

# Bill as Introduced

HB 412 - AS INTRODUCED

2011 SESSION

11-0690  
06/09

HOUSE BILL        *412*

AN ACT            establishing a committee to study issues of judicial standing under federal and state law.

SPONSORS:        Rep. Huxley, Hills 3; Rep. Cohn, Merr 6

COMMITTEE:        Judiciary

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ANALYSIS

This bill establishes a committee to study issues of judicial standing under federal and state law.

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Explanation:      Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears [~~in brackets and struckthrough.~~]  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**HB 412 - AS INTRODUCED**

11-0690  
06/09

**STATE OF NEW HAMPSHIRE**

*In the Year of Our Lord Two Thousand Eleven*

AN ACT                    establishing a committee to study issues of judicial standing under federal and state law.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

- 1            1 Committee Established. There is established a committee to study issues of judicial standing  
2 under federal and state law.
- 3            2 Membership and Compensation.
- 4            I. The members of the committee shall be as follows:
- 5                (a) Three members of the house of representatives, appointed by the speaker of the  
6 house of representatives.
- 7                (b) Two members of the senate, appointed by the president of the senate.
- 8            II. Members of the committee shall receive mileage at the legislative rate when attending to  
9 the duties of the committee.
- 10           3 Duties. The committee shall study the federal standing doctrine and standing issues under  
11 state law with emphasis on the private citizen's inability to challenge government actions.
- 12           4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from  
13 among the members. The first meeting of the committee shall be called by the first-named house  
14 member. The first meeting of the committee shall be held within 45 days of the effective date of this  
15 section. Three members of the committee shall constitute a quorum.
- 16           5 Report. The committee shall report its findings and any recommendations for proposed  
17 legislation to the speaker of the house of representatives, the president of the senate, the house  
18 clerk, the senate clerk, the governor, and the state library on or before November 1, 2011.
- 19           6 Effective Date. This act shall take effect upon its passage.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY  
PUBLIC HEARING ON HOUSE BILL 412

**BILL TITLE:** establishing a committee to study issues of judicial standing under federal and state law.

**DATE:** February 22, 2011

**LOB ROOM:** 208                      **Time Public Hearing Called to Order:** 2:49 pm

**Time Adjourned:** 3:12 pm

(please circle if present)

**Committee Members:** Rep. Rowe, Sorg, Souza, Hagan, Silva, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Tregenza, Wheaton, Wall, Potter, Weber and Watrous.

**Bill Sponsors:** Rep. Huxley, Hills 3; Rep. Cohn, Merr 6

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

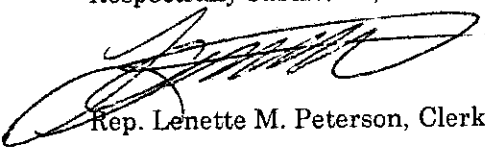
**Rep. Cohn, sponsor**

Introduced the bill. New Hampshire Right to Life vs. Gardhue, "no standing". All cases were settled "no standing". Town meeting recount of votes. Outcome wasn't favorable towards a town member, taxpayer went to Supreme Court and he "had no standing." Their interpretation of "no standing" is over used. Number of cases at state level that the citizens do have a say.

**\*Chuck Douglas, Concord Taxpayers Association – supports**

Recommends a quick, one sentence fix "Because every taxpayer has an interest in the preservation of an orderly and lawful government any taxpayer shall have standing to petition for relief without having to demonstrate that their personal rights were impaired or prejudiced." If you are just a taxpayer and see an injustice, do you have "standing?" Can a taxpayer bring a case?

Respectfully submitted,



Rep. Lenette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 412

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DATE: February <sup>22</sup> 2011

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Committee Members: Rep. ~~Rowe~~, ~~Sorg~~, Souza, ~~Hagan~~, ~~Silva~~, ~~Andolina~~, ~~Giuda~~, ~~LaCasse~~, ~~McClarren~~, ~~Murphy~~, ~~Palmer~~, ~~Peterson~~, ~~Tregenza~~, Wheaton, ~~Wall~~, ~~Potter~~, ~~Weber~~ and Watrous.

Bill Sponsors: Rep. Huxley, Hills 3; Rep. Cohn, Merr 6

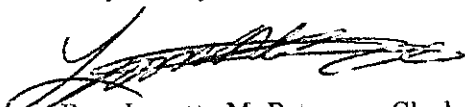
TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep. Cohn - NH vs Right to Life vs Gardner, "no standing"  
All cases were settled "no standing"  
Town Mtg. recount of votes - outcome wasn't happy towards a town member, taxpayer, went to Sup. Court he "had no standing"  
Their interpretation of "no standing" is over used  
everyone who came forward. Number of cases at state level, that the citizens do have a say.

\* Chuck Douglas (r) - recommend a one quick one sentence fix  
"because every taxpayer has an interest, and taxpayer will have the right..."

Respectfully Submitted,

  
Rep. Lenette M. Peterson, Clerk



If you are just a tax payer and see an injustice, do you have "standing". Can a tax payer bring a case?

