Bill as Introduced

2011 SESSION

11-0712
05/04

HOUSE BILL ***590***

AN ACT declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.

SPONSORS: Rep. Sorg, Graf 3; Rep. Mirski, Graf 10; Rep. D. McGuire, Merr 8; Rep. Itse, Rock 9

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This bill declares federal grants-in-aid relating to matters not delegated to the government of the United States by Article I, Section 8 of the federal Constitution to be an unconstitutional exercise of federal authority; declares the rules that must be implemented as a condition for making such grants an invasion of the reserved powers of the states guaranteed by the Tenth Amendment of the federal Constitution, and declares their acceptance by the state of New Hampshire an unconstitutional surrender of its sovereignty contrary to Part First, Article 7 of the New Hampshire constitution. The bill also establishes a committee to review state participation in federal grant-in-aid programs.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 590 – AS INTRODUCED

11-0712
05/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.

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

1 Purpose. The general court finds and declares that:

I. Under the federal system enshrined in the constitutions of the United States and the individual states, the ability of the national government to exercise authority over internal state and local concerns by imposing uniformity in domestic matters over the whole nation was curbed by delegating to the government of the United State powers that were few and defined, "exercised principally on external objects [such] as war, peace, negotiation and foreign commerce," while those reserved to the governments of the several states were numerous and indefinite, "extend[ing] to all the objects which in the ordinary course of affairs concern the lives, liberties and properties of the people, and in the internal order, improvement and prosperity of the State," The Federalist, No. 45 (Madison).

II. Said few and defined powers of the government of the United States were and are set forth in the 18 clauses of Section 8 of Article I of the federal Constitution, none of which authorizes the government of the United States to engage in or regulate matters of health, safety, and welfare within the boundaries of any state.

III. The reserved authority of the governments of the several states over such internal matters is reinforced by the Tenth Article of Amendment to the federal Constitution, to wit: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People."

IV. The reserved authority of the state of New Hampshire over such internal matters is further reinforced by Article 7, Part First of the New Hampshire constitution, to wit: "The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled."

V. Notwithstanding Section 8 of Article I of and the Tenth Article of Amendment to the federal Constitution, the government of the United States has enacted all manner of laws and promulgated all manner of regulations establishing and governing programs functioning within the boundaries of the state of New Hampshire relating to matters of health, safety, and welfare, in which

the government of the state of New Hampshire has acquiesced notwithstanding Article 7, Part First of the New Hampshire constitution.

VI. These unconstitutional encroachments of the government of the United States on the sovereignty and reserved powers of the state of New Hampshire have been accomplished in substantial part by inducing their acceptance by funding of all or a portion of the cost thereof.

VII. Such funding schemes amount to all intents and purposes of bribing the state of New Hampshire to surrender its sovereignty.

VIII. The government of the United States cannot and will never be able to deliver services more efficiently or economically than the several states functioning independently of both the government of the United States and one another in the competitive exercise of their reserved sovereign powers, independent of national legislators and civil servants remote from and unaccountable to them.

IX. Intervention by the government of the United States into the reserved powers of the several states tends towards the destruction of the independence of the states and the competition among them that alone moderates the natural tendency of government to grow, and of the liberties of their citizens.

2 Committee Established. There is established a committee to review state participation in federal grant-in-aid programs.

3 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Four members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

4 Duties. The committee shall review the Revised Statutes Annotated to identify the statutory authority for each federal grant-in-aid program in which the state participates. The committee shall then assess the value to the state of each program on its merits, without reference to the availability of federal aid, and the feasibility of retaining each meritorious program in the absence of federal aid. For each program determined both to merit retention and to be feasible to retain without federal aid, the committee shall consider and make recommendations as to the most expeditious and practicable means of modifying it to make feasible the transition to support entirely from state, local, and/or private sources of funding. The committee shall solicit information and testimony from the legislative budget assistant's office, the department of health and human services, the department of education, and other agencies and individuals with information and expertise relevant to the study.

5 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

6 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2011.

7 Effective Date. This act shall take effect upon its passage.

HB 590 – AS AMENDED BY THE HOUSE

23Feb2011... 0293h

2011 SESSION

11-0712
05/04

HOUSE BILL ***590***

AN ACT expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.

SPONSORS: Rep. Sorg, Graf 3; Rep. Mirski, Graf 10; Rep. D. McGuire, Merr 8; Rep. Itse, Rock 9

COMMITTEE: State-Federal Relations and Veterans Affairs

AMENDED ANALYSIS

This bill expresses the position of the New Hampshire general court that federal grants-in-aid relating to matters not delegated to the government of the United States by Article I, Section 8 of the federal Constitution is an unconstitutional exercise of federal authority and that acceptance by the state of New Hampshire an unconstitutional surrender of its sovereignty contrary to Part First, Article 7 of the New Hampshire constitution. The bill also establishes a committee to review state participation in federal grant-in-aid programs.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
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11-0712
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.

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

1 Purpose. The general court finds and declares that:

I. Under the federal system enshrined in the constitutions of the United States and the individual states, the ability of the national government to exercise authority over internal state and local concerns by imposing uniformity in domestic matters over the whole nation was curbed by delegating to the government of the United State powers that were few and defined, "exercised principally on external objects [such] as war, peace, negotiation and foreign commerce," while those reserved to the governments of the several states were numerous and indefinite, "extend[ing] to all the objects which in the ordinary course of affairs concern the lives, liberties and properties of the people, and in the internal order, improvement and prosperity of the State," The Federalist, No. 45 (Madison).

II. Said few and defined powers of the government of the United States were and are set forth in the 18 clauses of Section 8 of Article I of the federal Constitution, none of which authorizes the government of the United States to engage in or regulate matters of health, safety, and welfare within the boundaries of any state.

III. The reserved authority of the governments of the several states over such internal matters is reinforced by the Tenth Article of Amendment to the federal Constitution, to wit: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People."

IV. The reserved authority of the state of New Hampshire over such internal matters is further reinforced by Article 7, Part First of the New Hampshire constitution, to wit: "The people of this state have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled."

V. Notwithstanding Section 8 of Article I of and the Tenth Article of Amendment to the federal Constitution, the government of the United States has enacted all manner of laws and promulgated all manner of regulations establishing and governing programs functioning within the

boundaries of the state of New Hampshire relating to matters of health, safety, and welfare, in which the government of the state of New Hampshire has acquiesced notwithstanding Article 7, Part First of the New Hampshire constitution.

VI. These unconstitutional encroachments of the government of the United States on the sovereignty and reserved powers of the state of New Hampshire have been accomplished in substantial part by inducing their acceptance by funding of all or a portion of the cost thereof.

VII. Such funding schemes amount to all intents and purposes of bribing the state of New Hampshire to surrender its sovereignty.

VIII. The government of the United States cannot and will never be able to deliver services more efficiently or economically than the several states functioning independently of both the government of the United States and one another in the competitive exercise of their reserved sovereign powers, independent of national legislators and civil servants remote from and unaccountable to them.

IX. Intervention by the government of the United States into the reserved powers of the several states tends towards the destruction of the independence of the states and the competition among them that alone moderates the natural tendency of government to grow, and of the liberties of their citizens.

2 Committee Established. There is established a committee to review state participation in federal grant-in-aid programs.

3 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Four members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

4 Duties. The committee shall review the Revised Statutes Annotated to identify the statutory authority for each federal grant-in-aid program in which the state participates. The committee shall then assess the value to the state of each program on its merits, without reference to the availability of federal aid, and the feasibility of retaining each meritorious program in the absence of federal aid. For each program determined both to merit retention and to be feasible to retain without federal aid, the committee shall consider and make recommendations as to the most expeditious and practicable means of modifying it to make feasible the transition to support entirely from state, local, and/or private sources of funding. The committee shall solicit information and testimony from the legislative budget assistant's office, the department of health and human services, the department of education, and other agencies and individuals with information and expertise relevant to the study.

5 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

6 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2011.

7 Effective Date. This act shall take effect upon its passage.

Amendments

Rep. Cunningham, Sull. 2
February 10, 2011
2011-0293h
05/04

Amendment to HB 590

Amend the title of the bill by replacing it with the following:

AN ACT expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.

2011-0293h

AMENDED ANALYSIS

This bill expresses the position of the New Hampshire general court that federal grants-in-aid relating to matters not delegated to the government of the United States by Article I, Section 8 of the federal Constitution is an unconstitutional exercise of federal authority and that acceptance by the state of New Hampshire an unconstitutional surrender of its sovereignty contrary to Part First, Article 7 of the New Hampshire constitution. The bill also establishes a committee to review state participation in federal grant-in-aid programs.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB590 Date March 9, 2011

Committee CRSR

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Cordell Johnston	P.O. Box 617, Concord	224-7447	NH Municipal Ass'n		✓
BARBARA C. FRENCH	81 FAIRVIEW AVE, HENNIKER	428-3346	self		✓

Hearing Minutes

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

PUBLIC HEARING ON HB 590

BILL TITLE: declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.

DATE: February 10, 2011

LOB ROOM: 203 **Time Public Hearing Called to Order:** 2:00 p.m.

Time Adjourned: 2:40 p.m.

(please circle if present)

Committee Members: Reps. Baldasaro, Blankenbeker, L. Christiansen, T. Smith, Cunningham, Kingsbury, Larsen, Lundgren, McCarthy, Notter, Tamburello, Vita, Rokas, Domingo, Hofemann, Theberge and Spanhower.

Bill Sponsors: Rep. Sorg, Graf 3; Rep. Mirski, Graf 10; Rep. D. McGuire, Merr 8; Rep. Itse, Rock 9

TESTIMONY

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

Rep. Sorg introduced the bill.
Gave his handouts, quoted Pres. Madison
States power vs. Federal Government
Nothing in Constitution to allow appropriation
RSA 124 Federal Aid

Questions: Rep Christiansen
Discussion on 17th Amendment
Rep. Blankenbeker (why word "declare?")
Rep. Baldasaro
Rep. Theberge & Rep Christiansen
Send to constitutional committee?

Testimony: Rep. Dan McGuire questions by: Rep. Theberge & Baldasaro
Rep. Mirski, Rep. Itse, Questions by Rep. Blankenbeker, Rep. Notter, Rep. McCarthy, rep. Baldasaro, Rep. Theberge, Rep. Christiansen, Michael Brewster of Pittsfield, Claire Ebel, NHCLU (change words of declares unconstitutional)

Discussion over constitution and how we understand I or how someone else understands it.

Still talking about word "believe" or "declare"

Questions by Theberge, Kingsbury, McCarthy and Cunningham.

Respectfully submitted.

Jeanine Notter

Rep. Jeanine M. Notter,
Acting Clerk

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

PUBLIC HEARING ON HB 590

BILL TITLE: declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.

