

Republican Review

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HISTORIC: BUDGET VETO OVERRIDDEN

Republican Budget Becomes Law, Governor Caves on Business Taxes Republican Majority Votes to Move NH Forward

On Wednesday, House Republicans played a pivotal role in a historic legislative moment when for the first time in recent history, a governor's veto of a budget was overridden. Without a 2/3 majority in the House, (a 2/3 majority vote is needed to override a veto) Republicans had to rely on an unconventional set of circumstances. Governor Hassan openly requested members of her own party to override her own veto. By all accounts, this is an unprecedented move on a national or state level, and a very public admission that her veto of the fiscally responsible Republican budget was ill-advised.

Business Tax Relief Achieved

Senate Bill 9 was the mechanism by which the budget deal was reached. After months of negotiations, and pressure from within her own party and from outside advocacy groups representing constituencies who would benefit from the Republican budget passed in June, Governor Hassan conceded on her biggest concern: business tax cuts.

SB9 includes the same set of rate cuts to the Business Profits Tax (BPT) and the Business Enterprise Tax (BET) that were in the Republican budget (HB1 & 2), only they come in 2 phases instead of three. The result is a steeper initial rate cut, and the second set of cuts, to the lowest rates prescribed, come 1 year sooner than in HB2. Republicans believe this is a win for our business community.

The business tax relief in SB9 represents the first rate reduction in 20 years. The business tax relief in SB9 will benefit businesses who employ 95% of New Hampshire's private sector workforce.

Governor's Tax Proposals Rejected, Budget Still Has No New or Increased Tax or Fee

Over the summer, Governor Hassan proposed a "compromise" budget plan that included \$100 million in increased taxes, fees and revenue adjustments. The increases included a spike in the tobacco tax, increases motor vehicle registrations, and additional taxes on small businesses.

These proposals were considered dead-on-arrival in the legislature and were rejected immediately by House and Senate leaders. Nowhere in HB1, HB2 or SB9 are any taxes or fees created or increased.

Legislative Oversight Committee on Employee Relations

Another Republican victory contained in SB9 was the reestablishment of a legislative committee to give the legislature a voice and input into future contract negotiations. The Legislative Oversight Committee on Employee Relations will be an invaluable tool in future terms to ensure the government branch charged with funding those contacts can have some say in what those contacts include.

No New Net Appropriations

Included in SB9 was a provision to fund the new State Employee Contract. Savings resulting from executive branch agencies foregoing certain expenses over the course of the continuing resolution resulted in a situation where SB9 could be drafted to use those anticipated savings to pay for 2 cost of living increases for those on the state payroll. The bill charges the governor with finding the money to pay for these increases using existing funds.

In other words, not one dollar more that was previously prescribed to be spent in the initial budget bill (HB1) is at stake. It will be the executive branch's responsibility to find savings to pay for this provision.

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Medicaid Expansion Not Included

Although a priority for the governor and House Democrats, extension of Medicaid expansion was off the table from the outset of budget negotiations. The Speaker and Senate President have remained consistent with their position that any discussion on the matter be in a standalone bill for debate in 2016. At no time did either the Speaker or Senate President suggest to the governor there was any guarantee any proposal could pass either the House or Senate, but there will be a debate.

Financial Safeguards in Place

The House and Senate leaders involved in negotiations agreed to put reasonable safeguards into the business tax implementation process. If General Fund revenue meets a certain target, the second phase of tax reductions will take place as planned. If revenue falls short, the first set of reductions will remain in effect, and rates will remain constant. Legislative leaders are confident in the state's ability to meet the target. The revenue goal laid out in the bill is LESS THAN what the conservative House Ways and Means committee are currently estimating for the biennium. On meeting the targets, Senate Majority Leader Jeb Bradley (R-Wolfeboro) said, "And I am standing here saying I will stake my reputation on the fact that we are going to meet it. Then we will be below the corporate tax rate of Massachusetts."

Benefits of HB1 & HB2 Will Be Realized

HB1 & HB2 will become law in their entirety, except for the modification in the implementation of the business taxes (safeguards). Those benefits are laid out on pages 3 and 4 of this newsletter.



PHOTO: On Thursday, House Speaker Shawn Jasper received an overview of progress on the State House dome project. Originally the project was slated to refinish the golden dome, but after inspection, project managers realized that structural improvements to the roof area needed to be made prior to the refinishing.

REPUBLICAN BUDGET BECOMES LAW

Benefits of HB1 & HB2 Can Now Be Realized

It's hard to believe it's been 3 months since the committee of conference reports on the budget bills were approved by the House and Senate - and then vetoed by the governor. We thought it would be helpful to our readers to go over the many positive benefits of this budget that is now law through June of 2017.

Overall:

House and Senate budget writers have worked diligently to produce a thoughtful and responsible budget that meets the needs of the people of New Hampshire.

