

New Hampshire School Boards Association



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NEW HAMPSHIRE
SCHOOL BOARDS
ASSOCIATION
Incorporated 1946

2005 *Legislative Summary*

2005 LEGISLATIVE SUMMARY

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NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

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July 2005

On behalf of the New Hampshire School Boards Association, we are pleased to provide this 2005 LEGISLATIVE SUMMARY. This document is meant to serve as a comprehensive summary of actions of the 2005 New Hampshire Legislature related to public education. We offer this document as a working reference tool for New Hampshire School Board members, school administrators and legislators in hopes that it will assist all of us in staying current in the ever-changing field of New Hampshire school law.

The dominant issue of the 2005 legislative session was surely funding; from adopting an education funding plan, dealing with expected revenue for school choice and charters, to the final adoption of a state budget, lawmakers struggled to fund programs with limited revenue resources. Education funding dominated the House Education Committee through March, moving to the House Finance Committee in April and then to the Senate. District allocations for 2006 and 2007 have been determined with approval of the conference committee report, but the issue remains “fluid” as many communities consider legal challenges to the adoption of the current plan.

We would like to extend our appreciation to the many local School Board members and local school administrators who actively worked with their area legislators to assure that positions of NHSBA were communicated in an aggressive and timely manner, especially on the variety of issues discussed in this document.

The New Hampshire School Boards Association also offers appreciation to members of both the Senate and House of Representatives for their continued support of public education during extremely difficult economic times. We offer a special “thank you” to members of the Education Committees in both the House and Senate for their dedication and commitment to the youth of our state.

This Summary is intended to highlight the major education-related bills of the 2005 legislative session. In many instances, the complexity of a new education

law will demand an in-depth review; in other cases, the intent and implication of a particular piece of legislation may be quite clear. This document summarizes major new school laws. Language offered here is generic in nature and is not intended to cover specific circumstances. Prior to taking any action related to new laws, the complete text should be reviewed with local district legal counsel.

Please contact our office for any additional information on items that appear in this document or to request copies of any newly enacted piece of legislation.

Sincerely,

Theodore Comstock, Esq.
Executive Director

Dean Michener
Associate Director

**NEW HAMPSHIRE
SCHOOL BOARDS
ASSOCIATION**

STAFF AND BOARD OF DIRECTORS

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SUMMARY OF
MAJOR EDUCATION-RELATED LEGISLATION
PASSED DURING THE
2005 LEGISLATIVE SESSION

Adequacy and State Aid to Education

The 2005 legislative session will yet again be remembered as another year that lawmakers could not reach closure on an education funding formula until late in the session, with much debate over the pros and cons of different philosophies. Clearly, this issue dominated the entire session as legislators grappled with attempts to redistribute aid based on a pre-determined available amount of revenue. Lawmakers finally came to agreement when the House concurred with a Senate plan late in the session, once again changing revenue amounts for school districts after district meetings and budget adoption.

The major bills affecting education aid that ultimately passed include:

HB 616 Chapter 257, the adequate education funding formula that includes a statewide property tax, became law without the governor's signature. The new formula, by Senator Gatsas, costs \$472.7 million and distributes aid under three provisions: local tax capacity, state tax capacity and targeted aid. Local tax capacity aid (\$143.4 million) is based on property wealth and the amount of revenue a community can raise at a state average tax rate of \$7.19. State tax capacity aid (\$62.3 million) is based on property wealth and the amount of revenue a community can raise at a statewide property tax (statewide enhanced education tax) which is set at a level to raise \$363 million annually (\$2.84). Both these aid provisions require a community to have below average property wealth per pupil, and the aid is influenced by the size of the discrepancy between local property wealth and the state average. The third aid provision is targeted aid (\$250.3 million), based on numbers of educationally disabled pupils, free or reduced-price meal eligible pupils, limited English proficient pupils, and a transportation grant. Targeted aid applies if the community is below 150% of both the state average equalized valuation per pupil AND state average median family income. Special education pupils and students eligible for free/reduced price meals are weighted at 0.95 of a calculated \$4,122 per pupil amount (95% = \$3,916). Limited English proficient pupils