DATE: 2 - 10 - 11

LOB ROOM: 203 Time Public Hearing Called to Order: 2 pm

Time Adjourned:

(please circle if present)

Committee Members: Reps. Baldasaro, Blankenbeker, L. Christiansen, T. Smith, Cunningham, Kingsbury, Larsen, Lundgren, McCarthy, Notter, Tamburello, Vita, Rokas, Domingo, Hofemann, Theberge and Spainhower

Bill Sponsors: Rep. Sorg, Graf 3; Rep. Mirski, Graf 10; Rep. D. McGuire, Merr 8; Rep. Itse, Rock 9

TESTIMONY

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

Rep. Sorg introduced bill
- gave handouts, quoted Pres. Madison
- States power vs. Fed'l Gov't
- nothing in Constitution to ~~just~~ allow appropriation
- RSA 124 Fed'l Aid

Questions - Rep. Christiansen
discussion on 17th Amendment
- Rep. Blankenbeker (why word "declare")
- Rep. Baldasaro -
- Theberge & Rep Christiansen
- send to constitutional committee? —

Testimony: Rep. Dan McGuire - questions by: Rep. Theberge & Baldasaro
Rep. Mirski, ~~Rep Itse~~ Rep Itse - questions by: Rep Blankenbeker, Rep. Notter
Rep. McCarthy, Rep. Baldasaro, Rep. Theberge, Rep. Christensen
Michael Bearsto of Pittsfield, Claire Ebel, NHCLL (change wording of "declares unconstitutional")

discussion over constitution & how we understand it or how someone else understands it

still talking about word "believe" or "declare"

questions by theberge, Kingsbury, McCarthy & Cunningham

HOUSE COMMITTEE ON
CONSTITUTION REVIEW AND STATUTORY RECODIFICATION

PUBLIC HEARING ON HB 590

BILL TITLE: (New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.

DATE: March 9, 2011

LOB ROOM: 303 **Time Public Hearing Called to Order:** 10:06 am

Time Adjourned: 10:55 am

(please circle if present)

Committee Members: Reps. Itse, Cebrowski, Cartwright, Cohn, Davenport, P. Brown, Huxley, Krasucki, Luther, Peckham, Reichard, Weeden, Serlin, Katsiantonis, Richardson, Coulombe and A. Schmidt

Bill Sponsors: Rep. Sorg, Graf 3; Rep. Mirski, Graf 10; Rep. D. McGuire, Merr 8; Rep. Itse, Rock 9

TESTIMONY

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

1)* **Rep Greg Sorg** - in favor: Submitted written testimony (see attached doc A) States and towns started taking Grants-in-Aid in 1933. That's when we started taking federal money to implement federal law. If republics are to survive, they must divide power. States are laboratories of democracy. The New Deal broke state experimentation. Federalist 78 states that Federal Courts could be depended on to defend state powers. This broke in 1923 - Mass vs. Mellon.

Think of a bunch of pick pockets standing in a ring, each picking the pocket of his neighbor. Congressmen bring home federal money. Every state does the same thing. Madison said that everything that can be done locally should be done locally. Lets get off the Merry-go-round. NH is a net loser with these programs. NH would be better off to end them. We should start the ball rolling. NH ends up being stuck with programs even after the federal funding is gone. For example, NCLB has perverse incentives and hasn't been funded. We should form a committee to review Grants-In-Kind. Would the committee be constitutional?

2) **Rep Weyler** - in opposition:
This bill is unworkable. We received over 1.6 billion in federal funds, plus some, adding up to around 2 billion per year in Grant in Kind and Grants in Aid. For example, the federal gas tax. This is not a good idea as we are too entangled. The state pays around 6 billion to the federal government. Around 2 billion comes back as Grants in Kind, and another 2 Billion comes back in other federal programs (Social Security, Pensions). We are low on the amount of money coming back (49 or 50). This bill would effect a huge number of laws, and won't end up changing anything. S.S. wouldn't be affected.

3) **Rep. Itse** - in favor:
Compulsory legislation such as grants in aid from feds are prohibited. For example, the feds may say "We won't give you highway money if you don't pass seatbelt laws", but the courts have said they have to give you the money even if you don't pass the bill. HB590 would start the process of reviewing Grants-in-aid and deciding if the feds have authority for each one.

NH would come out for the better. For example, we get 6% of our educational money form the feds, but the mandate adds 20% to the costs. By refusing $10 that would cost us $20 to implement, we would save $10. Legislatures are allowed to refuse to take federal money. There is nothing in the NH or federal constitution prohibiting us from reviewing Grants-in-aid.

Towns in NH only have the power delegated to them by us. We can deprive towns of the ability to go to the federal government for money. Fed Gov in 1933 used tax duties to get towns to go straight to the feds. The legislature would be looking at RSA'a that empower towns to take money, and removing some of them.

4) **Pastor Garret Lear** - in favor:
Grant-in-aid is filthy lucre, nothing but vote buying. With shekels come shackles. Feds have no authority to take money away and give it someone else. We have a moral responsibility to do this. We do not want to promote Nanny Statism. It is easier to pick over a garbage dump than to kill a buffalo, but its not good for society. Alex de Tocqueville believed in American Exceptionalism. We have financial problems because of these programs. Civil society is better at this the types of things Grant-in-aid is targeted at.

Respectfully submitted,

Rep. Joshua Davenport
Clerk

HOUSE COMMITTEE ON
CONSTITUTION REVIEW AND STATUTORY RECODIFICATION

PUBLIC HEARING ON HB 590

BILL TITLE: (New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.

DATE: 3-9-2011 10:06am

LOB ROOM: 303 **Time Public Hearing Called to Order:**

Time Adjourned: 10:55am

(please circle if present)

Committee Members: Reps. Itse, Cebrowski, (Cartwright), (Cohn), (Davenport), (P. Brown), Huxley, Krasucki, (Luther), (Peckham), (Reichard), Weeden, Serlin, Katsiantonis, Richardson, (Coulombe) and A. (Schmidt)

Bill Sponsors: Rep. Sorg, Graf 3; Rep. Mirski, Graf 10; Rep. D. McGuire, Merr 8; Rep. Itse, Rock 9

TESTIMONY

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Testimony

HB 590
State & Federal Relations Committee
February 10, 2011
Supplement to Testimony of Rep. Gregory M. Sorg

RSA 124 (*Federal Aid*), as Amended through 2010:

Highways and Other Public Works

124:1 Authority for Seeking Aid. – The governor, with the approval of the council, is authorized to apply for financial or any other aid which the United States government has authorized or may authorize to be given to the several states for emergency industrial or unemployment relief, for public works and highway construction, for the creation of employment agencies, or for any other purpose intended to relieve distress. Any officer of the state who may be designated in any act passed by the congress of the United States, or in any regulation or requirement of any agency of the United States, is authorized in the name of the state to make all applications and sign all documents which may be necessary to obtain such aid, provided that such applications have the approval of the governor and council. The state treasurer is directed to receive all money so granted by the United States, or by any agency thereof, to the state and to hold all such funds separate from all other funds of the state. Such funds shall be disbursed by the treasurer upon warrants drawn by the governor for the purposes for which such relief or aid is granted.

Source. 1933, 162:2. RL 6:2.

124:2 Faith and Credit Pledged. – The faith and credit of the state are pledged to make adequate provision, from time to time, by appropriation or otherwise, to meet all obligations of the state incident to the acceptance of federal aid under the provisions of any act referred to in RSA 124:1 and the governor and council are authorized to issue all necessary documentary evidence of such faith and credit.

Source. 1933, 162:3. RL 6:3.

124:3 Debt Limitations. – Cities, towns, school districts, precincts, and counties, upon the approval of the commissioner of revenue administration, may make application to the governor and council for authority to exceed existing debt limitations for the purpose of taking advantage of such grants or aid as may be offered them by the United States government. The governor and council may grant to cities, towns, school districts, precincts, and counties authority to exceed existing debt limitations to such extent and in such amounts as they may deem prudent and advisable. In granting such authority the governor and council may prescribe the terms and conditions upon which such debt limitations may be exceeded.

Source. 1933, 162:4. RL 6:4. RSA 124:3. 1973, 544:8, eff. Sept. 1, 1973.

124:4 Application for and Administration of Federal Aid. – Notwithstanding any other provision of law, the governor and council are hereby authorized to designate from time to time, as they may deem in the best interest of the state, the proper persons or agencies in the state government to take all necessary action to apply for, receive, and administer any federal benefits, facilities, grants-in-aid, or other federal appropriations or services made available to assist state activities, for which the state is, or may become eligible. All such moneys in excess of $50,000 made available, after designation by the governor and council, may be expended by the proper persons or agencies in the state government only with the prior approval of the joint legislative fiscal committee. In addition to such other instruments, documents, and agreements as may be executed under the authority of this section, such persons or agencies may execute indemnification agreements, with the approval of governor and council, in the name of the state with and for the benefit of the United States whenever such execution is required as a condition of receipt of such federal assistance.

Source. 1950, 5, part 25:5. RSA 124:4. 1963, 166:1, eff. Aug. 19, 1963. 2005, 177:12, eff. July 1, 2005.

124:5 Certain Transfers Permitted. – The commissioner of administrative services is hereby authorized to effect such transfers of federal funds between state agencies as may be permitted by the laws of the United States, in order to reimburse any agency of the state for services performed for, or facilities made available to another state agency in the administration of federal benefits, facilities, grants-in-aid, or other federal appropriations or services made available to state activities.

Source. 1950, 5, part 25:6. RSA 124:5. 1985, 399:3, I, eff. July 1, 1985.

Capital Improvements

124:6 Authority Given. – [Repealed 2008, 177:16, IV, eff. June 11, 2008.

State Participation

124:7 to 124:9 Repealed. – [Repealed 2008, 177:16, V, eff. June 11, 2008.]

Relocation Assistance

124:10 Authorizing Payment of Relocation Assistance. – [Repealed 1989, 147:2, IV, eff. May 17, 1989.]

Indirect Costs

124:11 Computation of Indirect Costs Required. –

I. Each state agency receiving a federal grant or grants shall compute an agency indirect cost rate for each grant as provided by federal regulation and shall apply the same to each grant it receives. Any state agency making grants of federal funds to any other state agency, either directly or as a pass-through, shall fund the indirect costs for each such grant in the amount of

the indirect costs of the state agency to which it has granted the funds in accordance with the indirect cost rate computed as provided by federal regulations by the receiving state agency. All such indirect costs received shall accrue to the state general fund and shall not be available for expenditure by the agency, except that in the case of the departments of transportation and fish and game that proportion of any indirect cost recovery which represents costs of either of said departments as opposed to the state-wide overhead cost portion of the rate shall accrue to the highway fund or the fish and game fund as applicable.

II. The state agency shall include the indirect cost rate for each federal grant in any cost recovery plan filed with the commissioner of administrative services under RSA 21-I:75 and shall notify the department of administrative services of any negotiation with the federal agency relative to the agency's indirect cost rate proposal. The commissioner of the department of administrative services or the commissioner's designee may participate in such negotiations and shall approve the final agreement relative to the agency's indirect cost rate.

Source. 1975, 364:3, eff. June 7, 1975. 2005, 177:64, eff. July 1, 2005.

124:11-a Federal Proposals; Indirect Costs. – Any agency that submits an application for federal funds shall include in such application provisions for reimbursement of the allocated statewide central services cost and any agency indirect costs. If no federal funds are approved for indirect costs, the agency shall provide written notice of that determination to the department of administrative services.

Source. 2005, 177:65, eff. July 1, 2005.

Federal Block Grants

124:12 Definition of "State" for Block Grant Purposes. – The state of New Hampshire, for the purposes of accepting and expending federal block grants, shall be the branches of state government as defined in our constitution, as they interact in our established legal processes relating to authority to expend federal funds.

Source. 1981S, 1:12, eff. Nov. 23, 1981.

