Russman for the committee.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 224, relative to stenographic records of adjudicative hearings before licensing boards. Vote 7-0

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

INSURANCE

SB 33, requiring workers' compensation indemnity benefits to be paid on the same date each month. Vote 5-0

Inexpedient to Legislate, Senator Fraser for the committee.

SB 55, relative to health insurance for persons who use tobacco products.

MINORITY REPORT: Ought to Pass, Senator Francoeur for the committee. Vote 1-7

MAJORITY REPORT, Inexpedient to Legislate, Senator Fraser for the committee. Vote 7-1

SB 58, allowing clinical mental health counselors to obtain third party payment for services rendered which would otherwise qualify for such payments. Vote 7-1

Ought to Pass, Senator Wheeler for the committee.

SB 63, relative to applicability of workers' compensation to persons employed by 2 or more employers. Vote 8-0

Inexpedient to Legislate, Senator Squires for the committee.

SB 85-FN, including the judiciary as a public employer under the public employees labor relations act. Vote 7-1

Ought to Pass, Senator J. King for the committee.

SB 102, relative to premium tax penalties. Vote 8-0

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

SB 103, making certain changes in the insurance laws. Vote 8-0

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

SB 104, making a variety of changes in certain insurance laws. Vote 8-0

Ought to Pass, Senator Fraser for the committee.

SB 105, relative to continuation of coverage of health insurance. Vote 8-0

Ought to Pass, Senator Fraser for the committee.

SB 106, relative to continuing education for insurance adjusters. Vote 5-0

Inexpedient to Legislate, Senator Fraser for the committee.

SB 114, relative to health care carrier disclosure of third party liability. Vote 8-0

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

SB 173-FN, relative to optional allowances for beneficiaries of the New Hampshire retirement system members. Vote 5-0

Ought to Pass, Senator J. King for the committee.

SB 177, allowing marriage and family therapists to obtain third party payments for services rendered which would otherwise qualify for such payments. Vote 7-1

Ought to Pass, Senator Wheeler for the committee.

SB 182-FN, relative to eligibility for ordinary death benefits under the New Hampshire retirement system. Vote 5-0

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

SB 186-FN, relative to additional cost of living adjustments for certain retired group II firemen. Vote 5-0

Ought to Pass, Senator J. King for the committee.

SB 187-FN-L, relative to payment of group health insurance premiums for eligible retired teachers in the New Hampshire retirement system. Vote 5-0

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

SB 205-FN, expanding medical coverage to pay dental assistance for adults on medicaid. Vote 7-1

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

PUBLIC AFFAIRS

HB 227, establishing a committee to study the maintenance of voter checklists. Vote 6-0

Ought to Pass, Senator Wheeler for the committee.

HB 253, allowing ballots to be examined and counted prior to the opening of polls on election day. Vote 5-0

Ought to Pass, Senator Wheeler for the committee.

PUBLIC INSTITUTIONS, HEALTH AND HUMAN SERVICES

SB 200, relative to child care licensing procedures. Vote 6-0

Ought to Pass, Senator Gordon for the committee.

WILDLIFE & RECREATION

SB 47-FN, relative to compensation for time lost by fish and game conservation officers for injuries received in the line of duty, and restoring certain leave time for a conservation officer injured while on duty on August 19, 1997. Vote 5-3

Ought to Pass, Senator D'Allesandro for the committee.

SB 160, establishing a committee to study and identify or establish the duties of the fish and game commission. Vote 7-0

Ought to Pass, Senator Roberge for the committee.

AMENDMENTS

Senate Executive Departments and Administration

March 31, 1999

1999-0671s

10/01

Amendment to SB 224

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

AN ACT relative to stenographic records and availability of transcripts of adjudicative hearings before licensing boards.

Amend the bill by replacing section 1 with the following:

1 Administrative Procedure Act; Contested Cases Before Licensing Boards; Stenographic Record Required. Amend RSA 541-A:31, VII to read as follows:

VII. The entirety of all oral proceedings shall be recorded verbatim. ***At the request of the party in any disciplinary proceeding before a board responsible for professional licensing or certification, the record of the proceeding shall be made by a certified court stenographer at the requesting party's expense.*** Upon the request of any party ***made within 60 days after the decision or order***, or upon the agency's own initiative, such record shall be transcribed if the requesting party or agency shall first pay all reasonable costs for such transcription. ***If a transcript is not provided within 45 days of a request to a person who is a party in a disciplinary proceeding before a professional licensing or certification board, the proceeding shall be dismissed with prejudice.***

1999-0671s

AMENDED ANALYSIS

This bill requires that a stenographic record be made by a certified court stenographer in an adjudicative proceeding before a licensing board, upon the request of a party to the proceeding, and requires dismissal of a complaint if a transcript is not provided.