receive a value of \$1,000 each, and transportation is recognized at \$190 per ADM-R. As mentioned above, the plan includes a statewide property tax that is set annually to raise \$363 million. For the fy 2006 funding year, that rate would be \$2.84. A calculation to determine the amount of excess payment results in the elimination of almost all donor towns. The transition component, or hold harmless feature, costs \$16.7 million. Communities eligible for less aid in fy 2006 than received in fy 2005 would be held harmless at 85% of 2005 aid. Total grants, including the transition period, apply for the biennium, both fy 2006 and fy 2007.

- HB 1-2** The budget and trailer bill, Chapters 176 & 177. Fully funds building aid and catastrophic special education aid; vocational tuition & transportation is funded at approximately 82% of entitlement; includes reading recovery and dropout prevention, but local education improvement funds were cut in half, to \$273,435 in each year.
- HB 25** Chapter 259, the capital budget, with \$10.8 million for the Department of Education, and includes appropriations for Tech Ed Centers in Concord and Conway.
- HB 71** Chapter 37, supplemental building aid for fy 2005: covers the \$2.7 million shortfall.
- HB 78** Chapter 99, clarifies the capital appropriation requirements for funding regional vocational education projects, provides that the state shall fund between 50 and 75 percent of the cost of renovation or expansion of a regional vocational education center, and adds a definition of a qualified project.
- HB 129** Chapter 228 establishes criteria for designation as a high performance school by which a school district may be eligible for additional school building aid (3% of total cost). This bill also requires that any electric utility that collects funds for energy efficiency programs shall include participation in eligible public school construction or renovation projects that are designed to improve indoor air quality or energy efficiency.
- HB 248** Chapter 180, stipulates that building aid be paid in “2 approximately equal payments” (October and April). The bill also includes the purchase or lease-purchase of equipment designed to improve energy efficiency or indoor air quality in school buildings in the definition of “construction” for the purpose of calculating school building aid grants.
- HB 308** Chapter 10, amends the special education payment distribution schedule for children in certain court ordered placements and clarifies the department of education’s jurisdiction in alternative dispute resolution proceedings; nonbinding is struck and replaced by confidential, in paragraph III for alternative dispute resolution proceedings.

- SB 38** Chapter 208, provides that a receiving district situated in this state providing an education to pupils from one or more sending districts situated in this state under a contract entered into pursuant to RSA 194:21-a or RSA 194:22, shall be eligible, under certain conditions, to receive annual school building aid grants.
- SB 90** Chapter 164, extends the kindergarten construction program through the fiscal year ending June 30, 2006.

School District Governance and Operations

The 2005 legislative session considered many bills that would have an impact on how local districts, SAUs and towns operate. Major bills of interest to educators include:

- HB 41** Chapter 3, changes the name of the right-to-know study commission to the right-to-know oversight commission, and extends the commission for 5 years, to 2010. (See HB 626, retained in House Judiciary)
- HB 97** Chapter 49, changes the appointing authority for vacancies occurring on a cooperative school district budget committee to the budget committee.
- HB 132** Chapter 178, amends the grounds for dismissal of a teacher; incompetent is replaced by who has not satisfactorily maintained the competency standards established by the district.
- HB 150** Chapter 7, defines truancy as an unexcused absence from school or class and “unexcused absence” is an absence without parental or administrative permission; habitual truancy consists of 20 half days.
- HB 170** Chapter 239, makes changes to unemployment compensation eligibility requirements for people seeking part-time work when that person is the only available adult to care for a child.
- HB 346** Chapter 110, amends the procedure for withdrawal from a cooperative school district and allows the town which voted to undertake the withdrawal study to submit a minority report to the state board of education; any action on a plan to withdraw must still be submitted to the voters of the cooperative school district per RSA 195:29.
- HB 404** Chapter 297 allows an employee to have contributions to a political action committee deducted from his or her wages.
- HB 549** Chapter 188, allows a school district (city, town or public library) to accept unanticipated funds in an amount less than \$5,000, by posting notice of the funds in the agenda and including notice in the minutes of the meeting

in which such funds are discussed. The acceptance of unanticipated funds shall be made in public session of any regular school board meeting.