124:13 Departments to Submit Plan. –

I. Each department or agency responsible for block grants shall prepare and submit its complete proposed plan to the presiding officers of the legislature at least 30 days before the required legislative public hearing on the plan. The department or agency shall also make copies of such plan available to the public at least 30 days before that hearing.

II. In preparing its complete proposed plan, a department or agency shall comply with all federal requirements and the notice and hearing requirements of RSA 541-A:3. No plan shall be submitted to the legislature under paragraph I of this section unless all such requirements have been met.

Source. 1981S, 1:12, eff. Nov. 23, 1981.

124:13-a Disbursement of Energy Overcharge Funds. – Energy overcharge funds disbursed by the federal Department of Energy to the state shall be subject to the same department and agency planning requirements as federal block grants under this subdivision. No such energy overcharge funds shall be expended until specifically appropriated by the general court. The state agency responsible for planning for the distribution of federal fuel assistance block grants shall be responsible for submitting plans under RSA 124:13 for expenditure of any energy overcharge funds.

Source. 1987, 373:1, eff. July 25, 1987.

124:13-b Disbursement of Tobacco-Related Funds. – Any tobacco-related funds, including funds from settlements and grants, received by the state shall be subject to the same department and agency planning requirements as federal block grants under this subdivision. No tobacco-related funds shall be expended until specifically appropriated by the legislature. This section shall not apply to tobacco-related funds raised by the state of New Hampshire.

Source. 1998, 291:1, eff. Aug. 25, 1998.

124:13-c Workforce Investment Act Funds. – The administrative entity for the federal Workforce Investment Act funds shall submit a quarterly written report to the legislative fiscal committee, senate president, and speaker of the house of representatives. The entity shall make an oral presentation to the legislative fiscal committee on a semi-annual basis.

Source. 2001, 172:1, eff. Sept. 3, 2001.

Miscellaneous

124:14 Estimated Federal Funds. – If, under any appropriation made by the general court, the federal grant received, whether by direct grant from a federal agency or by a grant or pass-through of federal funds from a state agency, is less than estimated, the total appropriation shall be reduced by the amount of reduction in federal estimates and the applicable state matching funds, with the exception of food and nutrition grants to state institutions. If the applicable state matching funds are included in a section or sections other than the section or sections in which the federal grants are estimated, the appropriation reductions shall be made in the applicable sections. The provisions of this section shall also apply to any position funded in full or in part from federal funds, and if federal funds are not available to fund any position or positions as budgeted, said position or positions shall be abolished forthwith. The provisions of this section shall not apply to revenue sharing funds.

Source. 1983, 469:84, eff. July 1, 1983.

124:15 Positions Restricted. –

I. In addition to the positions authorized by law, no new personnel positions, or consultants, or both may be created by the acceptance of federal moneys or moneys from any other source unless such positions, or consultants, or both are approved by the fiscal committee of the general court; provided, however, that the governor and council may accept all moneys available for any

emergency or disaster as defined by the authority awarding such moneys; and provided further that all such moneys available to the general court or to either of its houses may be accepted by the respective presiding officers with the prior approval of the fiscal committee. Nothing herein shall be construed to affect the provisions of RSA 98:17-a.

II. Every board, agency, department or commission receiving such federal or other moneys shall attempt to apply them in whole or in part to the cost of personnel positions authorized by law so as to reduce the obligation of general funds, but if the salaries of such personnel positions cannot be paid out of such moneys then such positions shall be considered as specified in paragraph I.

III. All such moneys which fund personnel positions subject to the restrictions of this section shall be used only for the purposes or programs specified in the application for approval of the positions or as otherwise authorized by law, and all such moneys which are accepted in accordance with law are hereby appropriated.

Source. 1983, 469:84, eff. July 1, 1983.

Audits of Federal Grants

124:16 Funds Set Aside. – Every state department, board, institution, commission or agency which receives federal funds shall set aside an amount equal to the rate approved in the statewide indirect cost plan of the funds received. The amount set aside shall be used to pay for financial and compliance audits as required by the federal government or by state statute.

Source. 1983, 469:84, eff. July 1, 1983. 2008, 177:15, eff. June 11, 2008.

124:17 Use Restricted. – Applications for grants or other federal benefits, however designated, except where precluded by federal law, shall include requests for funds adequate to accomplish the objectives of the grant proposal, including moneys to pay for financial and compliance audits as required by the grantor or by state statute. Moneys included in a grant award budgeted and designated for auditing the grant or program shall not be used for any other purpose.

Source. 1983, 469:84, eff. July 1, 1983.

124:18 Separate Account Required. – All funds set aside and designated to be used for financial and compliance audits of federal assistance grants however designated shall be credited to a separate account maintained on the records of the commissioner of administrative services.

Source. 1983, 469:84, eff. July 1, 1983.

124:19 Legislative Budget Assistant to Audit. – The legislative budget assistant may enter into agreements or contracts with the federal government or its agencies for the purpose of conducting financial and compliance audits of programs funded in whole or in part by the federal government and carried out by agencies of the state or entities expending state or federal funds. The authority of the legislative budget assistant to conduct or contract for audits on non-state agencies shall be limited to 5 entities in a 5-year period. The legislative budget assistant may

conduct said audits or may contract with another auditor who shall conduct said audit under the direction and authority of the legislative budget assistant. All costs of such audits, direct or indirect, shall be a charge against the separate account maintained by the commissioner of administrative services of the funds set aside for the purpose, and the same are hereby continually appropriated.

Source. 1983, 469:84. 1985, 399:3, I, eff. July 1, 1985. 2006, 79:3, eff. July 1, 2007.

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Preliminary List of RSA Repeals and Amendments:

Section 1: RSA Chapter 124 ("Federal Aid") is hereby repealed in its entirety.

Section 2: RSA Chapter 228-A ("Federal Highway Grant Anticipation Bonds") is hereby repealed in its entirety.

Section 3: RSA 4-C:4 is repealed.

Section 4: RSA 9-B:4 is amended to read as follows:

"9-B:4 Expenditure of State Funds. – All state agencies shall give due consideration to the state's policy on smart growth under RSA 9-B:2 when providing advice or expending state funds, for their own use or as pass-through grants, for public works, transportation, or major capital improvement projects, and for the construction, rental, or lease of facilities. The intent of this action is that new investments and grants for existing sites and buildings in existing community centers will be given preference over investments in outlying areas where that is a practical solution for the use and community in question."

Section 5: RSA 12:9 is amended to read as follows:

"12:9 Acceptance of Grants. – The department is authorized to accept in the name of the state special grants of money or services from the state government or any of its agencies, and may accept gifts to carry on its activities."

Section 6: RSA 14:30-a VI is renumbered as IV, and is amended to read as follows:

"IV. Any non-state funds in excess of $50,000, whether public or private, including refunds of expenditures, local funds, gifts, bequests, grants and funds from any other non-state source which under state law require the approval of governor and council for acceptance and expenditure, may be accepted and expended by the proper persons or agencies in the state government only with the prior approval of the fiscal committee."

Section 7: RSA 19-J: is amended to read as follows:

"19-J:1 Definitions. – In this chapter:
"I. '"Council"'' means the New Hampshire council on developmental disabilities

established in RSA 19-J:2.

"II. '"Developmental disability"' means a severe, chronic disability which:

"(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

"(b) Is manifested before the person attains age 22;

"(c) Is likely to continue indefinitely;

"(d) Results in substantial functional limitations in 3 or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

"(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

"19-J:2 Council Established. – There is established the New Hampshire council on developmental disabilities which shall promote the inclusion, integration, productivity, independence, and self-determination of people with developmental disabilities in New Hampshire. The council may receive, administer, and expend funds from any sources public or private and to enter into contracts for the purposes of its program.

"19-J:3 Membership; Terms. –

I. The membership of the council shall be appointed by the governor and shall consist of not more than 21 members which shall include:

"(a) Individuals with developmental disabilities and parents or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves, which persons shall make up not less than 60 percent of the membership of the council.

"(b) The state agencies or subdivisions that administer funds related to individuals with disabilities.

"(c) Representatives of local and non-governmental agencies and private and non-profit groups located in New Hampshire concerned with services for individuals with developmental disabilities in New Hampshire.

"II. Terms of office shall be 3-year staggered terms. A council member whose term of office is expiring may continue beyond the end of the term until reappointed or until a successor is nominated. The council shall elect a chairperson. Vacancies shall be filled for the unexpired term. Members of the council shall be reimbursed for reasonable and necessary expenses for attending council meetings and performing council duties. The council shall support council member and staff travel to authorized training and technical assistance activities, including in-service training and leadership development activities. 19-J:4 Executive Director; Staff. – The council shall select an executive director by a vote of a majority of all voting council members. The executive director shall be in the classified service of the state and shall perform such duties as the council may require. The council shall maintain sufficient staff, supervised by the executive director, to carry out the duties of the council.

"19-J:5 Organization of Council. – The council shall organize itself in conformity with its responsibilities under this chapter, and shall establish committees to address issues that affect persons with developmental disabilities. The chairperson, with the input of the council, shall designate the members of such committees. The council shall adopt policies and procedures to carry out the council's duties under this chapter.

"19-J:6 Duties and Powers. – The council shall have the following duties and powers:

"I. To develop a state plan for the inclusion, integration, productivity, independence, and self-determination of people with developmental disabilities in New Hampshire and implement programs, projects, and activities to implement that plan.

"II. To support and conduct outreach activities to identify individuals with developmental disabilities and their families who otherwise might not come to the attention of the council or existing service systems.

"III. To support and conduct training for persons with developmental disabilities, their families, and service providers to enable such persons to obtain access to, or to provide, community services, individualized supports, and other forms of assistance, including special adaptation of generic community services or specialized services, to people with developmental disabilities.

"IV. To support and conduct technical assistance activities to assist public and private entities to contribute to the achievement of the purpose of this chapter.

"V. To support and conduct activities to assist neighborhoods and communities to respond positively to individuals with developmental disabilities and their families by encouraging local networks to provide informal and formal supports; through education; and by enabling neighborhoods and communities to offer such individuals and their families access to and use of services, resources, and opportunities.

"VI. To support and conduct activities to promote interagency collaboration and coordination to better serve, support, assist, or advocate for individuals with developmental disabilities and their families.

"VII. To support and conduct activities to enhance coordination of services with other entities authorized by state law, concerning individuals with disabilities, and other groups interested in activities to benefit individuals with disabilities.

"VIII. To support and conduct activities to eliminate barriers to access and use of community services by individuals with developmental disabilities, enhance systems design and redesign, and enhance citizen participation to address issues identified in the state plan.

"IX. To support and conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families and to develop and support coalitions that support the policy agenda of the council, including training in self-advocacy, education of policymakers, and citizen leadership skills.

"X. To support and conduct activities to provide information to state and local policymakers by supporting and conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations.

"XI. To support and conduct demonstrations of new approaches to services and supports.

"XII. To support and conduct other advocacy, capacity building, and systemic change activities to promote the development of a coordinated, consumer and family-centered, and directed comprehensive system of community services, individualized supports, and other forms of assistance that contribute to the achievement of the purpose of this chapter.

"XIII. To adopt rules, pursuant to RSA 541-A, to carry out the council's duties under this chapter.

"19-J:7 Meetings. – The council shall establish a schedule of meetings on an annual basis. All meetings shall be open to the public in accordance with RSA 91-A."