This budget includes carefully considered appropriations that will allow our state to take care of those most in need while enabling a stronger economy while promoting job growth through reducing the tax burden on our business community and making New Hampshire more competitive.

This budget maintains important House priorities including increased funding to our state's charter schools, and minimizing impacts on local property taxpayers. Most importantly, it contains no new taxes or fees.

This budget provides much needed funding in our fight against substance abuse, increases funding for local schools and higher education, invests in our state's continued efforts to improve our infrastructure, ensure adequate public safety, and appropriates more money for health and human services than any previous budget in our state's history.

The House and Senate made an important decision not to include an extension of Medicaid Expansion in any version of the budget. Review of data, costs, and the federal government's commitment to its share of funding will be considered in the next legislative session, separately from the budget.

New Hampshire's taxpayers deserve an honest, transparent, and fiscally responsible budget that promotes efficiency and accountability, and is built on realistic revenue estimates. We are confident this budget leads us in that direction.

Fiscal Responsibility:

The Committee of Conference produced a budget that relies on sound revenue estimates ensuring we only spend money we can reasonably rely on receiving. The budget will also more than double the size of the state's rainy day fund, which will help our state's fiscal security and bond rating.

Very importantly, this budget does not contain any new taxes or fees. It relies on revenue from existing sources and the increased revenue we expect as a result of an improving economy. It also protects local property taxpayers from downshifting or costs or unfunded mandates.

Reducing Business Taxes to Help Spur Economic Growth:

This budget contains a plan to lower the state's business profits tax by 11.4%. New Hampshire has come of this highest corporate tax rates in the nation. In order to compete for jobs, we must be more business friendly. Lowering our BPT rate by 11.4% will help us be more competitive in attracting new business and help our current businesses stay in New Hampshire to grow and create more jobs.

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Health and Human Services:

This budget provides much needed increase in funding for substance abuse treatment, services for the developmentally disabled, mental health and elder care services, including meals on wheels and Servicelink. In fact, this budget spends more on health and human services than any prior state budget. Funds were made available for emergency shelters and an additional \$1 million was appropriated to fund 10 additional beds at the New Hampshire hospital.

Education:

This budget fully funds our Community College system, allowing them to keep tuition affordable. It also increases funding to the University System by 5.8% for a total of \$162 million. Communities affected by a cap in education adequacy funding will experience a boost in funding for their local schools, with the cap being removed in FY 2018. Education stabilization grants will continue at 96% of current levels, ensuring no school district will see a dramatic reduction in funding.

This budget also increases charter school funding by \$1000 per student, ensuring these institutions continue to provide an innovative alternative for parents looking for education solutions that fit the unique needs of their children.

Public Safety and Infrastructure:

This budget funds priorities in the Department of Safety and Department of transportation that will ensure our efforts to improve roads and bridges continue, and our citizens can feel safe that our State Police had the resources they need to keep crime low. This budget ensures municipal block grants from road toll revenue continue, and DMV substations remain open for business. Very importantly this budget abides by state law that states that gas tax revenue be used for our roads and bridges and not diverted to other areas of government.

Travel and Tourism:

This budget provides \$4.2 million per year in funding for travel and tourism promotion, ensuring one of our state's biggest industries continues to be an economic benefit. An additional \$5 million in revenue from the meals and rooms tax, which is highly dependent on our tourism industry, will be distributed to cities and towns, which is good for local property taxpayers.

Efficiency and Accountability:

This budget takes steps to make government more efficient by merging offices, sharing resources and asking agencies to find ways to do more with the same amount of resources.

This budget also takes steps to demand more accountability from government agencies. For example, this budget allows for more oversight of the liquor commission by requiring legislative review of transfers over \$75k in their budget. It also adds legislative appointees to the university system board to increase oversight of their expenditures and operations to answer the best decisions are being made to improve the quality of education they provide.

What Constitutes a “Money Bill”?

A fair question was brought to the House’s attention on Wednesday relative to whether Part II Article 18 and/or 18a of the New Hampshire Constitution made SB9 unconstitutional. The Speaker’s ruling that the bill was constitutional was based on an opinion from House Legal Counsel, former State Supreme Court Justice Atty. Chuck Douglas, that the Supreme Court’s decision in *Baines v. NH Senate President* defined what a money bill is and how that definition has been applied and should be applied. Below is an excerpt from the Court’s decision.

Meaning of “Money Bill”

It has been the practice of the State of New Hampshire since 1784 to interpret “money bill” to mean “rais[ing] money by direct taxation.” Opinion of the Justices, 102 N.H. at 82, 150 A.2d 813; see Marshall, supra at 139. “[M]oney bills or bills for raising revenue are confined to bills which levy taxes in the strict sense of the word, and do not apply to bills which incidentally raise revenue or involve appropriation of state money.” Opinion of the Justices, 102 N.H. at 82, 150 A.2d 813. “This limited and strict construction of the constitutional requirement that money bills or bills for raising revenue shall originate in the lower house is supported by the overwhelming weight of authority.” Id.