- HB 557** Chapter 189, amends the due dates for certain data submitted to the department of education.
- HB 683** Chapter 245 requires driver education instructors to obtain a certificate from the department of safety, requires reporting of motor vehicle offenses by driver education instructors, and authorizes the suspension or revocation of driver education certificates.
- SB 40** Chapter 83, permits an official ballot school district to hold a special school district meeting in conjunction with the biennial election.
- SB 208** Chapter 92, allows persons approved to teach driver education, but who are not certified secondary school teachers, to teach driver education in schools.

Other

Obviously, many other bills passed during the 2005 legislative session, with several addressing operations in specific districts. Following are several bills of interest only to specific districts.

- HB 53** Chapter 15, repeals a 1901 law relating to the apportionment of library funds in the town of Haverhill.
- SB 45** Chapter 74, ratifies and affirms the establishment of a tax stabilization fund by the Hanover school district at its March 2004 annual school district meeting.
- SB 141** Chapter 89, authorizes the Gorham school district, the Randolph school district, and the Shelburne school district to establish and fund certain capital reserve funds which will become part of the Gorham-Randolph-Shelburne cooperative school district.

Additionally

- SJR 1** Chapter 2, declaring the month of April 2005 to be Boston Red Sox Month!

The NH House of Representatives adopted a resolution, **HR 12**, proclaiming:

- That the first week of each calendar school year in New Hampshire be referred to as “Dictionary Week”; and

- That educators in the state of New Hampshire are encouraged to ask students to use easy-to-understand dictionaries and always look up the definitions of words and symbols they do not fully understand when reading; and
- That the department of education be urged to keep a link to this resolution on their homepage.

Education Related
Retained Bills
Authorized by the
2005 Legislative Session

Note to Reader:

*These Bills will be studied further
next Fall by the Committee of assignment.
Most work must be completed by November 1, 2005.*

Retained Bills have been sent back to committee for further study. They generally require a report to be filed in November 2005, and require a full committee vote before any consideration by the entire legislative body.

Education Funding

House Bills 100, 606, 614, 650 and 684: all education-funding formula revisions and all retained in House Education, by the original sub-committee on education funding.

HB 646 proposes a definition for an adequate education. (House Education)

HB 191 making temporarily leased classroom space eligible for school building aid grant money. (House Finance)

Charter Schools/Open Enrollment/Choice

HB 76 adds a reference to the fiscal year of attendance relative to the amount of funding per pupil for a charter school and deletes a reference to the department of education. (House Education)

- HB 297** •Allows a school board to vote to designate any one or more of its schools as open enrollment schools.
 •Removes the limit on the number of charter schools which may be granted during the 10-year pilot program.
 •Revises the procedures to be used by the state board of education in responding to charter school applications with missing, unclear, or incomplete information.
 •Inserts a conflict of interest provision relating to members of a charter school board of trustees.
 •Requires that funding for state-authorized charter schools be paid by the state directly to the charter school.
 •Requires that a school district grant a leave of absence to any teacher who wishes to teach in a charter school. (House Education)
- HB 664** removes the residency requirements for school attendance and requires that all elementary and secondary schools be open enrollment schools. (House Education)
- SB 131** establishing a school choice certificate program. (Senate Finance)

School District Governance and Operations

- HB 39** setting forth criteria for instruction and course materials on sex education in public schools. (House Education)
- HB 258** allowing negotiations with an individual teacher over terms which exceed the collective bargaining agreement. (House Education)
- HB 278** revises the voting process for adopting the alternative budget procedure for a school administrative unit. (House Education)
- HB 292** establishing procedures for a town to withdraw from a cooperative school district. (House Education)
- HB 356** provides that the budget proposed by a committee appointed pursuant to a joint maintenance agreement shall be presented unchanged to the component districts. (House Education)
- HB 406** revises notice and procedural provisions applying to home education programs. (Senate Education)
- HB 626** clarifies the manner in which the right-to-know law applies to both governmental records kept in electronic form and electronic communication used to transact governmental business. (House Judiciary)

*Education Related
Legislative Studies
Authorized by the
2005 Legislative Session*

Two legislative studies of interest to school board members were authorized this session.