Section 8: RSA 31:115 is repealed.

Section 9: RSA 33:7-b is amended to read as follows

"33:7-b Anticipation of State Aid. – A municipality may contract for or accept grants of state aid in connection with any project for which the municipality may incur indebtedness under this chapter; and, after their receipt, such grants shall be expended according to the terms under which they are received or used to pay indebtedness incurred under this chapter. Any municipality which has contracted for or accepted an offer of a grant of state aid, and any municipality which has not contracted for or accepted such aid but which has authorized such action and which has received a certificate from the department of environmental services stating that the department of environmental services has determined that such municipality may reasonably expect to receive an amount of state aid with respect to a sewer project, may incur indebtedness in anticipation of the receipt of such aid by issuing its note or notes payable not more than 5 years from their dates, except that notes issued for a shorter period than 5 years may be funded and refunded from time to time by the issue of other notes which shall be payable no later than 5 years after the date of issue of the original note or notes creating the indebtedness being funded or refunded. In the case of a city the authority to contract for or accept grants of state aid shall be given by a resolution passed in the manner provided in RSA 33:9, and in the case of a town, school district or village district the authority shall be given by a vote by ballot of 2/3 of all the voters present and voting at an annual or special meeting of such corporation; and the giving of such authority shall be sufficient to authorize the appropriate officers as specified in RSA 33:8 and 9 to issue notes as provided in this section without further proceedings by the municipality. Nothing contained in this section shall be

construed to authorize the appropriation of any money in a manner which is inconsistent with laws relating to appropriations of money by municipalities."

Section 10: RSA 126-C:2, Article VII, is repealed.

Section 11: RSA 127:10 is amended to read as follows:

"127:10 Additional Funds. – Any district department of health organized hereunder is authorized to use any additional funds which the department of health and human services may secure from other official agencies and which it may allot to such district department of health."

Section 12: RSA 135-C:11 is repealed.

Section 13: RSA 146-C:12 is repealed.

Section 14: RSA 147-F:20 is repealed.

Section 15: RSA 161:2, VI is amended to read as follows:

"VI. Medical Care. In cooperation with state health authorities and county and local officials, develop and administer a state plan for providing medical or other remedial assistance."

Section 16: RSA 161:2, VII, IX are repealed.

Section 17: RSA 161:2, XII is amended to read as follow:

"XII. Social Service Programs. Develop a broad range of social and related services aimed at preventing dependency and family breakdown, promoting child development and child care, protecting vulnerable children and enabling them to live in their own homes or foster homes rather than in institutions, assisting individuals to attain and maintain self-support and strengthen family life, and develop and operate social service programs within the department of health and human services."

Section 18: RSA 161:2, XII-a is amended to read as follows:

"XII-a. Residential Care Facility Program. Develop a broad range of social and related services aimed at protecting adults and enabling aged and infirm adults to live in their own homes or residential care facilities rather than in institutions, assisting individuals to attain and maintain self-support and strengthen family life, and develop and supervise a residential care facility program."

Section 19: RSA 161:2, XIII is repealed.

Section 20: RSA 161:2, XVI is amended to read as follows:

"XVI. Collection of Child Support. Establish, maintain and direct a system of collecting and disbursing payments, including an electronic benefits disbursement system as described in paragraph I, ordered in divorce, nonsupport and support for children of unwed parents cases when so ordered by the court."

Section 21: RSA 161:2-a is repealed.

Section 22: RSA 161:10 is repealed.

Section 23: RSA 161-F:5 and 6 are repealed.

Section 24: RSA 162-L:11 through 19 are repealed.

Section 25: RSA 167:24 is repealed.

Section 26: RSA 186:6, 7 and 39 are repealed.

Section 27: RSA 186:40 is amended to read as follows:

"186:40 Administration. – The commissioner, department of education, is authorized to approve certain schools and educational institutions within the state as vocational training centers for the purpose of enlarging the opportunities for such training and to make suitable arrangements with such schools and institutions to receive pupils for vocational training who may not reside in the town or school district where such school or institution is located."

Section 28: RSA 186-C:12 is repealed.

Section 29: RSA 188-F:6, V is amended to read as follows:

"V. Accept any moneys accruing to the community college system and its colleges, or moneys appropriated by or received from the state of New Hampshire, including any grant moneys from state governmental agencies, public or private corporations, foundations or organizations for the benefit and support of the community college system."

Section 30: RSA 188-F:17 is repealed.

Section 31: RSA 198:15-g is repealed.

Section 32: RSA 201-A:13 is repealed.

Section 33: RSA 203:21 is amended to read as follows:

"203:21 Aid From State Government. – In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept contributions, grants or other financial assistance from the state government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the state government, and to these ends comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or co-operation of the state government in the undertaking, construction, maintenance or operation of any housing project by such authority."

Section 34: RSA 204-C:8, IV is repealed.

Section 35: RSA 204-C:8, V is amended to read as follows:

"V. Collect and correlate information regarding housing projects and housing laws either within or without the state, and upon request furnish local housing authorities, cities or towns, information and advice in connection with any housing project; conduct studies of housing needs in the state and use information gained thereby in planning how best to carry out the purposes of this chapter; work with other state in such studies and planning; develop such plans with the office of energy and planning and other state agencies; and when in the opinion of the authority it is feasible to do so, select projects to fund consistent with the requirements of the plan[.]"

Section 36: RSA 205:7 is repealed.

Section 37: RSA 205-D:19 is repealed.

Section 38: RSA 227-M:3 is amended to read as follows:

"227-M:3 Land and Community Heritage Investment Program Established. – There is hereby established the New Hampshire land and community heritage investment program. The program shall acquire resource assets, through voluntary negotiations with property owners and utilization of all available state, local, private, and other matching funds and incentives. The program shall also provide funding for restoration and rehabilitation of cultural and historical resources and for certain costs associated with the acquisition of resource assets. All deeds or other documents evidencing purchase of any fee interest or other easement interest in resources under this chapter shall be drawn and held in the name of the municipality, other political subdivision, or qualified publicly-supported nonprofit corporation purchasing the interest through the use of program funds. All easement interests and legal obligations that are attached in perpetuity to any property shall be recorded in the deed. The state of New Hampshire shall hold an

executory interest in all easement interests acquired by the program and held by municipalities, other political subdivisions, or qualifying nonprofit corporations. There shall be no power by the state of New Hampshire to take any resource by eminent domain, nor shall any funds made available by this program be used to take by eminent domain except in cases involving the voluntary quieting of title. All acquisition projects shall involve a willing seller and willing buyer, or a willing donor of resource assets."

Section 39: RSA 227-M:5, VIII(c) is amended to read as follows:

"(c) Apply for and accept from any source gifts and donations of: money, including money from appropriate fundraising activities; labor, equipment, and supplies; land and other real property; interests in land and other real property; local, private, and other matching funds and incentives; and other assets to be deposited in the fund for the purposes of this chapter and to aid the authority in the conduct of its affairs."

Section 40: RSA 228:14 and 15 are repealed.

Section 41: RSA 228:71, X is amended to read as follows:

"X. Accept gifts and grants from agencies of local and state governments or from private agencies or persons, and accede to such conditions and obligations as may be imposed as prerequisites to such gifts and grants; except that no gift or grant of real property or tangible personal property shall be accepted without the approval of the governor and council as provided in paragraph V of this section."

Section 42: RSA 228:74-a is repealed.

Section 43: RSA 235:1, 2, 3, 4 and 7 are repealed.

Section 44: RSA 422:14 and 15 are repealed.

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WORKING KNOWLEDGE

Stimulus Surprise: Companies Retrench When Government Spends

Q&A with: Joshua Coval
Published: May 24, 2010
Author: Sean Silverthorne

Recent research at Harvard Business School began with the premise that as a state's congressional delegation grew in stature and power in Washington, D.C., local businesses would benefit from the increased federal spending sure to come their way.

It turned out quite the opposite. In fact, professors Lauren Cohen, Joshua Coval, and Christopher Malloy discovered to their surprise that companies experienced lower sales and *retrenched* by cutting payroll, R&D, and other expenses. Indeed, in the years that followed a congressman's ascendancy to the chairmanship of a powerful committee, the average firm in his state cut back capital expenditures by roughly 15 percent, according to their working paper, "Do Powerful Politicians Cause Corporate Downsizing?"

"It was an enormous surprise, at least to us, to learn that the average firm in the chairman's state did not benefit at all from the unanticipated increase in spending," Coval reports.

Over a 40-year period, the study looked at increases in local earmarks and other federal spending that flowed to states after the senator or representative rose to the chairmanship of a powerful congressional committee.

We asked Coval about the relationship between the government and the private sector, and how policymakers should critically evaluate federal stimulus plans to help local companies.

Sean Silverthorne: First, a little bit about your empirical approach to the research. Why did you decide to study changes in congressional committee chairmanships?

Joshua Coval: Our original goal was to investigate how politically connected firms benefit from increases in the power of their representatives. A benefit in focusing on changes in committee chairmanships is that their timing is largely exogenous from the perspective of the ascending chairman and his constituents. That is, a change in chairmanship can only occur if the incumbent retires or is voted out--both of which are entirely independent of what is currently happening in the ascending chairman's state.

Q: One of your findings was that the chairs of powerful congressional committees truly bring home the bacon to their states in the forms of earmark spending. Can you give a sense of how large this effect is?

A: Sure. The average state experiences a 40 to 50 percent increase in earmark spending if its senator becomes chair of one of the top-three committees. In the House, the average is around 20 percent. For broader measures of spending, such as discretionary state-level federal transfers, the increase from being represented by a powerful senator is around 10 percent.

Q: Perhaps the most intriguing finding, at least for me, was the degree and consistency to which federal spending at the state level seemed to be connected with a decrease in corporate spending and employment. Did you suspect this was the case when you started the study?

A: We began by examining how the average firm in a chairman's state was impacted by his ascension. The idea was that this would provide a lower bound on the benefits from being politically connected. It was an enormous surprise, at least to us, to learn that the average firm in the chairman's state did not benefit at all from the increase in spending. Indeed, the firms significantly cut physical and R&D spending, reduce employment, and experience lower sales.

The results show up throughout the past 40 years, in large and small states, in large and small firms, and are most pronounced in geographically concentrated firms and within the industries that are the target of the spending.

Q: Although you didn't intend to answer this question with the research, what does your team suspect are some of the causes that could explain why companies retrench when federal dollars come into their neighborhoods?

A: Some of the dollars directly supplant private-sector activity—they literally undertake projects the private sector was planning to do on its own. The Tennessee Valley Authority of 1933 is perhaps the most famous example of this.

Other dollars appear to indirectly crowd out private firms by hiring away employees and the like. For instance, our effects are strongest when unemployment is low and capacity utilization is high. But we suspect that a third and potentially quite strong effect is the uncertainty that is created by government involvement.

Q: These findings present something of a dilemma for public policymakers who believe that federal spending can stimulate private economic development. How would you suggest they approach the problem that federal dollars may actually cause private-sector retrenchment?

A: Our findings suggest that they should revisit their belief that federal spending can stimulate private economic development. It is important to note that our research ignores all costs associated with paying for the spending such as higher taxes or increased borrowing. From the perspective of the target state, the funds are essentially free, but clearly at the national level someone has to pay for stimulus spending. And in the absence of a positive private-sector response, it seems even more difficult to justify federal spending than otherwise.