Insurance

April 6, 1999

1999-0740s

01/09

Amendment to SB 102

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

AN ACT relative to payment of the premium tax.

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

1 Premium Tax; Estimated Liability. Amend RSA 400-A:32, II to read as follows:

II. On or before March 1, June 1, September 1, and December 1 of each year, every authorized insurer required to pay a tax in accordance with RSA 400-A:32, I shall pay to the insurance commissioner an amount equal to 1/4 of the previous calendar year's tax paid pursuant to said paragraph***; provided, however, any authorized insurer having an estimated liability of $100 or less for each quarter shall make payment in full on March 1***. These payments shall be considered as a partial payment of the tax upon the business done in the state during the calendar year in which the payment was received.

2 Effective Date. This act shall take effect January 1, 2000.

1999-0740s

AMENDED ANALYSIS

This bill requires certain insurers to make payment of the premium tax due in full by a certain date.

This bill is a request of the insurance department.

Insurance

April 6, 1999

1999-0739s

01/09

Amendment to SB 103

Amend the bill by replacing section 2 with the following:

2 Deleting Specific Dates and Certain Information. Amend RSA 420-I:4 to read as follows:

420-I:4 Reports to Insurance Commissioner. [~~On or before March 1 and September 1 of each year,~~] Each managed care insurer shall file a report in form and containing such information as the insurance commissioner prescribes ***when requested by the commissioner***. [~~Such report shall include the name of the managed care insurer, its affiliates, a description of each exclusive arrangement to which it is a party and, as applicable, the date on which exclusive arrangement has been or will be terminated.~~]

1999-0739s

AMENDED ANALYSIS

This bill:

(1) Deletes the specific due dates and certain information for reports required to be filed by managed care companies with the insurance commissioner.

(2) Makes a technical correction to the law regulating foreign insurance companies.

(3) Makes certain personnel corrections.

(4) Clarifies the procedure pertaining to books, records, and other documents when an insurance company is undergoing examination

Insurance

April 6, 1999

1999-0738s

05/10

Amendment to SB 114

Amend the bill by replacing section 4 with the following:

4 Disclosure. Amend RSA 420-G:11, II to read as follows:

II. All health carriers shall electronically provide [~~data on claims and subscribers~~] to the department of health and human services[~~, in accordance with rules adopted under RSA 126:27~~]***:***

(a) Data on claims and subscribers filed in accordance with rules adopted under RSA 126:27; and

(b) Cross-matched claims data on requested policyholders, and subscriber information necessary for third party liability for benefits provided under RSA 167, filed in accordance with rules adopted under RSA 167:3-c.

Insurance

April 2, 1999

1999-0702s

10/09

Amendment to SB 182-FN-LOCAL

Amend the introductory paragraph of RSA 100-A:9, III as inserted by section 1 of the bill by replacing it with the following:

III. If the member ***did not have at least 10 years combined creditable service and*** was not eligible for service retirement at the time of death, there shall be payable to the member's [~~widow~~] ***spouse*** or the member's designated beneficiary or beneficiaries, if other than [~~his widow~~] ***the member's spouse***, if living, otherwise to the member's estate, a lump sum equal to the greater of either:

Insurance

April 2, 1999

1999-0703s

10/09

Amendment to SB 187-FN-LOCAL

Amend RSA 100-A:53-a, I as inserted by section 4 of the bill by inserting after subparagraph (f) the following new subparagraph:

(g) Any person who has completed no less than 20 years of group I teacher creditable service and who retired prior to attaining the age of 60, and who attains the age of 60.

Insurance

April 6, 1999

1999-0746s

05/10

Amendment to SB 205-FN

Amend the bill by replacing section 3 with the following:

3 New Paragraph; Types of Dental Assistance Covered. Amend RSA 167:6 by inserting after paragraph VII the following new paragraph:

VIII. Persons deemed medically and categorically needy shall be eligible for dental assistance including emergency dental care for relief of pain, bleeding and infection, selected preventative and restorative procedures designed to cease disease progression, and necessary diagnostic and consultative services. Such services shall include complete full denture and denture repair coverage. The annual per person benefit maximum shall be $400. In addition to the annual benefit, one full set of dentures per lifetime, with lifetime repairs, shall also be covered.