HB 41 (Chapter 3) was adopted, changing the name of the right-to-know study commission to the right-to-know oversight commission, and extending the commission for 5 years to 2010. The original study commission began looking into issues associated with the right-to-know law two years ago in 2003, including the issue of electronic communications. The 2003 legislation that created this commission is also the same legislation that added to the list of what does not constitute a meeting, i.e. a caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2.

The oversight commission is charged to study, and report annually in November, on:

- I. The need for disclosure requirements or guidelines for email and other electronic communication occurring between and among state, county, and local government appointed and elected officials and employees of governmental entities.
- II. The need for disclosure requirements or guidelines for electronic communications with constituents of state, county, and local government appointed and elected officials and employees of governmental entities.
- III. Archival requirements for electronic documents.
- IV. The status of proprietary data within the definitions of the right-to-know law.
- V. The ability to recover costs relative to the retrieval of electronic files and communications.

- VI. Issues relative to public records posted to web sites of governmental entities.
- VII. Whether a member of a body subject to the right-to-know law may participate in a meeting by teleconference or other electronic means.
- VIII. The extent to which the public will be provided access to stored computer data under the right-to-know law.
- IX. Any other matter deemed relevant by the commission

HB 157 (Chapter 132) establishes a committee to study procurement methods for public works projects by state and local government agencies. The committee consists of two representatives and two senators. It is charged with studying contracting practices for public works projects by state agencies, municipalities, counties, school districts, and all other political subdivisions. The goal is to recommend public procurement policies that promote the best economic and work quality value from public construction and infrastructure investment. The committee is to base its recommendation on consideration of the following: labor law enforcement, workplace safety compliance, workers' compensation compliance, access to workforce and apprenticeship training, in-state job creation and community economic development, communities' uncompensated care burdens and other social welfare costs, and such additional criteria as the committee deems appropriate. A report of findings and any recommendations for proposed legislation is due November 1, 2006.

Education Related Bills

Defeated During the

2005 Legislative Session

Bills Killed During Legislative Process

These bills were intentionally killed by the legislature when either the House or Senate adopted a motion of ITL (Inexpedient to Legislate). One bill, adopted by both the House and Senate, was killed by the Governor's veto.

House Bills:

- HB 64** This bill would have established a committee to study assessing local education costs on a county-wide basis.
- HB 89** This bill would have made a petitioned warrant article in SB 2 districts non-amendable upon application of 5 percent of the number of voters who voted in the most recent second session of the last annual meeting or 100 voters, whichever would have been less.
- HB 103** This bill would have made a \$1,000,000 appropriation to the department of education for the support of charter schools.
- HB 137** This bill would have deleted the requirement that an individual seek full-time employment to qualify for unemployment compensation benefits. However, note that **HB 170, Chapter 239**, did pass and makes certain changes to unemployment eligibility for individuals seeking part-time work when that person is the only available adult to care for a child.
- HB 151** This bill would have required each school district to establish a school age nutrition and physical activity advisory committee to develop policy for nutrition and physical activity.
- HB 163** This bill would have established a committee to study the provision of education through the county government system.
- HB 208** This bill prohibited the possession of a firearm in a safe school zone and would have set forth specific exceptions to the prohibition.