# Testimony

An act to permit taxpayer petitions

Amend RSA 491:22 by inserting the following sentence after the first sentence in section I:

Because every taxpayer has an interest in the preservation of an orderly and lawful government any taxpayer shall have standing to petition for relief without having to demonstrate that their personal rights were impaired or prejudiced.

**491:22 Declaratory Judgments.**

I. Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive. <sup>^</sup>The existence of an adequate remedy at law or in equity shall not preclude any person from obtaining such declaratory relief. However, the provisions of this paragraph shall not affect the burden of proof under RSA 491:22-a or permit awards of costs and attorney's fees under RSA 491:22-b in declaratory judgment actions that are not for the purpose of determining insurance coverage.

II. The district court shall have concurrent jurisdiction over such claims arising under its subject matter jurisdiction authority in RSA 502-A except that the defendant shall have the right to remove said declaratory judgment action to the superior court, subject to conditions established by rule of court, if the claim exceeds \$1,500. The court of probate shall have exclusive jurisdiction over such claims arising under its subject matter jurisdiction authority in RSA 547 and RSA 552:7.

III. No petition shall be maintained under this section to determine coverage of an insurance policy unless it is filed within 6 months after the filing of the writ, complaint, or other pleading initiating the action which gives rise to the question; provided, however, that the foregoing prohibition shall not apply where the facts giving rise to such coverage dispute are not known to, or reasonably discoverable by, the insurer until after expiration of such 6-month period; and provided, further, that the superior court may permit the filing of such a petition after such period upon a finding that the failure to file such petition was the result of accident, mistake or misfortune and not due to neglect. A petition for declaratory judgment to determine coverage of an insurance policy may be instituted as long as the court has personal jurisdiction over the parties to the matter, even though the action giving rise to the coverage question is brought in a federal court or another state court.

INSERT  
↑

BAER v. NH DEPT.  
OF ED.

9/24/10

Comm'r, N.H. Dep't of Safety, 145 N.H. 578, 587 (2000). Therefore, we focus our analysis upon whether the petitioners have standing to bring these claims under RSA 491:22. Only if the petitioners demonstrate standing under RSA 491:22 will we consider their rulemaking challenges under the standard enumerated in RSA 541-A:24.

The petitioners argue that they have standing as taxpayers of the District. They assert that they will be harmed by the waiver rules because the rules permit their taxpayer dollars to be used to finance schools that do not meet minimum lot size standards. The petitioners also assert that they will be harmed because these "substandard" schools will be in their community.

Our case law contains two conflicting lines of cases regarding taxpayer standing to bring a declaratory judgment action. Under one line of cases, we have permitted taxpayers to maintain an equity action seeking redress for the unlawful acts of their public officials, even when the relief sought was not dependent upon showing that the illegal acts of the public officials resulted in a financial loss to the town. Green v. Shaw, 114 N.H. 289, 291-92 (1974). We have reasoned that "every taxpayer has a vital interest in and a right to the preservation of an orderly and lawful government regardless of whether his purse is immediately touched." Id. at 292 (quotation omitted); see also, e.g., Grinnell v. State, 121 N.H. 823, 825 (1981).

More recently, however, we have required taxpayers to demonstrate that their rights are impaired or prejudiced in order to maintain a declaratory judgment action. See Sirrell v. State, 146 N.H. 364, 370-71 (2001) (taxpayers required to establish they were harmed by the practical operation of challenged tax). Even when we have not explicitly addressed taxpayer standing, it is evident from the facts of recent cases that we require an impairment of personal rights to bring a declaratory judgment action. See, e.g., Green Meadows Mobile Homes v. City of Concord, 156 N.H. 394, 395 (2007) (taxpayers who owned mobile parks sought declaratory and injunctive relief against city to prohibit city from taxing them for mobile home units).

We find our more recent analysis of taxpayer standing to be more consistent with the language of RSA 491:22. To maintain a declaratory judgment action, a party must show "a present legal or equitable right." RSA 491:22. "A party will not be heard to question the validity of a law, or any part of it, unless he shows that some right of his is impaired or prejudiced thereby." Asmussen, 145 N.H. at 587 (quotation omitted).

The claims raised in any declaratory judgment action must be definite and concrete touching the legal relations of parties having adverse interests. The action cannot be based on a hypothetical set of facts, and it cannot constitute a request for advice as to

## The Standing Issue in Taxpayer Suits

As far back as 1863, the Supreme Court has held that taxpayers have a legitimate interest in the disposition of their tax dollars. In Merrill v. Plainfield, 45 N.H. 126 (1863), for example, the plaintiffs were taxpayers who objected to use their money by Selectmen to pay for defenses in proceedings concerning election fraud. The Court recognized the standing of the taxpayers insofar as they were "residents and tax-payers in said town, and that they fear said money will be paid over according to said vote, unless the town and its present officers are restrained by injunction." Ultimately, the Court granted the injunction and enjoined any public money from being spent for such defenses.