Q: What do you think your research has brought to the literature?

A: The literature has had difficulty empirically identifying the effect of government spending on the private sector. Because spending both influences and is influenced by developments in the private sector, disentangling the two has proven challenging. We think our approach offers a rare opportunity to identify the private-sector response to government spending increases that are essentially random.

Q: What are you working on next?

A: Our next project will be to ask a similar question of the private sector: Does private-sector economic activity create or crowd out additional private-sector opportunities? Put differently, did Bill Gates's decision to relocate Microsoft to the Seattle area in 1979 increase the likelihood that Amazon.com, Starbucks, and Costco would emerge from there a decade or so later? If so, this has strong implications for policymakers interested in, say, improving Detroit's economic prospects. WP

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Excerpt from Madison, *The Federalist, No. 45*:

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.

"The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States. If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them."

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Excerpt from *Grover Cleveland, A Study in Courage*, by Allan Nevins (New York, Dodd, Mead & Company (1933)), pp 331-332:

"Early in 1887 both houses of Congress passed a bill – the so-called Texas Seed Bill – which sharply challenged [President] Cleveland's views. Certain Texas counties had suffered from a drought and were in urgent need of seed-grain. Congress generously appropriated $10,000 to enable the Commissioner of Agriculture to distribute seed. The amount was trifling; but Cleveland, who had just vetoed the Dependent Pensions Bill, saw that the same underlying delusion – the delusion that the government ought to give alms to anybody in distress – was involved. The Texas legislature could easily meet the need, or popular subscriptions could be circulated. On February 19 he disallowed the measure, sending the House a remonstrance that has more than once been quoted by his successors...Cleveland believed it wrong, as he wrote, 'to indulge a benevolent and charitable sentiment through the appropriation of public funds' for this purpose. 'I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be expended to the relief of individual suffering which is in no manner properly related to the public service or benefit.' Once more he struck out one of his few memorable phrases:

> 'A prevalent tendency to disregard the limited mission of this (the Government's) power and duty should, I think, be steadfastly resisted, to the end that the lesson should constantly be enforced that though the people support the Government, the Government should not support the people.'"

Excerpt from *New State Ice Company v. Liebmann*, 285 U.S. 262, 280, 306-311 (1932), dissenting opinion of Justice Louis D. Brandeis:

"It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country....If we would guide by the light of reason, we must let our minds be bold."

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West Headnotes from Massachusetts v Mellon (262 US 447 (1923):

A litigant can question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage.

The courts have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional, but may only ascertain and declare the law when justification for some direct injury, suffered or threatened, presenting a justiciable issue, is made to rest on such an act, and have little more than the negative power to disregard an unconstitutional enactment standing in the way of enforcement of a legal right.

The Supreme Court is without authority to pass abstract opinions on the constitutionality of acts of Congress claimed to invade the reserved powers of the states, when no rights of a state falling within the scope of the judicial power have been brought within the actual or threatened operation of the statute.

The contention, in suit to enjoin enforcement of appropriation act of Congress, that it invades the reserved powers of the states, raises a political and not judicial question, and is a matter not admitting of the exercise of the judicial power.

To the legislative department of the government has been committed the duty of making laws, to the executive the duty of executing them, and to the judiciary the duty of interpreting and applying them in cases properly brought before the court, and the general rule is that neither department may invade the province of another, or control, direct, or restrain its action.

Constitution Article 3, § 2, providing that judicial power extends to controversies between a state and citizens of another state, and that the Supreme Court has original jurisdiction when a state is a party, does not confer jurisdiction merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance.

A state cannot, as *parens patriae*, institute judicial proceedings to protect its citizens, who are also citizens of the United States, from the operation of a statute of the United States, since, with respect to their relations to the federal government, it, and not the state, represents them as *parens patriae*.

A taxpayer cannot sue to enjoin the execution of a federal appropriation act on the ground that it is invalid and will result in taxation for illegal purposes, as the administration of a statute likely to produce additional taxes is a matter of public, and not of individual concern.

When case for preventive relief is presented by reason of unconstitutionality of statute, the court

does not enjoin the execution of the statute, but the acts of officials, notwithstanding the statute.

To enjoin officials of the executive department of the government from executing an act of Congress asserted to be unconstitutional, in absence of injury sustained or immediately threatened would not be to decide a judicial controversy, but to assume a position of authority over the governmental acts of another department.

In suit by a state to enjoin enforcement of Act Cong. Nov. 23, 1921, 12 Stat. 224, 42 U.S.C.A. § 161 et seq., on the ground that it is an attempt to legislate within the field of local powers exclusively reserved to the states, nothing is added to the effect of this assertion by allegations that the ulterior purpose was to induce the states to yield a portion of their sovereign rights, that the burden of the appropriations thereby provided for falls unequally on the several states, and that there is imposed on the states an illegal and unconstitutional option to yield a part of their reserved rights or lose their share of the moneys appropriated, as the burden falls on inhabitants and not on the states, and the state may refuse to yield its rights.

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Supreme Court of the United States
262 U.S. 447 (1923)

COMMONWEALTH OF MASSACHUSETTS
v.
MELLON, Secretary of the Treasury, et al.

FROTHINGHAM
v.
SAME.

Nos. 24, Original, and 962.
Argued May 3 and 4, 1923.
Decided June 4, 1923.

Appeal from the Court of Appeals of the District of Columbia.

Original suit by the Commonwealth of Massachusetts against Andrew W. Mellon, Secretary of the Treasury, and others, and suit by Harriet A. Frothingham against Andrew W. Mellon, Secretary of the Treasury, and others. A decree dismissing the bill in the second suit was affirmed by the Court of Appeals of the District of Columbia (288 Fed. 252), and plaintiff appeals. First suit dismissed, and decree in the second suit affirmed.

Mr. Justice SUTHERLAND delivered the opinion of the Court:

These cases were argued and will be considered and disposed of together. The first is an original suit in this court. The other was brought in the Supreme Court of the District of Columbia. That court dismissed the bill and its decree was affirmed by the District Court of Appeals. Thereupon the case was brought here by appeal. Both cases challenge the constitutionality of the Act of November 23, 1921, 42 Stat. 224, c. 135, commonly called the Maternity Act. Briefly, it provides for an initial appropriation and thereafter annual appropriations for a period of five years, to be apportioned among such of the several states as shall accept and comply with its provisions, for the purpose of co-operating with them to reduce maternal and infant mortality and protect the health of mothers and infants. It creates a bureau to administer the act in co-operation with state agencies, which are required to make such reports concerning their operations and expenditures as may be prescribed by the federal bureau. Whenever that bureau shall determine that funds have not been properly expended in respect of any state, payments may be withheld.

It is asserted that these appropriations are for purposes not national, but local to the states, and together with numerous similar appropriations constitute an effective means of inducing the states to yield a portion of their sovereign rights. It is further alleged that the burden of the appropriations provided by this act and similar legislation falls unequally upon the several states, and rests largely upon the industrial states, such as Massachusetts; that the act is a usurpation of power not granted to Congress by the

Constitution-an attempted exercise of the power of local self-government reserved to the states by the Tenth Amendment; and that the defendants are proceeding to carry the act into operation. In the Massachusetts Case it is alleged that the plaintiff's rights and powers as a sovereign state and the rights of its citizens have been invaded and usurped by these expenditures and acts, and that, although the state has not accepted the act, its constitutional rights are infringed by the passage thereof and the imposition upon the state of an illegal and unconstitutional option either to yield to the federal government a part of its reserved rights or lose the share which it would otherwise be entitled to receive of the moneys appropriated. In the Frothingham Case plaintiff alleges that the effect of the statute will be to take her property, under the guise of taxation, without due process of law.

We have reached the conclusion that the cases must be disposed of for want of jurisdiction, without considering the merits of the constitutional questions.

In the first case, the state of Massachusetts presents no justiciable controversy, either in its own behalf or as the representative of its citizens. The appellant in the second suit has no such interest in the subject-matter, nor is any such injury inflicted or threatened, as will enable her to sue.

First. The state of Massachusetts in its own behalf, in effect, complains that the act in question invades the local concerns of the state, and is a usurpation of power, viz. the power of local self-government, reserved to the states.

Probably it would be sufficient to point out that the powers of the state are not invaded, since the statute imposes no obligation but simply extends an option which the state is free to accept or reject. But we do not rest here. Under article 3, § 2, of the Constitution, the judicial power of this court extends 'to controversies * * * between a state and citizens of another state' and the court has original jurisdiction 'in all cases * * * in which a state shall be a party.' The effect of this is not to confer jurisdiction upon the court merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant. In Wisconsin v. Pelican Insurance Co., 127 U. S. 265, 289, 8 Sup. Ct. 1370, 1373 (32 L. Ed. 239), Mr. Justice Gray, speaking for the court, said:

"As to 'controversies between a state and citizens of another state': The object of vesting in the courts of the United States jurisdiction of suits by one state against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff state were compelled to resort to the courts of the state of which the defendants were citizens. Federalist, No. 80; Chief Justice Jay, in Chisholm v. Georgia, 2 Dall. 419, 475; Story on the Constitution, §§ 1638, 1682. The grant is of 'judicial power,' and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one state, of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all."

That was an action brought by the state of Wisconsin to enforce a judgment of one of its own courts for a penalty against a resident of another state, and, in pursuance of the doctrine announced by the language just quoted, this court declined to assume jurisdiction upon the ground that the courts of no country will execute the penal laws of another.

In an earlier case it was held that a proceeding by mandamus by one state to compel the Governor of another to surrender a fugitive from justice was not within the powers of the judicial department, since the duty of the Governor in the premises was in the nature of a moral rather than a legal obligation. Kentucky v. Dennison, 24 How. 66, 109, 16 L. Ed. 717. In New Hampshire v. Louisiana and New York v. Louisiana, 108 U. S. 76, 2 Sup. Ct. 176, 27 L. Ed. 656, this court declined to take jurisdiction of actions

to enforce payment of the bonds of another state for the benefit of the assignors, citizens of the plaintiff states. In Georgia v. Stanton, 6 Wall. 50, 75, 18 L. Ed. 721, and kindred cases, to which we shall presently refer, jurisdiction was denied in respect of questions of a political or governmental character. On the other hand, jurisdiction was maintained in Texas v. White, 7 Wall. 700, 19 L. Ed. 227, The State of Florida v. Anderson, 91 U. S. 667, 23 L. Ed. 290, and Alabama v. Burr, 115 U. S. 413, 6 Sup. Ct. 81, 29 L. Ed. 435, because proprietary rights were involved; in Georgia v. Tennessee Copper Co., 206 U. S. 230, 237, 27 Sup. Ct. 618, 51 L. Ed. 1038, 11 Ann. Cas. 488, because the right of dominion of the state over the air and soil within its dominion was affected; in Missouri v. Holland, 252 U. S. 416, 40 Sup. Ct. 382, 64 L. Ed. 641, 11 A. L. R. 984, because, as asserted, there was an invasion, by acts done and threatened, of the quasi sovereign right of the state to regulate the taking of wild game within its borders; and in other cases because boundaries were in dispute. It is not necessary to cite additional cases. The foregoing for present purposes sufficiently indicate the jurisdictional line of demarcation.

