

# Republican Review

A Publication of the New Hampshire House Majority Office

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## FY15 ENDS WITH \$73.2 MILLION SURPLUS

By law the governor was required to release the final but unaudited 2015 fiscal year figures on September 30. Those figures released this week indicate that the state has an unaudited \$73.2 million surplus for the recently concluded fiscal year, which is \$9.7 million greater than the committee of conference on the budget had predicted.

The Comprehensive Annual Financial Report (CAFR) is a report which presents the State's financial condition at the end of each fiscal year (June 30th). The Department of Administrative Services provides a Preliminary CAFR to the Office of Legislative Budget Assistant 90 days after the close of each fiscal year (September 30th). The Preliminary CAFR is then subsequently audited by the LBAO and the Final Audited CAFR must then be completed and released to the public by December 31st of each year.

There are a few important things to note.

First, the FY2014-2015 budget comprised 99% of what was proposed by Senate Republicans in 2013. 90% of House Republicans supported HB1 (2013) and 95% supported HB2 (2013). The budget was balanced, based on conservative revenue estimates, and contained no new or increased taxes or fees. It is that budget that has produced this surplus.

Next, despite the Governor's rosy rhetoric about the surplus, just 3 months ago, when she vetoed HB1 (2015) and HB2 (2015), one of her top concerns was that she believed we could not count on a large surplus to carry forward into FY16 (part of the budget we just passed).

"This budget is unbalanced. The legislature double-counted carryforward funds, attempting to take money that has been designated and appropriated to pay for 2015 bills, and instead proposed to use it to balance its 2016 budget," Governor Hassan said in her veto message dated June 25, 2015. "This gimmick would have forced cuts to this budget within months of enactment, eliminating the increased funding that many people thought they were being promised in this budget." The governor's argument that the FY16-17 budget contained in HB1 was unbalanced has now been completely refuted by this report.

"It turns out that the governor's oft-stated concern about carrying forward what she believed were unrealistically high balances from the last biennium to balance this biennium's budget was unjustified," said Rep. Neal Kurk, Chair of the House Finance committee.

Rep. Lynne Ober, Vice Chair of House Finance said she was very concerned that the governor did not know how much money was being spent or not spent by state agencies and that she was unaware of the upshift in revenues.. "Why would she veto the budget claiming that Republicans had passed an unbalanced budget when the just completed biennium showed the proposed budget would benefit from both the larger revenues in FY15?" Ober said. "Does she know what is being spent and how much revenue the state is collecting? In light of this information, her June budget veto makes even less sense. All that veto did was delay needed services to our residents."

Lastly, all parties involved agree that this larger than expected surplus will augment the state's all-too-meager rainy day fund, bolstering the state's good credit ratings.

As additional details contained in this and future reports are reviewed, we will pass along similar information.

## WITH BUDGET IN PLACE, COMMUNITY COLLEGES FREEZE TUITION

This week, the Community College System of New Hampshire officially announced that tuition would be frozen now that the state budget, which Governor Hassan vetoed, has become law.

The Republican budget proposal allocated \$86 million to the Community College System of NH, a 5% increase over the previous budget, making the tuition freeze possible.

According to NHPR reports, Chancellor Ross Gittell says it wasn't ideal to have had to start the academic year not knowing for sure what tuition would be.

"It made for some uncertainty and that was a challenge not only for our colleges but also for the system office," says Gittell.

Had Governor Hassan signed the budget or let it become law without her signature, CCSNH and many other state agencies would not have been affected by 3 months of "uncertainty".



*Photo: With the change in season, the landscape around the State House has changed as well. Multicolored mums have replaced summer's blooming flowers that surrounded the NH Law Enforcement Memorial in front of the Legislative Office Building.*

### UL Editorial: Hassan's budget? Stealing credit again

On Friday, the Union Leader editorial reminded New Hampshire readers that Governor Hassan has a problem giving credit where credit is due - and taking credit where no credit is due. It says, in part:

*"After spending the entire year lambasting Republicans for "draconian cuts," "gimmicks" and "blowing a \$90 million hole in the budget," a few weeks ago she watched as the Legislature overrode her budget veto."*

*"It would be one thing if Hassan were merely acceding to Republicans for the good of the state. But she insists on claiming credit for the very budget she vetoed. She's worse than the proverbial rooster taking credit for the sunrise."*

[Read the full editorial at the Union Leader's website by clicking here.](#)

*The following op-ed appeared in in several publications this past week*

## **New Hampshire finally has the budget it needs**

BY SEN. CHUCK MORSE

After a needless three-month wait, New Hampshire finally has the budget it needs.

The budget the legislature passed fully funded our state's top priorities, including vital social services such as Meals on Wheels, the Developmentally Disabled Waitlist and Service Link. It increased state support for charter schools, lifted the cap on education funding to local school districts, and provided an increase to the Community College System sufficient to freeze tuition for the next two years.

Another key priority was addressing the growing substance-abuse epidemic plaguing New Hampshire. We not only increased funding for alcohol and drug treatment programs by 75 percent, but finally assured that money will come from a new dedicated fund set up for that purpose.