- HB 230** This bill attempted to provide some clarification on what can be included in a default budget. During the committee of conference, House and Senate conferees were unable to agree on common language, a report was never filed, and the bill died.
- HB 233** This bill would have required a city or town, which hosts a cooperative school or authorized regional enrollment area school and which provides police assistance to such school, to be reimbursed for police assistance on a per diem basis.
- HB 240** This bill would have prohibited public school personnel from recommending or requiring that a child take a psychotropic medication.
- HB 271** This bill would have designated the first signatory to a petitioned warrant article as the sponsor of the article.
- HB 305** This bill would have required that both the original warrant article and the amended warrant article appear on a ballot in towns that have adopted official ballot voting. The warrant article receiving the greatest number of votes would have prevailed.
- HB 320** This bill would have established a program to be administered by the postsecondary education commission for educational scholarship grants to be made annually to qualifying private education institutions. Grants would have been used for state residents and were to be limited to the lesser of education funds provided to students by each institution or the amount of property taxes paid by the institution.
- HB 336** This bill would have required the use of secret ballots on questions seeking the appropriation of \$100,000 or more at non-SB2 annual meetings.
- HB 341** This bill would have established a six-member committee to study the curriculum content of an adequate education.
- HB 354** This bill would have enabled House and Senate policy committees to vote for a joint resolution on final agency rules, which could have delayed the ability of the agency to adopt the rules. **VETOED** by Governor.
- HB 358** This bill would have established a committee to study the efficacy of the municipal budget committee and cooperative school district budget committee processes.
- HB 360** This bill would have restricted the amount of the appropriation in an amended official ballot warrant article from deviating by more than 10 percent from the original warrant article amount.

- HB 381** This bill would have included employees of quasi-public corporations in the prohibition on communicating in any way to influence how another person may vote at any election on any question.
- HB 390** This bill would have required an individualized education plan to be reviewed by a school board, or sub-committee of a school board, and be approved by a school board.
- HB 395** This bill would have required a majority of voters to be present and voting for the adoption of a long-term contract by a school district.
- HB 396** This bill would have revised the provisions relating to short-term tuition contracts entered into by school districts.
- HB 431** This bill would have provided that when two competing articles in an official ballot proceeding receive the minimum number of votes to pass, the article with the most votes would have prevailed.
- HB 435** This bill would have required a one-half year course in civics for high school graduation. A similar bill in the Senate, SB 82, was also voted ITL. The civics requirement, however, is part of the new rules adopted by the State Board of Education.
- HB 441** This bill would have allowed a school board to publish a pupil's name as part of an honor roll listing or as part of a description of high academic achievement received by such pupil.
- HB 442** This bill would have established a committee to study the feasibility and need for a vocational technical education program at Mascoma Valley regional high school.
- HB 451** This bill would have required a separate preparation and approval process for the special education budget, requiring submission to the legislative body for approval by majority vote
- HB 458** This bill would have allowed towns to permit limited youth voting in municipal elections.
- HB 503** This bill would have mandated the distribution of tobacco settlement funds received by the state; the first \$3 million to tobacco use prevention, the next \$40 million to the education trust fund, and any remaining balance to be distributed $\frac{1}{2}$ to the general fund and $\frac{1}{2}$ to the counties.
- HB 564** This bill would have permitted the use of liquor, wine, or other beverages, under adult supervision, as part of an approved high school culinary arts program or class.

- HB 612** This bill would have established the New Hampshire volunteer elementary teachers and students program within the department of education, allowing interested and eligible individuals to team-teach students in elementary school.
- HB 622** This bill would have established an income tax at the rate of 4 percent to help support the education trust fund.
- HB 635** This was a funding formula bill based on property wealth and median household income that also repealed the statewide property tax.
- HB 660** This bill would have made a cooperative school district equivalent to a town for the purposes of state and local taxation.
- HB 665** This bill would have raised the minimum wage for hourly employees.
- HB 721** This bill would have prohibited the department of education and the state board of education from proposing or adopting rules which purport to define an adequate education.