What, then, is the nature of the right of the state here asserted and how is it affected by this statute? Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the states. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the states to yield a portion of their sovereign rights; that the burden of the appropriations falls unequally upon the several states; and that there is imposed upon the states an illegal and unconstitutional option either to yield to the federal government a part of their reserved rights or lose their share of the moneys appropriated. But what burden is imposed upon the states, unequally or otherwise? Certainly there is none, unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the states where they reside. Nor does the statute require the states to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding.

In the last analysis, the complaint of the plaintiff state is brought to the naked contention that Congress has usurped the reserved powers of the several states by the mere enactment of the statute, though nothing has been done and nothing is to be done without their consent; and it is plain that that question, as it is thus presented, is political, and not judicial in character, and therefore is not a matter which admits of the exercise of the judicial power.

In Georgia v. Stanton, supra, this court held that a bill to enjoin the Secretary of War, and other officers, from carrying into execution certain acts of Congress, which it was asserted would annul and abolish the existing state government and establish another and different one in its place, called for a judgment upon a political question and presented no case within the jurisdiction of the court. Mr. Justice Nelson, speaking for the court, said (6 Wall. 77, 18 L. Ed. 721):

"That these matters, both as stated in the body of the bill, and, in the prayers for relief, call for the judgment of the court upon political questions, and, upon rights, not of persons or property, but of a political character, will hardly be denied. For the rights for the protection of which our authority is invoked, are the rights of sovereignty, of political jurisdiction, of government, of corporate existence as a state, with all its constitutional powers and privileges. No case of private rights or private property, infringed, or in danger of actual or threatened infringement, is presented by the bill, in a judicial form, for the judgment of the court."

In Cherokee Nation v. Georgia, 5 Pet. 1, 8 L. Ed. 25, an injunction was sought to prevent certain acts of legislation from being carried into execution within the territory of the Cherokee Nation of Indians, the original jurisdiction of this court being invoked on the ground

that plaintiff was a foreign nation. It was asserted that the acts in question, if executed, would have the effect of subverting the tribal government and subjecting the Indians to the jurisdiction of the state of Georgia. It was held that the Cherokee Nation could not be regarded as a foreign nation, within the meaning of the Judiciary Act (1 Stat. 73), but Chief Justice Marshall, delivering the opinion for the majority, said, further (5 Pet. 20, 8 L. Ed. 25):

"That part of the bill which respects the land occupied by the Indians, and prays the aid of the court to protect their possession, may be * * * doubtful. The mere question of right might perhaps be decided by this court in a proper case with proper parties. But the court is asked to do more than decide on the title. The bill requires us to control the Legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the court may well be questioned. It savors too much of the exercise of political power to be within the proper province of the judicial department."

And Mr. Justice Thompson, with whom Mr. Justice Story concurred, in the course of an opinion, said (6 Wall. 75, 18 L. Ed. 721):

"It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief.

"This court can have no right to pronounce an abstract opinion upon the constitutionality of a state law. Such law must be brought into actual, or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here."

See, also, Luther v. Borden, 7 How. 1, 12 L. Ed. 581; Mississippi v. Johnson, 4 Wall. 475, 500, 18 L. Ed. 437; Pacific Telephone Co. v. Oregon, 223 U. S. 118, 32 Sup. Ct. 224, 56 L. Ed. 377; Louisiana v. Texas, 176 U. S. 1, 23, 20 Sup. Ct. 251, 44 L. Ed. 347; Fairchild v. Hughes, 258 U. S. 126, 42 Sup. Ct. 274, 66 L. Ed. 499.

It follows that, in so far as the case depends upon the assertion of a right on the part of the state to sue in its own behalf, we are without jurisdiction. In that aspect of the case we are called upon to adjudicate, not rights of person or property, not rights of dominion over physical domain, not quasi sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of government. No rights of the state falling within the scope of the judicial power have been brought within the actual or threatened operation of the statute, and this court is as much without authority to pass abstract opinions upon the constitutionality of acts of Congress as it was held to be, in Cherokee Nation v. Georgia, supra, of state statutes. If an alleged attempt by congressional action to annul and abolish an existing state government 'with all its constitutional powers and privileges,' presents no justiciable issue, as was ruled in Georgia v. Stanton, supra, no reason can be suggested why it should be otherwise where the attempt goes no farther, as it is here alleged, than to propose to share with the state the field of state power.

We come next to consider whether the suit may be maintained by the state as the representative of its citizens. To this the answer is not doubtful. We need not go so far as to say that a state may never intervene by suit to protect its citizens against any form of enforcement of unconstitutional acts of Congress; but we are clear that the right to do so does not arise here. Ordinarily, at least, the only way in which a state may afford protection to its citizens in such cases is through the enforcement of its own criminal statutes, where that is appropriate, or by opening its courts to the injured persons for the maintenance of civil suits or actions. But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a state, as parens patriae, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the state, under some circumstances, may sue in that capacity for the protection of its citizens (Missouri v. Illinois and Chicago District, 180 U. S. 208, 241, 21 Sup. Ct. 331, 45 L. Ed. 497), it is no part of its duty or power to enforce

their rights in respect of their relations with the federal government. In that field it is the United States, and not the state, which represents them as parens patriae, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status.

Second. The attack upon the statute in the Frothingham Case is, generally, the same, but this plaintiff alleges, in addition that she is a taxpayer of the United States; and her contention, though not clear, seems to be that the effect of the appropriations complained of will be to increase the burden of future taxation and thereby take her property without due process of law. The right of a taxpayer to enjoin the execution of a federal appropriation act, on the ground that it is invalid and will result in taxation for illegal purposes, has never been passed upon by this court. In cases where it was presented, the question has either been allowed to pass sub silentio or the determination of it expressly withheld. Millard v. Roberts, 202 U. S. 429, 438, 26 Sup. Ct. 674, 50 L. Ed. 1090; Wilson v. Shaw, 204 U. S. 24, 31, 27 Sup. Ct. 233, 51 L. Ed. 351; Bradfield v. Roberts, 175 U. S. 291, 295, 20 Sup. Ct. 121, 44 L. Ed. 168. The case last cited came here from the Court of Appeals of the District of Columbia, and that court sustained the right of the plaintiff to sue by treating the case as one directed against the District of Columbia, and therefore subject to the rule, frequently stated by this court, that resident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation. Roberts v. Bradfield, 12 App. D. C. 453, 459, 460. The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate. It is upheld by a large number of state cases and is the rule of this court. Crampton v. Zabriskie, 101 U. S. 601, 609, 25 L. Ed. 1070. Nevertheless, there are decisions to the contrary. See, for example, Miller v. Grandy, 13 Mich. 540, 550. The reasons which support the extension of the equitable remedy to a single taxpayer in such cases are based upon the peculiar relation of the corporate taxpayer to the corporation, which is not without some resemblance to that subsisting between stockholder and private corporation. 4 Dillon, Municipal Corporations (5th Ed.) § 1580 et seq. But the relation of a taxpayer of the United States to the federal government is very different. His interest in the moneys of the treasury-partly realized from taxation and partly from other sources-is shared with millions of others, is comparatively minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.

The administration of any statute, likely to produce additional taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public and not of individual concern. If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect of the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained. It is of much significance that no precedent sustaining the right to maintain suits like this has been called to our attention, although, since the formation of the government, as an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for nonfederal purposes have been enacted and carried into effect.

The functions of government under our system are apportioned. To the legislative department has been committed the duty of making laws, to the executive the duty of executing them, and to the judiciary the duty of interpreting and applying them in cases properly brought before the courts. The general rule is that neither department may invade the province of the other and neither may control, direct, or restrain the action of the other. We are not now speaking of the merely ministerial duties of officials. Gaines v. Thompson, 7 Wall. 347, 19 L. Ed. 62. We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act.

Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented, the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding. Here the parties plaintiff have no such case. Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be, not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and coequal department, an authority which plainly we do not possess.

No. 24, Original, dismissed.

No. 962 affirmed.

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HB 590
Constitutional Review & Statutory Recodification Committee
March 4, 2011
Supplement to Testimony of Rep. Gregory M. Sorg

Excerpt from Madison, *The Federalist, No. 45*:

"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.

"The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States. If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them."

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Excerpt from *Grover Cleveland, A Study in Courage*, by Allan Nevins (New York, Dodd, Mead & Company (1933)), pp 331-332:

"Early in 1887 both houses of Congress passed a bill – the so-called Texas Seed Bill – which sharply challenged [President] Cleveland's views. Certain Texas counties had suffered from a drought and were in urgent need of seed-grain. Congress generously appropriated $10,000 to enable the Commissioner of Agriculture to distribute seed. The amount was trifling; but Cleveland, who had just vetoed the Dependent Pensions Bill, saw that the same underlying delusion – the delusion that the government ought to give alms to anybody in distress – was involved. The Texas legislature could easily meet the need, or popular subscriptions could be circulated. On February 19 he disallowed the measure, sending the House a remonstrance that has more than once been quoted by his successors...Cleveland believed it wrong, as he wrote, 'to indulge a benevolent and charitable sentiment through the appropriation of public funds' for this purpose. 'I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be expended to the relief of individual suffering which is in no manner properly related to the public service or benefit.' Once more he struck out one of his few memorable phrases:

> 'A prevalent tendency to disregard the limited mission of this (the Government's) power and duty should, I think, be steadfastly resisted, to the end that the lesson should constantly be enforced that though the people support the Government, the Government should not support the people.'"

Excerpt from *New State Ice Company v. Liebmann*, 285 U.S. 262, 280, 306-311 (1932), dissenting opinion of Justice Louis D. Brandeis:

"It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country....If we would guide by the light of reason, we must let our minds be bold."

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West Headnotes from Massachusetts v Mellon (262 US 447 (1923)):

A litigant can question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage.

The courts have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional, but may only ascertain and declare the law when justification for some direct injury, suffered or threatened, presenting a justiciable issue, is made to rest on such an act, and have little more than the negative power to disregard an unconstitutional enactment standing in the way of enforcement of a legal right.

The Supreme Court is without authority to pass abstract opinions on the constitutionality of acts of Congress claimed to invade the reserved powers of the states, when no rights of a state falling within the scope of the judicial power have been brought within the actual or threatened operation of the statute.

The contention, in suit to enjoin enforcement of appropriation act of Congress, that it invades the reserved powers of the states, raises a political and not judicial question, and is a matter not admitting of the exercise of the judicial power.

To the legislative department of the government has been committed the duty of making laws, to the executive the duty of executing them, and to the judiciary the duty of interpreting and applying them in cases properly brought before the court, and the general rule is that neither department may invade the province of another, or control, direct, or restrain its action.

Constitution Article 3, § 2, providing that judicial power extends to controversies between a state and citizens of another state, and that the Supreme Court has original jurisdiction when a state is a party, does not confer jurisdiction merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance.

A state cannot, as *parens patriae*, institute judicial proceedings to protect its citizens, who are also citizens of the United States, from the operation of a statute of the United States, since, with respect to their relations to the federal government, it, and not the state, represents them as *parens patriae*.

A taxpayer cannot sue to enjoin the execution of a federal appropriation act on the ground that it is invalid and will result in taxation for illegal purposes, as the administration of a statute likely to produce additional taxes is a matter of public, and not of individual concern.

When case for preventive relief is presented by reason of unconstitutionality of statute, the court

does not enjoin the execution of the statute, but the acts of officials, notwithstanding the statute.