HEARINGS

WEDNESDAY, APRIL 7, 1999

BANKS, Room 103, LOB

8:30 a.m. **HB 79**, relative to reports to the bank commissioner and to safe deposit box openings.

8:50 a.m. **HB 80**, making technical corrections in the banking laws.

9:10 a.m. **HB 373**, making technical corrections to the securities laws.

EXECUTIVE SESSION TO FOLLOW

JUDICIARY, Room 102, LOB

10:15 a.m. **SB 67**, limiting liability resulting from the use of automatic external defibrillation.

10:45 a.m. **SB 185**, relative to property settlements in cases where certain domestic relationships have terminated.

11:00 a.m. **SB 151**, relative to assignment of judges.

11:20 a.m. **SB 165**, relative to the Uniform Trustees' Powers Act.

11:45 a.m. **SB 148**, relative to the content of personnel files of police officers.

EXECUTIVE SESSION TO FOLLOW ON THE FOLLOWING BILLS (SB 57, SB 88-FN, SB 141, CACR 18, CACR 19)

FRIDAY, APRIL 9, 1999

FINANCE, Room 103, SH

9:00 a.m. **SB 131-FN-A**, appropriating funds to the office of travel and tourism.

9:30 a.m. **SB 135-FN**, relative to the water supply land protection grants.

● PLEASE NOTE SB 31-L & SB 127-FN-A-L, WERE RECESSED ON FEBRUARY 12TH AND RESCHEDULED TO THIS DATE:

WAYS AND MEANS, Room 103, SH

1:00 p.m. **SB 31-L**, allowing property taxpayers to choose whether to participate in the funding of nonprofit organizations through their property taxes.

1:05 p.m. **SB 127-FN-A-L**, establishing a local property tax education homestead allowance against school taxes on residential real estate, establishing a fund to reimburse municipalities for such exemptions, and making an appropriation therefor.

1:10 p.m. **SB 86**, relative to enforcement of the collection and payment of county taxes by the county treasurer.

1:15 p.m. **SB 73**, relative to eligibility for off-premise liquor licenses.

1:20 p.m. **SB 168**, adopting a model statute as a result of the tobacco litigation master settlement agreement.

1:30 p.m. **SB 153-FN-A**, requiring that a percentage of gross revenues from liquor sales be placed into and continually appropriated to a special fund for an alcohol education and abuse prevention programs.

2:00 p.m. **SB 184-FN-A**, repealing the tax on nuclear station property.

MONDAY, APRIL 12, 1999

● PLEASE NOTE SB 162 HAS BEEN ADDED TO THE FOLLOWING HEARING:

INSURANCE

PLEASE NOTE THE FOLLOWING HEARING WILL BE HELD IN ROOM 206-208, LOB

8:30 a.m. **SB 162**, establishing the voluntary small employer health insurance purchasing alliance.

10:00 a.m. **SB 147**, relative to self-referrals for chiropractic care under managed care organizations.

● 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

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

1:00 p.m. **HB 210**, reinstating the corporate charter of C.A.B. Real Estate, Inc.

1:15 p.m. **HB 218-L**, reinstating the corporate charter of Approved Industries, Inc.

1:30 p.m. **HB 223**, relative to waiver of filing fees and petitions for candidates for federal offices.

2:00 p.m. **HB 490**, enabling cities to permit the mayor to vote at city council meetings.

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.

WEDNESDAY, APRIL 14, 1999

EDUCATION, Room 105-A, SH

8:30 a.m. **HB 358**, relative to the term of office for members of the state board of education.

8:50 a.m. **HB 250**, relative to authorized regional enrollment area schools.

9:20 a.m. **HCR 6**, calling on the President and the Congress to fully fund the federal government's share of the average per pupil expenditure in public elementary and secondary schools in the United States under the Individuals with Disabilities Education Act.

JUDICIARY, Room 102, LOB

10:15 a.m. **SB 158-FN**, relative to indecent exposure.

10:40 a.m. **SB 163**, establishing a commission to study methods for reducing violent incidents involving children and guns.