“Direct taxation means taxes upon polls and estates.” Opinion of the Justices, 115 N.H. 304, 305, 339 A.2d 721 (1975). Thus, we have held that a bill that would impose a direct tax on parimutuel pools is not a “money bill” because it is not a direct tax on polls and estates. Opinion of the Justices, 116 N.H. 351, 353-54, 358 A.2d 667 (1976).

Our interpretation of the New Hampshire Origination Clause is consistent with the interpretation by federal courts of the Federal Origination Clause. See United States v. Norton, 91 U.S. 566, 569, 23 L.Ed. 454 (1875); see also United States v. Mayo, 26 F. Cas. 1230, 1231 (C.C.D.Mass.1813). Like the State Origination Clause, the Federal Origination Clause “has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which incidentally create revenue.” Norton, 91 U.S. at 569 (quotation omitted).

“Raising revenue, in the context of the origination clause, implies that the purpose of a measure must be to increase revenue for the support of government through the operation of the taxing power.” Jipping, supra at 666 (quotation omitted). Thus, numerous courts have held that bills that do not have this as their purpose are not “money bills” within the meaning of the Origination Clause. See Bertelsen v. White, 65 F.2d 719, 722 (1st Cir.1933) (bill that diminishes revenue of the government is not a bill to raise revenue under Federal Constitution); Mobil Oil Corp. v. Township of Greenwich, 22 N.J.Tax 1, 19 (2004) (act that was not intended to raise revenue and anticipated that some property that was previously taxed would be exempt was not a bill to raise revenue).

*We find the case of State v. Lasky, 156 Me. 419, 165 A.2d 579 (1960), instructive. At issue was legislation that corrected errors and inconsistencies in public laws, including a statute that imposed a tax on quahogs. Lasky, 165 A.2d at 581-82. The correcting legislation included a provision that repealed the quahog tax statute “and enacted as something new the same statute, identical in all respects apart from section numbers.” Id. at 582. The Maine Supreme Judicial Court held that the correcting legislation did not violate the Maine Origination Clause because it **was not a bill for raising revenue.** Id. at 583. “[T]he repeal and enactment sections . accomplish neither more nor less than the amendment of the original quahog tax statute by changing the assignment of section numbers in the Revised Statutes.” Id. at 582. Had the correcting legislation created the quahog tax in the first instance, the court noted, it would have been a revenue bill. Id. at 581.*

Because SB9 did not raise revenue by direct taxation (on polls or estates), and in fact lowers state revenue, was one of many reasons why SB9 was determined to not be a money bill, and therefore constitutional.

On the next page, we review several Senate bills that affect state revenue and appropriations that became law and were also not deemed to be unconstitutional.

REVIEW OF SPENDING LEGISLATION ORIGINATING IN THE SENATE

Over the last 5 years, there have been many Senate bills containing appropriations that eventually became law. Many of these bills contained subject matter that could have been included in a budget proposal. Many of them were big issues and had an effect on taxpayers and citizens of New Hampshire, including the **Medicaid Expansion (SB413)** and the **funding of charter schools and HHS contracts**. Here is a small sample of related bills that originated in the Senate:

2014 SB413 relative to access to health insurance coverage.

2013 SB40 relative to distribution of education funds for fiscal year 2013.

2012 SB401 relative to reporting the average daily membership of pupils in the public schools and relative to adjustments to adequate education grants.

2011 SB515 relative to contracts of the department of health and human services.

2011 SB82 extending the state board of education's authority to approve chartered public schools and relative to the funding of chartered public schools approved by a school district.

REVIEW OF TAX LEGISLATION ORIGINATING IN THE SENATE

Over the last 5 years, there have been many tax policy changes made in Senate bills, like SB9, that eventually become law. Many of them were important to Republicans in the House and made a positive difference to taxpayers and citizens of New Hampshire, including the **Education Tax Credit program established in 2012 (SB327)** and the **increase in the R&D tax credit in 2013 (SB1)**. Here is a small sample of tax related bills that originated in the Senate:

2015 SB232 exempting certain leases from the real estate transfer tax.

2015 SB211 relative to taxation of employee leasing companies under the business enterprise tax.

2015 SB369 relative to the Medicaid enhancement tax

2014 SB327 relative to economic revitalization zone tax credits.

2014 SB243 relative to the carry forward of a credit against the business profits tax, rulemaking concerning the real estate transfer tax, the disclosure of certain department of revenue administration records, and the tax on unstamped tobacco products.

2013 SB1 increasing the research and development tax credit against the business profits tax and relative to the report of the commissioner of resources and economic development on the research and development tax credit.

2012 SB327 establishing an education tax credit

2012 SB125 relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships.

2011 SB35 relative to exemption from the definition of utility property for purposes of the utility property tax.