To enjoin officials of the executive department of the government from executing an act of Congress asserted to be unconstitutional, in absence of injury sustained or immediately threatened would not be to decide a judicial controversy, but to assume a position of authority over the governmental acts of another department.

In suit by a state to enjoin enforcement of Act Cong. Nov. 23, 1921, 12 Stat. 224, 42 U.S.C.A. § 161 et seq., on the ground that it is an attempt to legislate within the field of local powers exclusively reserved to the states, nothing is added to the effect of this assertion by allegations that the ulterior purpose was to induce the states to yield a portion of their sovereign rights, that the burden of the appropriations thereby provided for falls unequally on the several states, and that there is imposed on the states an illegal and unconstitutional option to yield a part of their reserved rights or lose their share of the moneys appropriated, as the burden falls on inhabitants and not on the states, and the state may refuse to yield its rights.

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RSA 124 (*Federal Aid*), as Amended through 2010:

Highways and Other Public Works

124:1 Authority for Seeking Aid. – The governor, with the approval of the council, is authorized to apply for financial or any other aid which the United States government has authorized or may authorize to be given to the several states for emergency industrial or unemployment relief, for public works and highway construction, for the creation of employment agencies, or for any other purpose intended to relieve distress. Any officer of the state who may be designated in any act passed by the congress of the United States, or in any regulation or requirement of any agency of the United States, is authorized in the name of the state to make all applications and sign all documents which may be necessary to obtain such aid, provided that such applications have the approval of the governor and council. The state treasurer is directed to receive all money so granted by the United States, or by any agency thereof, to the state and to hold all such funds separate from all other funds of the state. Such funds shall be disbursed by the treasurer upon warrants drawn by the governor for the purposes for which such relief or aid is granted.

Source. 1933, 162:2. RL 6:2.

124:2 Faith and Credit Pledged. – The faith and credit of the state are pledged to make adequate provision, from time to time, by appropriation or otherwise, to meet all obligations of the state incident to the acceptance of federal aid under the provisions of any act referred to in RSA 124:1 and the governor and council are authorized to issue all necessary documentary evidence of such faith and credit.

Source. 1933, 162:3. RL 6:3.

124:3 Debt Limitations. – Cities, towns, school districts, precincts, and counties, upon the approval of the commissioner of revenue administration, may make application to the governor and council for authority to exceed existing debt limitations for the purpose of taking advantage of such grants or aid as may be offered them by the United States government. The governor and council may grant to cities, towns, school districts, precincts, and counties authority to exceed existing debt limitations to such extent and in such amounts as they may deem prudent and advisable. In granting such authority the governor and council may prescribe the terms and conditions upon which such debt limitations may be exceeded.

Source. 1933, 162:4. RL 6:4. RSA 124:3. 1973, 544:8, eff. Sept. 1, 1973.

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Preliminary List of RSA Repeals and Amendments:

Section 1: RSA Chapter 124 ("Federal Aid") is hereby repealed in its entirety.

Section 2: RSA Chapter 228-A ("Federal Highway Grant Anticipation Bonds") is hereby repealed in its entirety.

Section 3: RSA 4-C:4 is repealed.

Section 4: RSA 9-B:4 is amended to read as follows:

"9-B:4 Expenditure of State Funds. – All state agencies shall give due consideration to the state's policy on smart growth under RSA 9-B:2 when providing advice or expending state funds, for their own use or as pass-through grants, for public works, transportation, or major capital improvement projects, and for the construction, rental, or lease of facilities. The intent of this action is that new investments and grants for existing sites and buildings in existing community centers will be given preference over investments in outlying areas where that is a practical solution for the use and community in question."

Section 5: RSA 12:9 is amended to read as follows:

"12:9 Acceptance of Grants. – The department is authorized to accept in the name of the state special grants of money or services from the state government or any of its agencies, and may accept gifts to carry on its activities."

Section 6: RSA 14:30-a VI is renumbered as IV, and is amended to read as follows:

"IV. Any non-state funds in excess of $50,000, whether public or private, including refunds of expenditures, local funds, gifts, bequests, grants and funds from any other non-state source which under state law require the approval of governor and council for acceptance and expenditure, may be accepted and expended by the proper persons or agencies in the state government only with the prior approval of the fiscal committee."

Section 7: RSA 19-J: is amended to read as follows:

"19-J:1 Definitions. – In this chapter:
"I. ""Council"" means the New Hampshire council on developmental disabilities

Voting Sheets

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

EXECUTIVE SESSION on HB 590

BILL TITLE: **declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.**

DATE: February 10, 2011

LOB ROOM: 203

Amendments:

Sponsor: Rep. Cunningham — OLS Document #: 2011 0293h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

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

Moved by Rep. Cunningham

Seconded by Rep.

Vote: 8-2 (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:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jeanine Notter, Acting Clerk

Jeanine Notter

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

EXECUTIVE SESSION on HB 590

BILL TITLE: **declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.**

DATE: 2/10/11

LOB ROOM: 203

Amendments:

Sponsor: Rep. Cunningham OLS Document #: 2011-0283h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Cunningham

Seconded by Rep.

Vote: 8-2 (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:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. ~~Kirsten Larson~~ Walter, Clerk

STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

:

Bill #: HB590 **Title:** Amend title

PH Date: 2/10/11 Exec Session Date: 2/10/11

Motion: Cunningham Amendment #: 0293h

MEMBER	YEAS		NAYS
Baldasaro, Alfred P, Chairman	✓	✓	
Blankenbeker, Lynne F, V Chairman	✓	✓	
Christiansen, Lars T	✓	✓	
Smith, Todd P			
Cunningham, Steven L	✓	✓	
Kingsbury, Robert P	✓	✓	
Larsen, Kirsten L, Clerk			
Lundgren, David C			
McCarthy, Frank H	✓	✓	
Notter, Jeanine M	✓	✓	
Tamburello, Daniel J			
Vita, Lucien A	✓	✓	
Rokas, Theodoros V			
Domingo, Baldwin M			
Hofemann, Roland P			
Theberge, Robert L	✓		✓
Spainhower, Dale S	✓		✓

Bill as Amendment OTP
m

TOTAL VOTE: 10-0 on Amendment 8-2

Printed: 1/11/2011

HOUSE COMMITTEE ON
CONSTITUTION REVIEW AND STATUTORY RECODIFICATION

EXECUTIVE SESSION on HB 590

BILL TITLE: **(New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.**

DATE: March 22, 2011

LOB ROOM: 206

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Krasucki

Seconded by Rep. Cohn

Vote: 12-2 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: YES (NO) please circle one)

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Josh Davenport, Clerk

HOUSE COMMITTEE ON
CONSTITUTION REVIEW AND STATUTORY RECODIFICATION

EXECUTIVE SESSION on HB 590

BILL TITLE: **(New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.**

DATE: 3/22/2011

LOB ROOM: 206

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Krasucki

Seconded by Rep. Cohn

Vote: 12/2 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: YES NO (please circle one)

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Josh Davenport, Clerk

OFFICE OF THE HOUSE CLERK 2011 SESSION

CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION

Bill #: 590 **Title:** Expressing the position... grant-in-aid programs

PH Date: / / **Exec Session Date:** 3 / 22 / 2011

Motion: OTP **Amendment #:**

MEMBER	YEAS	NAYS
Itse, Daniel C, Chairman	✓	
~~Cebrowski, John W, V Chairman~~ Comerford, Jim	✓	
Brown, Paul E	✓	
Cartwright, Anne S	✓	
Cohn, Seth	✓	
Davenport, Joshua C, Clerk	✓	
Huxley, Robert J	✓	
Krasucki, Joseph F	✓	
Luther, Robert A	✓	
Peckham, Michele S		
Reichard, Kevin E	✓	
Weeden, Michael W	✓	
Serlin, Christopher W		
Katsiantonis, Thomas		
Richardson, Gary B		✓
Coulombe, Gary M	✓	
Schmidt, Andrew R		✓
	12	2

TOTAL VOTE:

Printed: 1/28/2011

Committee Report

REGULAR CALENDAR

February 15, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS to which was referred HB590,

Original: House Clerk
Cc: Committee Bill File

AN ACT declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Steven L Cunningham

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MAJORITY
COMMITTEE REPORT

Committee:	**STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS**
Bill Number:	**HB590**
Title:	**declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.**
Date:	**February 15, 2011**
Consent Calendar:	**NO**
Recommendation:	**OUGHT TO PASS WITH AMENDMENT**

STATEMENT OF INTENT

The committee determined that this bill brings an appropriate resistance to encroachments on the state of New Hampshire by the federal government in areas exceeding the constitutional powers of the federal government. This will allow New Hampshire through a joint committee to review grants-in-aid to determine their constitutionality

Vote 8-2

Rep. Steven L Cunningham
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

HB590, declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Steven L Cunningham for the **Majority** of STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS. The committee determined that this bill brings an appropriate resistance to encroachments on the state of New Hampshire by the federal government in areas exceeding the constitutional powers of the federal government. This will allow New Hampshire through a joint committee to review grants-in-aid to determine their constitutionality **Vote 8-2.**

Original: House Clerk
Cc: Committee Bill File

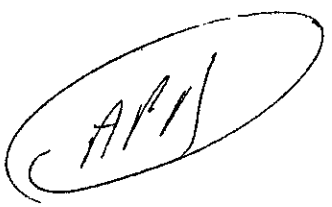
Blurbs Majority Report

HB 590 declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.

OTPw/A # 2011-0293h Regular Calendar 8-2

The committee determined that this bill brings an appropriate resistance to encroachments on the state of New Hampshire by the federal government in areas exceeding the constitutional powers of the federal government. This will allow New Hampshire through a joint committee to review grants-in-aid to determine their constitutionality.

Rep. Cunningham



HB 590

THE COMMITTEE DETERMINED THAT THIS BILL BRINGS AN APPROPRIATE RESISTANCE TO ENCROACHMENTS ON THE STATE OF N.H. BY THE FEDERAL GOVERNMENT IN AREAS EXCEEDING THE CONSTITUTIONAL POWERS OF THE FEDERAL GOVERNMENT. THIS WILL ALLOW NEW HAMPSHIRE THROUGH A JOINT COMMITTEE ~~REP. STEVEN CONNAUGHTON~~ TO REVIEW GRANTS-IN-AID TO ~~DETERMINE~~ DETERMINE THEIR CONSTITUTIONALITY.

AHS

COMMITTEE REPORT

COMMITTEE: State-Federal & Vet. Affairs

BILL NUMBER: HB 590

TITLE: (new title)

DATE: 2-10-2011 **CONSENT CALENDAR:** YES ☐ NO ☒

☒ **OUGHT TO PASS** as

☒ **OUGHT TO PASS W/ AMENDMENT**

☐ **INEXPEDIENT TO LEGISLATE**

☐ **INTERIM STUDY** (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

ATTACHED.