11:05 a.m. **SB 126**, requiring approval of the superior court or, in the case of workers' compensation, the labor commissioner, as a precondition to transfer of any structured settlement payment rights.

11:30 a.m. **SB 24**, extending the application of certain provisions of the child protection act to all children in out-of-home placements.

11:45 a.m. **SB 66**, relative to structured settlements.

WILDLIFE & RECREATION, Room 101, LOB

2:45 p.m. **HB 520**, relative to an open season for chukar partridge.

3:00 p.m. **HB 418**, relative to accounts and reporting dates of certain funds in the fish and game department.

3:15 p.m. **HB 229**, changing the registration fee requirement of the commercial feed law.

3:30 p.m. **HB 238-FN-A**, allowing the production and sale of American ginseng in the state of New Hampshire and making an appropriation therefor.

FRIDAY, APRIL 16, 1999

WAYS AND MEANS, Room 103, SH

9:00 a.m. **SB 76-L**, allowing certain municipalities to offer tax exemptions to foster commercial and industrial construction.

MONDAY, APRIL 19, 1999

INSURANCE

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

1:00 p.m. **SB 216-FN**, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces.

1:30 p.m. **SB 166**, requiring insurance coverage for certain physical, occupational, and speech therapies.

3:00 p.m. **SB 167**, relative to off-label prescription drugs.

TUESDAY, APRIL 20, 1999

EXECUTIVE DEPARTMENTS AND ADMINISTRATION, Room 101, LOB

1:00 p.m. **HB 261-L**, relative to the official ballot option.

1:30 p.m. **HB 292**, relative to ballot procedures for constitutional amendments.

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

1:00 p.m. **HB 307**, establishing a committee to study the negotiated risk agreements when patients desire to remain in a facility over the recommendations of the department of health and human services.

1:40 p.m. **HB 90**, removing the prohibition on adoption and foster parenting by homosexual persons.

TRANSPORTATION, Room 104, LOB

2:45 p.m. **HB 365**, establishing a committee to study the current practice of posting roads and its effect on the economy.

3:00 p.m. **HCR 4**, urging the U.S. Secretary of Transportation to include U.S. Route 2 as a border corridor highway.

3:15 p.m. **HB 204-FN**, relative to driving after license revocation or suspension.

WEDNESDAY, APRIL 21, 1999

EDUCATION, Room 105-A, SH

8:30 a.m. **SB 219-FN-L**, establishing a procedure for providing educational improvement assistance to local school districts.

WILDLIFE & RECREATION, Room 101, LOB

2:45 p.m. **HB 302**, relative to paint ball guns.

3:15 p.m. **HB 710-FN**, relative to expanding the availability of lifetime licenses for hunting and fishing.

3:45 p.m. **HB 203**, making impaired boating laws consistent with driving while intoxicated laws.

TUESDAY, APRIL 27, 1999

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

1:00 p.m. **HB 206**, relative to restrooms in restaurants.

1:20 p.m. **HB 214**, changing the membership of and extending the reporting date for the committee to study women's health care.

1:35 p.m. **HB 515**, extending the indemnification of persons providing clinical services to the department of health and human services.

TRANSPORTATION, Room 104, LOB

3:00 p.m. **HB 447**, repealing the laws prohibiting certain promotional games.

MEETINGS

WEDNESDAY, APRIL 7, 1999

THE DEPARTMENT OF TRANSPORTATION NHDOT, Room 3, 1 Hazen Drive, Concord

9:00 a.m. Commission Meeting (Carroll-Bethlehem, US Route 302)

JOINT LEGISLATIVE FACILITIES COMMITTEE (RSA 17-E:2) Room 103, SH

10:30 a.m. Meeting

FRIDAY, APRIL 9, 1999

FOSTER CARE SYSTEM TASK FORCE (SB 346, Chapter 277:1, 1998) Room 306-308, LOB

1:00-2:30 Meeting

THE DEPARTMENT OF TRANSPORTATION Runnells Hall, Tamworth

4:00 p.m. Visioning Workshop (Tamworth Pilot Study)

MONDAY, APRIL 12, 1999

NUCLEAR DECOMMISSIONING FINANCING COMMITTEE (RSA 91-A:2) Public Utilities Commission, 8 Old Suncook Road, Concord

1:30 p.m. Meeting (1) Consideration Of A Proposed Report And Order In Docket No. NDFC 98-1 (2) Other Business