We also passed tax relief for New Hampshire businesses, phasing in a series of modest rate reductions over the next five years in order to restore our state's economic competitiveness.

Taxes on New Hampshire's businesses have left our employers in an increasingly uncompetitive position with neighboring states, ranking New Hampshire 48th worst in the country. The modest, phased-in business tax cuts now in place result in our employers bearing lower business taxes than Massachusetts, and send a signal nationwide that the Granite State is once again open for job creation. They will also provide tax relief for companies employing 95 percent of private sector workers, encouraging them to invest in new jobs.

Lowering business taxes is an important piece of our overall economic development strategy. We've also taken big steps to lower workers compensation costs, bring down electric rates for residential and commercial customers, and address rising health insurance premiums. These are the four primary financial obstacles to job creation in New Hampshire.

To aid this further, the budget trailer bill that Gov. Maggie Hassan signed actually accelerates the tax cuts so that they will be fully phased in by 2018. The legislature, in exchange, agreed to a revenue trigger that would delay the second rate cut if revenue performance is below a certain rate. We remain confident that state revenues will exceed the conservative estimates built into the budget.

These priorities were addressed all while rebuilding New Hampshire's Rainy Day Fund, without raising taxes on our citizens.

All of this good work was jeopardized by Gov. Hassan's unfortunate veto in June. She objected to the tax cuts on our employers being included, and her counter offer to increase other taxes by \$82 million with \$74 million in additional spending was completely unacceptable. Increasing taxes, much less the massive spending she proposed, was never on the table for the Legislature. We were pleased that she finally relented, allowing the budget to go into law.

I'm proud of the fiscal year 2016-17 budget that is now law. We funded critical programs for New Hampshire's most vulnerable, increased support for substance abuse treatment and prevention, provided more help to local school districts and charter schools, and started to lower our high business taxes in order to boost the economy.

Better late than never, New Hampshire finally has the budget it needs.

## Douglas: SB9 is not a Budget Bill

On September 16, 2015 the legislature overrode Governor Hassan's veto of HB1 and HB2 and followed that action up by passing SB9, which was conditioned on HB1 and HB2 taking effect. At the time there were some who felt that passing SB9 was in violation of Part II, Article 18-a of the New Hampshire Constitution. As a result, Speaker Jasper requested a memorandum from House Legal Counsel, the Honorable Charles G. Douglass, III, citing his legal opinion on the matter.

The Speaker received his opinion this week and sent it to House members via email. It appears below.

### LEGAL MEMORANDUM

#### **SB 9 Enacted on September 16, 2015 Was Not A Budget Bill**

On September 16, 2015, the legislature overrode the Governor's veto of HB 1 and HB 2 and enacted thereafter SB 9 which was conditioned on HB 1 and HB 2 taking effect. SB 9 had in its 12 pages the following four items:

- I. Appropriations for salary increases for state employees. (Appropriation – not a budget.)
- II. Establishes a legislative oversight committee on employee relations (not a budget.)
- III. Amends the purpose of a capital budget appropriation made to the liquor commission. (Technical correction – not a budget.)
- IV. Reduces the rates of the business profits tax and the business enterprise tax (Tax cut – not a budget.)

HB 1 was the biennial budget with a massive detail of appropriations many, many times longer than SB 9.

The budget provision in Part II on the N.H. Constitution is as follows:

[Art.] 18-a [Budget Bills.] All sections of all budget bills before the general court shall contain only the operating and capital expenses for the executive, legislative and judicial branches of government. No section or footnote of any such budget bill shall contain any provision which establishes, amends or repeals statutory law, other than provisions establishing, amending or repealing operating and capital expenses for the executive, legislative and judicial branches of government.

The genesis of Article 18-a was the 1984 Constitutional Convention's goal of preventing a take it or leave it budget vote larded with scores of statutory changes for controversial measures.

At the time, the two year spending plan we now call HB 1 also contained numerous statutory law changes. While HB 1 still contains footnotes, they now only relate to financial management and operate within existing law. The statutory changes are now included in HB 2. This is why we refer to HB 2 only as the budget trailer, or budget companion bill. But HB 2 is not the budget.

Legislators have the option of supporting the biennial budget (HB 1) and supporting or opposing statutory law changes in HB 2 as a separate measure. If HB 2 were classified as an actual budget bill and not the trailer/companion bill, every HB 2 in recent memory would have also been unconstitutional. There are many bills before the legislatures with budget implications. But there is only one bill that contains the biennial budget which the entirety of state government operates under as called for in RSA 9:3.

When article Part II, Article 18-a of the state constitution was being debated at the 1984 constitutional convention, at no time did any delegate in their remarks, either for or against the resolution, mention anything other than "footnotes" in the "budget bill." It is clear throughout the debate that the concern was the 2-year state spending plan and at no time was concern raised about other appropriation bills that may or may not contain statutory law changes.

*CONTINUED ON PAGE 5*

*SB9 LEGAL OPINION CONTINUED FROM PAGE 4*

Delegate Tamposi said, "...the question at hand relates to the footnotes that relate to the capital, or the operating budget."