COMMITTEE VOTE: 8-2

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Rep. STEVEN CUNNINGHAM

For the Committee

Rev. 02/01/07 - Yellow

REGULAR CALENDAR

February 15, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS to which was referred HB590,

Original: House Clerk
Cc: Committee Bill File

AN ACT declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs. Having considered the same, and being unable to agree with the Majority, report with the following Resolution:

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Robert L Theberge

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MINORITY
COMMITTEE REPORT

Committee:	STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS
Bill Number:	HB590
Title:	**declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.**
Date:	**February 15, 2011**
Consent Calendar:	**NO**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

This bill would create a committee to review whether every grant-in-aid program, at every level of state government (municipal, county and, state) that currently exists should be retained and/or funded with town, county or state money rather than federal. By not accepting Federal grants-in -aid; towns, counties and, the state, wishing to have the respective program in place, would have to increase revenues through an increase in property taxes. The latter would render New Hampshire less competitive and less attractive to companies wanting to locate and/or expand in the Northeast. The legislation also fails to identify any specific program for review. As a result, the jurisdiction of the committee is overly broad and would cause a waste of legislative and executive branch resources. In addition, rather than directing an objective review of grant-in-aid programs, the language of the bill labels grant-in-aid programs as "unconstitutional encroachments" on the sovereignty of New Hampshire that amount "to all intents and purposes of bribing the state of New Hampshire". This language makes it clear that the motivation for the bill is political ideology rather than an objective analysis of grant-in-aid programs.

Original: House Clerk
Cc: Committee Bill File

Rep. Robert L Theberge
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

HB590, declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs. **INEXPEDIENT TO LEGISLATE.**

Rep. Robert L Theberge for the **Minority** of STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS. This bill would create a committee to review whether every grant-in-aid program, at every level of state government (municipal, county and, state) that currently exists should be retained and/or funded with town, county or state money rather than federal. By not accepting Federal grants-in -aid; towns, counties and, the state, wishing to have the respective program in place, would have to increase revenues through an increase in property taxes. The latter would render New Hampshire less competitive and less attractive to companies wanting to locate and/or expand in the Northeast. The legislation also fails to identify any specific program for review. As a result, the jurisdiction of the committee is overly broad and would cause a waste of legislative and executive branch resources. In addition, rather than directing an objective review of grant-in-aid programs, the language of the bill labels grant-in-aid programs as "unconstitutional encroachments" on the sovereignty of New Hampshire that amount "to all intents and purposes of bribing the state of New Hampshire". This language makes it clear that the motivation for the bill is political ideology rather than an objective analysis of grant-in-aid programs.

Original: House Clerk
Cc: Committee Bill File

MINORITY REPORT

COMMITTEE: State + Federal

BILL NUMBER: HB 590

TITLE:

DATE: 2/10/2010 **CONSENT CALENDAR:** YES ☐ NO ☒

☐ **OUGHT TO PASS**

☐ **OUGHT TO PASS W/ AMENDMENT**

☒ **INEXPEDIENT TO LEGISLATE**

☐ **INTERIM STUDY** (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

See attached.

COMMITTEE VOTE: 8-2

RESPECTFULLY SUBMITTED,

Rep. Robert L. Theberge
For the Minority

• Copy to Committee Bill File

Rev. 02/01/07 - Blue

HB 590 declaring unconstitutional under the federal Constitution the offering of federal grants-in-aid relating to matters not included among the defined powers of the federal government and declaring unconstitutional under the New Hampshire constitution their acceptance in such circumstances, and establishing a committee to review state participation in federal grant-in-aid programs.

Minority Report ITL

Robert Theberge for the **Minority** of State-Fedral Relations and Veterans Affairs:

This bill would create a committee to review whether every grant-in-aid program, at every level of state government (municipal, county and, state) that currently exists should be retained and/or funded with town, county or state money rather than federal. By not accepting Federal grants-in - aid; towns, counties and, the state, wishing to have the respective program in place, would have to increase revenues through an increase in property taxes. The latter would render New Hampshire less competitive and less attractive to companies wanting to locate and/or expand in the Northeast. The legislation also fails to identify any specific program for review. As a result, the jurisdiction of the committee is overly broad and would cause a waste of legislative and executive branch resources. In addition, rather than directing an objective review of grant-in-aid programs, the language of the bill labels grant-in-aid programs as "unconstitutional encroachments" on the sovereighty of New Hampshire that amount "to all intents and purposes of bribing the state of New Hampshire". This language makes it clear that the motivation for the bill is political ideology rather than an objective analysis of grant-in-aid programs.

REGULAR CALENDAR

March 22, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION to which was referred HB590,

Original: House Clerk
Cc: Committee Bill File

AN ACT (New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Joseph F Krasucki

FOR THE MAJORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MAJORITY
COMMITTEE REPORT

Committee:	CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION
Bill Number:	HB590
Title:	**(New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.**
Date:	**March 22, 2011**
Consent Calendar:	**NO**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This bill proposes to establish a legislative study committee to examine New Hampshire RSAs to identify the statutory authority for each federal grant-in -aid program. The committee will solicit information from the legislative budget assistance office, dept of health and human services, dept of education, dept of environmental services, and other agencies and individuals with information and expertise relevant to the study. The study committee will recommend legislation to the general court to repeal or amend federal grant-in-aid programs. HB 590 is clearly constitutional.

Vote 12-2

Rep. Joseph F Krasucki
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION

HB590, (New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs. **OUGHT TO PASS.**

Rep. Joseph F Krasucki for the **Majority** of CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION. This bill proposes to establish a legislative study committee to examine New Hampshire RSAs to identify the statutory authority for each federal grant-in -aid program. The committee will solicit information from the legislative budget assistance office, dept of health and human services, dept of education, dept of environmental services, and other agencies and individuals with information and expertise relevant to the study. The study committee will recommend legislation to the general court to repeal or amend federal grant-in-aid programs. HB 590 is clearly constitutional. **Vote 12-2.**

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Const. Review

BILL NUMBER: ~~HCR 19~~ ~~HCR~~ HB 590

TITLE: affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire

DATE: 3-22-2011 **CONSENT CALENDAR:** YES ☐ NO ☒

☒ **OUGHT TO PASS**

☐ **OUGHT TO PASS W/ AMENDMENT**

☐ **INEXPEDIENT TO LEGISLATE**

☐ **INTERIM STUDY** (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

HB-590 proposes to establish a Legislative Study Committee to examine New Hampshire RSAS to identify the statutory authority for each Federal Grant in Aid Program. The Study Committee will ~~make~~ recommend Legislation to the General Court to repeal or amend federal Grant in Aid Programs. The Committee will solicit information from the Legislative Budget Assistance Office, Dept. of Health & Human Services, Dept. of Education, Dept. of Environmental Services, other agencies and individuals with information & expertise relevant to the study.

HB-590 is clearly Constitutional

COMMITTEE VOTE: 12-2 OTP/A

RESPECTFULLY SUBMITTED:

Rep. ~~Rep Reckord~~ Rep Krasucki
For the Committee

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rev. 02/01/07 - Yellow

HB 590 Maj Rep
OTP
12-2
Rep Joseph Krasucki

This bill proposes to establish a legislative study committee to examine New Hampshire RSAs to identify the statutory authority for each federal grant-in -aid program. The committee will solicit information from the legislative budget assistance office, dept of health and human services, dept of education, dept of environmental services, and other agencies and individuals with information and expertise relevant to the study. The study committee will recommend legislation to the general court to repeal or amend federal grant-in-aid programs. HB 590 is clearly constitutional.

Majority Blurb HB-590 **Constitutional Committee**

HB-590 proposes to establish a Legislative Study Committee to examine New Hampshire RSA's to identify statutory authority for each Federal Grant in Aid Program.

The Study Committee will recommend Legislation to the General Court.

The Committee will solicit information from the Legislative Budget Assistance Office, Dept. of Health & Human Services, Dept. of Education, Dept. of Environmental Services, other agencies and individuals with information and expertise relevant to the study.

HB-590 is clearly Constitutional.

REGULAR CALENDAR

March 22, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION to which was referred HB590,

Original: House Clerk
Cc: Committee Bill File

AN ACT (New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs. Having considered the same, and being unable to agree with the Majority, report with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Gary B Richardson

FOR THE MINORITY OF THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

MINORITY
COMMITTEE REPORT

Committee:	**CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION**
Bill Number:	**HB590**
Title:	**(New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.**
Date:	**March 22, 2011**
Consent Calendar:	**NO**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

This bill would create a study committee to assess all federal grants-in-aid and "make recommendations as to the most expeditious and practical means of modifying (them) to make feasible the transition to support entirely from state, local and /or privates sources of funding". The sponsors failed to identify any particular grant-in-aid that is alleged to be unconstitutional or the number of grants-in-aid that would be placed in jeopardy. By characterizing grants-in-aid as "bribes", it is clear that this bill is motivated by ideology rather than honest constitutional concerns since grants-in- aid have been repeatedly upheld by judicial decisions. E.g. New York v. United States 488U.S.1041 (1992).

Rep. Gary B Richardson
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION

HB590, (New Title) expressing the position of the New Hampshire general court that the offering and acceptance of federal grants-in-aid relating to matters not included among the defined powers of the federal government is unconstitutional under the state and federal Constitutions and establishing a committee to review state participation in federal grant-in-aid programs.

INEXPEDIENT TO LEGISLATE.

Rep. Gary B Richardson for the **Minority** of CONSTITUTIONAL REVIEW & STATUTORY RECODIFICATION. This bill would create a study committee to assess all federal grants-in-aid and "make recommendations as to the most expeditious and practical means of modifying (them) to make feasible the transition to support entirely from state, local and /or privates sources of funding". The sponsors failed to identify any particular grant-in-aid that is alleged to be unconstitutional or the number of grants-in-aid that would be placed in jeopardy. By characterizing grants-in-aid as "bribes", it is clear that this bill is motivated by ideology rather than honest constitutional concerns since grants-in- aid have been repeatedly upheld by judicial decisions. E.g. New York v. United States 488U.S.1041 (1992).

Original: House Clerk
Cc: Committee Bill File

224-7791

MINORITY REPORT

Rep Richardson

COMMITTEE: Constitutional Review

BILL NUMBER: HB 590

TITLE:

DATE: 3/22/11 **CONSENT CALENDAR:** YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS W/ AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

Minority Report: HB 590 would create a study committee to assess all federal grants-in-aid and "make recommendations as to the most expeditious and practical means of modifying (them) to make feasible the transition to support entirely from state, local and/or private sources of funding". The sponsors failed to identify any particular grant-in-aid that is alleged to be unconstitutional or the number of grants in-aid that would be placed in jeopardy. By characterizing grants-in-aid as "bribes", it is clear that this bill is motivated by ideology rather than honest constitutional concerns since grants-in-aid have been repeatedly upheld by judicial decisions, e.g. New York v. United States 488 U.S. 1041 (1992).

COMMITTEE VOTE:

RESPECTFULLY SUBMITTED,

Rep _____
For the Minority

• Copy to Committee Bill File

Rev. 02/01/07 - Blue

HB 590 Minority Rep
ITL
Rep. Gary Richardson

This bill would create a study committee to assess all federal grants-in-aid and "make recommendations as to the most expeditious and practical means of modifying (them) to make feasible the transition to support entirely from state, local and /or privates sources of funding". The sponsors failed to identify any particular grant-in-aid that is alleged to be unconstitutional or the number of grants-in-aid that would be placed in jeopardy. By characterizing grants-in-aid as "bribes", it is clear that this bill is motivated by ideology rather than honest constitutional concerns since grants-in- aid have been repeatedly upheld by judicial decisions. E.g. New York v. United States 488U.S.1041 (1992).