In Stockholm v. Brackett, 95 N.H. 227 (1948), taxpayers brought suit against Dover including the City Manger, Mayor and members of the City Council in order to prevent the fulfillment of a contract with a private company to revalue the city's land. The Supreme Court recognized the "well established rule" in New Hampshire that "equity may restrain the unlawful appropriation of public funds." Id. at 229.

Since the nineteenth century the Supreme Court expanded the standing of taxpayers so that they no longer had to rely on showing financial loss. In Clapp v. Town of Jaffrey, 97 N.H. 456 (1952), the Court considered whether taxpayers had standing to sue despite their inability to show any financial loss to the town, merely on the basis of their interest in efficient government. The Court held, "it is plain that every taxpayer of a town has a vital interest in and a right to the preservation of an orderly and lawful government regardless of whether his purse is immediately touched."

This principle was echoed in Green v. Shaw, 114 N.H. 289, 292 (1974), which says: "This right of taxpayers to maintain an equity action for relief is not dependent upon showing that the illegal acts 'result in financial loss to the town' since every taxpayer 'has a vital interest in and a right to the preservation of an orderly and lawful government regardless of whether his purse is immediately touched.'"

The Green court also held that "it is well settled in this State that plaintiffs, as taxpayers, have standing to seek redress for the unlawful acts of their public officials." 114 N.H. at 291-92 (1974) (citing O'Neil v. Thomson, 114 N.H. 155 (1974)). However, in the Baer case last year all of these cases were brushed aside.

# Voting Sheets

HOUSE COMMITTEE ON JUDICIARY  
EXECUTIVE SESSION on HOUSE BILL 412

**BILL TITLE:** establishing a committee to study issues of judicial standing under federal and state law.  
**DATE:** March 3, 2011  
**LOB ROOM:** 208

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. P. Siva

Seconded by Rep. D. McClarren

Vote: 15-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

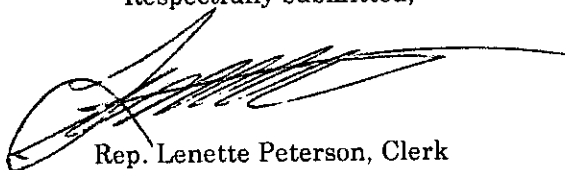
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

  
Rep. Lenette Peterson, Clerk



HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 412

BILL TITLE: establishing a committee to study issues of judicial standing under federal and state law.  
DATE: {Type DATE} 3/3/11  
LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:  
Sponsor: Rep. OLS Document #:  
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Silva*  
Seconded by Rep. *McClarren*  
Vote: *15-0* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.  
Seconded by Rep.  
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE} *Yes*

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

  
Rep. Benette Peterson, Clerk

JUDICIARY

Bill #: 412 Title: \_\_\_\_\_

PH Date: 2, 22, 11

Exec Session Date: 3, 3, 11

Motion: ITL

Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	—	—
Sorg, Gregory M, V Chairman	✓	
Souza, Kathleen F	—	—
Hagan, Joseph M	✓	
Silva, Peter L	✓	
Andolina, Donald C	✓	
Giuda, J. Brandon	✓	
LaCasse, Paul D	✓	
McClarren, Donald B	✓	
Murphy, Brian JX	—	—
Palmer, Barry J	✓	
Peterson, Lenette M	✓	
Tregenza, Norman A	✓	
Wheaton, Gary W	✓	
Wall, Janet G	✓	
Potter, Frances D	✓	
Weber, Lucy M	✓	
Watrous, Rick H	✓	

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# Committee Report

**CONSENT CALENDAR**

**March 9, 2011**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

The Committee on JUDICIARY to which was referred HB 412,

AN ACT establishing a committee to study issues of judicial standing under federal and state law. Having considered the same, report the same with the following Resolution:

**RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

**Rep. Peter L. Silva**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB 412
Title:	establishing a committee to study issues of judicial standing under federal and state law.
Date:	March 9, 2011
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

### STATEMENT OF INTENT

This bill would establish a committee to study issues of judicial standing under federal and state law. The committee believes that this study is unnecessary because the perceived problems regarding taxpayer standing can be resolved by amending RSA 491:22. Therefore, the committee unanimously recommend inexpedient to legislate.

Vote 15-0.

Rep. Peter L. Silva  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### JUDICIARY

**HB 412**, establishing a committee to study issues of judicial standing under federal and state law.  
**INEXPEDIENT TO LEGISLATE.**

Rep. Peter L. Silva for JUDICIARY. This bill would establish a committee to study issues of judicial standing under federal and state law. The committee believes that this study is unnecessary because the perceived problems regarding taxpayer standing can be resolved by amending RSA 491:22. Therefore, the committee unanimously recommend inexpedient to legislate. **Vote 15-0.**

Original: House Clerk  
Cc: Committee Bill File

CC

HB 412, establishing a committee to study issues of judicial standing under federal and state law.

Inexpedient to Legislate

This bill would establish a committee to study issues of judicial standing under federal and state law. The committee believes that this study is unnecessary because the perceived problems regarding taxpayer standing can be resolved by amending RSA 491:22. Therefore, the committee unanimously recommend inexpedient to legislate.

Peter L. Silva

