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To: All School Board Chairs

From: Ted Comstock, NHSBA Executive Director

Date: February 29, 2008

In RE: Questions/ Answers Concerning Potential Lawsuit Regarding
Unfunded Mandates

I am pleased to enclose a Questions and Answers Sheet addressing the major questions that have arisen about the potential lawsuit to challenge the down-shifting of significant employee retirement costs to local school districts.

I want to emphasize to all of you the significant costs to your districts that are involved here – if the current interpretation by the State of the costs of the medical subsidies stands. Your contributions to the State Retirement System on behalf of teachers will increase over 50% in the very near future, and 40% of that increase is directly attributable to the down-shifting of the medical subsidies to local school districts, and other public employers.

Please feel free to contact me with any questions at 603-228-2061.

Executive Director

Dr. Theodore E. Comstock

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COMMON QUESTIONS REGARDING THE PROPOSED 28-LITIGATION

Question 1 *What is Article 28-a of the state Constitution?*

Part I, Article 28-a is the prohibition against unfunded state mandates and reads: “The state shall not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision unless such programs or responsibilities are fully funded by the state or unless such programs or responsibilities are approved for funding by a vote of the local legislative body of the political subdivision.”

Question 2 *How does Article 28-a apply to employer funding of the NH Retirement System (NHRS).*

Public employers and employees are responsible for funding the pension fund of the New Hampshire Retirement System. This responsibility was established prior to the adoption of Part I, Article 28-a of the New Hampshire Constitution. In 1983, the Legislature created the Special Account to fund COLAs and other post-employment benefits. Until this past year, 25% of the employers’ yearly contribution to the pension fund was transferred to the 401(h) subtrust from which the medical subsidy payments were made. Money from the Special Account reimbursed the pension fund for the amount paid by the employers. Now, the NHRS says that this reimbursement from the Special Account may violate IRS rules. The NHRS wants employers to continue to contribute the 25% to the medical subsidy without reimbursement. Based on legislative history, it is clear that there was never an intent that employers pay for the medical subsidy. Rather, it was the intent that the Special Account pay for this benefit, and the law states that. We believe that this is an unfunded mandate, and employers should not be obligated to pay more than their normal contribution rate to fund health benefits.

Question 3 *What is at stake?*

Without a challenge, public employer (taxpayer) contribution rates will increase substantially, resulting in either increased property taxes or decreased services. The percentage increase in contribution rates varies, ranging from 50.8% for teachers to 36.8% for fire. The entire 25% cost to pay for health benefits would be assessed on public employers.

Question 4 *Are efforts being made to resolve this issue without filing a 28-a lawsuit?*

Yes. We have reached out to all parties with an interest in resolving this issue – the NHRS, the Legislature, employee organizations, and others – to find a workable solution that removes the 28-a issue. Our objective remains the same. We want a balanced, accountable and certain solution which does not saddle local property taxpayers with the costs of this mandate and, at the same time, protects the health care benefits of current retirees.

Question 5 *How was the local government contribution to the lawsuit computed?*

The amount requested is one half of one percent of your local FY 2007 contribution to the NHRS. These NHRS contribution amounts are printed in the appendix to the Legislature's Retirement Study Commission report which is posted on the NHMA section of the LGC website: www.nhlgc.org. The requested amount would raise approximately \$500,000 which would be used to pay for outside legal counsel, as well as professional expertise from actuaries and accountants. If a resolution is found, the balance of any money collected will be returned to the contributing municipalities.

Question 6 *What happens if too much money or not enough money is collected?*

If there is any money left at the conclusion of all proceedings, the balance will be returned to those units that contributed, on a pro-rata basis. By contributing now, no local government unit is incurring any obligation to make additional contributions in the future, should more funds be needed. If a large number of local government entities respond affirmatively to this request, we do not anticipate needing additional funds.

Question 7 *Who will oversee and direct this litigation?*

There will be a Steering Committee composed of local officials from communities which contribute to the litigation. It will include municipal, school, and county representatives who will work with outside counsel.

Question 8 *If local governments win the lawsuit, how will the medical subsidy be funded?*

If local governments win in court, then the Legislature would need to find a new way to finance the medical subsidy and do so in a way that does not require additional mandated funding by public employers. Remember, the medical subsidy was created by the Legislature for those retirees who chose to enroll in it with the intent that it would be funded by the Special Account, not by public employers.