Delegate Phelps goes on to argue, "If they are deserving of passage, the legislature will pass them," referring to removing footnotes from the budget bill and discussing them as separate matters.

Delegate Jacobson said, in part, "...the important point is that every one of these footnotes which amend, repeal, or establish statutory law can be separate legislation."

The issue came before the N.H. Supreme Court in the Case of Warbuton v. Thomas, 136 N.H. 383 (1992). At issue there was HB 1026, an act relative to a companion bill to the supplemental budget being considered in the second year of a legislative session. HB 1026, as does SB 9, appropriated several million dollars and had provisions establishing, amending or repealing statutory law. The Warbuton plaintiffs (including the undersigned in his capacity as a taxpayer) asserted that the bill violated Part II, Article 18-a..

The Supreme Court concluded that "a bill does not automatically become a budget bill simply because it appropriates." 136 N.H. at 396:

There is no indication in any of the Constitutional Convention debates over Resolution No. 60 that the amendment was intended to extend beyond the State budget bill to lesser appropriations bills. The words "all budget bills" embody no such intention.

HB 1026 is not the type of bill the Constitutional Convention sought to regulate with article 18-a.

The court then turned to the purpose of Article 18-a:

Article 18-a was intended to prevent the State budget from being used to carry numerous, unrelated pieces of proposed legislation through the legislative process. Id at 397.

...[W]e hold that HB 1026 is not a budget bill and, therefore, does not violate part II, article 18-a of the New Hampshire Constitution. Id at 399.

Research also reveals the practice of the legislature since 1984.

While SB 9 contains appropriations, not all appropriations bills are considered budget bills. Over the past 5 years, a total of 239 bills containing appropriations were introduced. Since 1989, over 2000 bills containing appropriations have been acted on by legislature.

### **CONCLUSION**

None of the four sections in SB 9 constitutes a state budget which is the two year spending plan for the state of New Hampshire.

Accordingly, it is my legal opinion that SB 9 is not in violation of Part II, Article 18-a of the New Hampshire Constitution.

*CHARLES G. DOUGLAS, III*  
*Legal Counsel to the New Hampshire House of Representatives*

## Legislative Service Request (LSR) Reminder

Reminder to House Republicans:

*Please be aware that House rule 38 b requires that, "The sponsor of any legislation shall sign it for introduction within 10 calendar days after the draft legislation is mailed to the sponsor for approval, whether or not the fiscal note has been prepared." This requires that members must act on bills as they become available for review and revision, and must do so no later than 10 days after the draft is mailed or emailed. The absolute last opportunity to complete this process is October 30<sup>th</sup>, but unless you are still in the process of drafting/revising your LSRs, most of you will need to sign off prior to October 30<sup>th</sup>. Please do your best to respond to communication from OLS to ensure you do not miss the window to act on your LSRs. If there is ever a doubt as to the status of a particular LSR, do not hesitate to call OLS and inquire with them directly at 603-271-3435.*

House Rule:

**38. Sign off: deadline reference; 10-day period; failure to sign off; withdrawal of LSR prior to introduction; withdrawal of bill following introduction.**

(a) The sign-off deadlines set by Rule 65 shall supersede the time limits set forth in this Rule.

(b) The sponsor of any legislation shall sign it for introduction within 10 calendar days after the draft legislation is mailed to the sponsor for approval, whether or not the fiscal note has been prepared. If the 10th day falls on a Saturday, Sunday, or holiday, the 10-day period shall expire on the subsequent working day. The Director of the Office of Legislative Services may withdraw any legislation when the sign-off deadline has not been met. The sponsor's name shall be published at least once on the "signatures needed" list in the House Calendar within the sign-off period. If the sponsor requests a redraft within the sign-off period, the sponsor shall sign the legislation for introduction within 10 calendar days after the redraft has been mailed to the sponsor. No more than one redraft per LSR may be requested during the last 10 days prior to the sign off-deadline. The sign-off deadline in section (a) shall supersede the time limits set forth in this section.

(c) If the primary sponsor signs the legislation in time for introduction, but one or more co-sponsors fails to sign, the legislation shall be introduced in the names of those sponsors who have signed. If the primary sponsor fails to sign the legislation in time for introduction, a co-sponsor may become the primary sponsor. If the primary sponsor fails to sign, and no co-sponsor wishes to become the primary sponsor, the legislation may not be introduced.

(d) An LSR may be withdrawn at any time prior to its introduction with the consent of all of its sponsors by filing a written request, signed by the sponsor and all co-sponsors, with the Clerk of the House. Any sponsor may request that his or her name be deleted as a sponsor of the bill prior to its introduction.

(e) Following its introduction, a House Bill, House Concurrent Resolution, House Joint Resolution House Resolution or House Constitutional Amendment Concurrent Resolution may be withdrawn only by a vote of the House prior to any public hearing on the measure. A request to withdraw shall be filed in writing with the Clerk of the House and shall be signed by the prime sponsor and all co-sponsors. Such a request must be filed with the Clerk prior to noon of the second legislative day of the session, and shall be taken up by the House prior to or during the early session of the third legislative day.