NH BRAIN & SPINAL CORD INJURY ADVISORY COUNCIL (RSA 137-K:2) Room 205, LOB

2:00-4:00 Regular Meeting

JOINT LEGISLATIVE HISTORICAL COMMITTEE (RSA 17-1) Room 103, SH

2:00 p.m. Regular Meeting

WEDNESDAY, APRIL 14, 1999

THE DEPARTMENT OF TRANSPORTATION Peterborough Town House, 1 Grove Street

7:00 p.m. Public Informational Meeting (Peterborough, US 202)

FRIDAY, APRIL 16, 1999

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

9:00 a.m. Meeting

BOARD OF MANUFACTURED HOUSING (RSA 205-A:25, I) Room 203, LOB

1:00-3:00 Regular & Board Meeting

MONDAY, APRIL 19, 1999

CHRISTA McAULIFFE PLANETARIUM COMMISSION Christa McAulife Planetarium's Discovery Room

10:30-Noon Meeting

NATURAL, CULTURAL & HISTORICAL RESOURCE CONSERVATION COMMISSION (SB 493, Chapter 161:2, 1998) Room 302, LOB

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

TUESDAY, APRIL 20, 1999

THE DEPARTMENT OF TRANSPORTATION Hudson Town Hall, 12 School Street

7:00 p.m. Combined Public Officials/Public Informational Meeting (Hudson, NH 102, Highland Street To McDonald's)

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)

MONDAY, APRIL 26, 1999

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

9:00 a.m. Hearing and Regular Meeting

TUESDAY, APRIL 27, 1999

THE DEPARTMENT OF TRANSPORTATION Hampstead Town Hall, Meeting Room, 11 Main Street, Hampstead

7:00 p.m. Combined Public Officials/Public Informational Meeting (Hampstead, Park and Ride At NH 111/NH 121A)

MONDAY, MAY 3, 1999

THE JOINT HEALTH COUNCIL (RSA 326-B:12) NH Board Of Nursing, Room 17, 78 Regional Drive, Building 2, Concord

5:30 p.m. Meeting

TUESDAY, MAY 4, 1999

THE DEPARTMENT OF TRANSPORTATION Griffin Memorial School, Litchfield

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

THE DEPARTMENT OF TRANSPORTATION Holderness Town Hall, Route 3, Holderness

7:00 p.m. Combined Public Officials/Public Informational Meeting (Holderness Realignment Of NH 113)

THE DEPARTMENT OF TRANSPORTATION Gilsum Town Library Basement, 652 Route 10, Gilsum

7:00 p.m. Public Information/Officials (Gilsum, NH Route 10 Over Ashuelot River)

THE JOINT PHARMACEUTICAL FORMULARY BOARD (RSA 327:6b) The Board Of Optometry Office, 2 Industrial Park Drive, Concord

7:15 p.m. Meeting

WEDNESDAY, MAY 5, 1999

THE DEPARTMENT OF TRANSPORTATION Hooksett Memorial School Gymnasium, Memorial Drive, Hooksett

7:00 p.m. Public Hearing Commission (Hooksett, US Route 3/NH Route 28)

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)

WEDNESDAY, MAY 12, 1999

THE DEPARTMENT OF TRANSPORTATION Hinsdale Town Hall, 11 Main Street, Hinsdale

7:00 p.m. Public Information/Officials (Hinsdale, Route 63/Kilburn Brk.)

THE DEPARTMENT OF TRANSPORTATION Western School Gymnasium, 1066 Hanover Street, Manchester

7:00 p.m. Public Hearing Commission (Manchester, Candia Road)

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

THURSDAY, MAY 27, 1999

THE DEPARTMENT OF TRANSPORTATION Sheraton Wafayer Inn, Bedford

8:00 a.m. Statewide Bike/Ped Meeting

FRIDAY, JUNE 4, 1999

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

9:00-12:00 Meeting

MONDAY, JUNE 7, 1999

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

9:30-12:00 Regular 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 45 SB 46, SB 47, SB 48, SB 49, SB 50, SB 70, SB71, SB 113, SB122, SB 167, SB 207, SB 212, SB 213

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

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

TUESDAY, APRIL 13, 1999

The Legislators For Limited Spending Will Meet At Noon At The Upham Walker House On Tuesday, April 13th And April 27th. Coffee Will Be Served

Senator Mary Brown

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 NH 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.