Senate Bills:

- SB 12** This bill would have rewritten RSA 194:22 and established a new procedure for school districts to make a contract with non-profit academies for the provision of secondary education.
- SB 14** This bill would have exempted votes on tuition contracts at special meetings from the requirement that voter turnout equal at least 50 percent of the number of voters at the previous regular meeting.
- SB 15** This bill would have authorized a school district to enter into a tuition contract for a term not to exceed 20 years without the approval of the legislative body of the school district.
- SB 35** This bill would have transferred 10 acres of the youth development center's campus in Manchester to Hope for Autism for the purpose of establishing a charter school for children with autism.
- SB 68** This bill would have modified the purpose of a certain sum of money payable to the Manchester school district by the town of Bedford, relative to secondary educational costs.
- SB 82** This bill would have required a one-half year course in civics for high school graduation. A similar bill in the House, HB 435, was also voted ITL. The civics requirement, however, is part of the new rules adopted by the State Board of Education.

- SB 160** This bill would have returned the appointing authority for the commissioner, deputy commissioner, and division directors of the department of education to the state board of education.
- SB 174** This bill would have required all indirect costs relative to collective bargaining agreements, such as insurance premiums and other benefits and costs, to be itemized and placed on the warrant article.
- SB 177** This bill would have prohibited the sale of certain food and drinks in public school cafeterias.

Proposed Constitutional Amendments:

- CACR 1** This amendment would have made the maximum increase in any budget bill, in the state or its political subdivisions, limited by the rate of inflation and population growth.
- CACR 3** This amendment would have required that any personal income tax enacted by the general court be dedicated exclusively for the funding of public education.
- CACR 4** This amendment would have required a $\frac{3}{5}$ vote of the House and Senate to pass a new tax or to increase any assessment, rate, or tax, tariff, or fee that has been levied.
- CACR 9** This amendment would have combined the concepts in CACRs 1 and 4, requiring a $\frac{2}{3}$ vote to pass a new tax or to increase a tax after it is levied and making the maximum increase in any budget bill limited to the rate of inflation and population growth.
- CACR 14** This amendment would have deleted the language in article 83 of the second part of the New Hampshire constitution which states that "Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination".
- CACR 15** This amendment would have restricted revenues raised by a statewide property tax, income tax, or general sales tax to be used exclusively to support local public schools.
- CACR 17** This amendment would have replaced the NH Constitution's "cherish the interest of literature ... and all public schools" clause with one requiring legislators "to consider the importance of education to a prosperous and democratic society when allocating the resources of the state and its municipalities."

Bills Laid on the Table

In addition to those bills specifically voted down (ITL) or otherwise killed, the House and Senate laid several bills on the table. This means the possibility of any action on these bills is remote, but still possible. Both the House and Senate will be convening once again, if only to consider Governor Lynch's veto message(s). At that time, it is possible that a bill could be removed from the table for consideration. However, this would require a $\frac{2}{3}$ vote. In addition, if the Senate (or House) considered a Senate (or House) bill, it would still have to be considered by the other body, requiring super majority votes to allow for deadline extensions. When the next annual session begins in January, any bill remaining on the table dies and disappears.

- HB 98** This bill would have given law enforcement authority to town selectmen and city mayors for the purpose of safe school zones under federal law; the bill was tabled in the House.
- HB 126** This bill would have extended the right of free speech to all public employees, protecting them from discharge or discrimination when the public employee has spoken about a matter that is of public interest concerning his or her employment; the bill was laid on the table in the Senate.
- HB 219** This bill would have permitted a school bus owner to make an audio and video recording of a student on a school bus if the school district authorizes the recording and the parents and students are notified of the recording; the bill was tabled in the House.
- HB 301** This bill would have set forth procedures for every school board to establish a parent advisory council to advise the school board on matters pertaining to the education and safety of educationally disabled children; the bill was laid on the table in the Senate.
- SB 71** In SB 2 districts, this bill would have required voting on both the original warrant article, and the article as amended; the bill was laid on the table in the Senate.
- SB 109** This bill would have required the state to fully fund catastrophic special education aid; the bill was laid on the table in the Senate.