

# Bill as Introduced

SB 1-FN - AS INTRODUCED

2011 SESSION

11-0515  
06/01

SENATE BILL ***1-FN***

AN ACT eliminating the automatic continuation requirement for public employee collective bargaining agreements.

SPONSORS: Sen. Odell, Dist 8; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bradley, Dist 3; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forrester, Dist 2; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. Morse, Dist 22; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9

COMMITTEE: Public and Municipal Affairs

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ANALYSIS

This bill eliminates the requirement that the terms of a collective bargaining agreement automatically continue if an impasse is not resolved at the time of the expiration of such agreement.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**SB 1-FN - AS INTRODUCED**

11-0515

06/01

**STATE OF NEW HAMPSHIRE**

*In the Year of Our Lord Two Thousand Eleven*

**AN ACT** eliminating the automatic continuation requirement for public employee collective bargaining agreements.

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

- 1 1 Repeal. RSA 273-A:12, VII, relative to collective bargaining agreements, is repealed.
- 2 2 Effective Date. This act shall take effect upon its passage.

LBAO  
11-0515  
12/29/10

**SB 1-FN - FISCAL NOTE**

**AN ACT**            eliminating the automatic continuation requirement for public employee collective bargaining agreements.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

**SB 1 FISCAL NOTE**

AN ACT           eliminating the automatic continuation requirement for public employee collective bargaining agreements.

**FISCAL IMPACT:**

The Public Employee Labor Relations Board states this bill may have an indeterminable fiscal impact on state, local, and county revenues and expenditures in FY 2011 and each fiscal year thereafter. The New Hampshire Association of Counties states this bill may decrease county expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter. The New Hampshire Municipal Association states this bill will decrease local expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter.

**METHODOLOGY:**

The Public Employee Labor Relations Board states this bill is a repeal of RSA 273-A:12, VII, a law requiring inclusion of an automatic continuation clause in collectively bargained agreements with public employees. The Board states under current law, when such agreements expire their terms and conditions pay plans, but not cost of living increases, shall continue in force and effect until a new agreement shall be executed. The Board states this repeal could result in a lack of or delay in wage increases for some public employees in the event any impasse is not resolved by the expiration date of any existing agreement that does not have a valid negotiated evergreen clause and will likely lead to a decrease in disputes and litigation concerning RSA 273-A:12, VII. The Board states it is unable to estimate the fiscal impact of this repeal due to lack of available data as it does not audit or assess the fiscal impact of collective bargaining agreements and it is uncertain how parties to statutory collective bargaining will respond.

The New Hampshire Municipal Association states this bill eliminates the requirement that the terms of a collective bargaining agreement for public employees continue automatically if an impasse is not resolved at the time of the expiration of such an agreement. The Association states elimination of this requirement will result in a discontinuation of automatic pay increases and allow public employee compensation to remain constant until a new contract is negotiated. The Association states this repeal will reduce local expenditures in FY 2012 and in each fiscal year thereafter by an indeterminable amount.

The New Hampshire Association of Counties states this bill repeals the state mandated evergreen provision and would effectively remove automatic pay step increases for public

employees which cause county expenditures to increase without local spending approval. The Association further states this bill will decrease county expenditures as it will decrease time and resources spent on collective bargaining agreement negotiations. The Association cannot predict the fiscal impact on county expenditures as actual savings will depend on decisions made by specific counties.

The Department of Administrative Services states it anticipates no fiscal impact as a result of this repeal as the state of New Hampshire has specific evergreen language in its three current collective bargaining agreements (State Employees' Association, the New England Police Benevolent Association, and the New England Troopers Association), which would remain in force until new agreements are negotiated.

The Judicial Branch states this bill would repeal RSA 273-A:12, VII eliminating the automatic continuation requirement for public employee collective bargaining agreements. The Branch states it currently has two collective bargaining agreements: one with the State Employees' Association of New Hampshire covering over three hundred non-judicial employees; and other with Teamsters Local 633 covering over one hundred court security officers. The Branch states as both agreements are in effect until June 30, 2011 or until such time a new agreement is executed, there will be no fiscal impact as a result of this repeal.

CHAPTER 3  
SB 1-FN-LOCAL - FINAL VERSION

2011 SESSION

11-0515  
06/01

SENATE BILL        ***1-FN-LOCAL***

AN ACT            eliminating the automatic continuation requirement for public employee collective bargaining agreements.

SPONSORS:        Sen. Odell, Dist 8; Sen. Barnes, Jr., Dist 17; Sen. Boutin, Dist 16; Sen. Bradley, Dist 3; Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. De Blois, Dist 18; Sen. Forrester, Dist 2; Sen. Forsythe, Dist 4; Sen. Gallus, Dist 1; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Luther, Dist 12; Sen. Morse, Dist 22; Sen. Rausch, Dist 19; Sen. Sanborn, Dist 7; Sen. Stiles, Dist 24; Sen. White, Dist 9

COMMITTEE:       Public and Municipal Affairs

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ANALYSIS

This bill eliminates the requirement that the terms of a collective bargaining agreement automatically continue if an impasse is not resolved at the time of the expiration of such agreement.

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CHAPTER 3  
SB 1-FN-LOCAL - FINAL VERSION

11-0515  
06/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT           eliminating the automatic continuation requirement for public employee collective bargaining agreements.

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

3:1 Repeal. RSA 273-A:12, VII, relative to collective bargaining agreements, is repealed.

3:2 Effective Date. This act shall take effect upon its passage.

Approved: Enacted in accordance with Article 44, Part II, of N.H. Constitution, without signature of the Governor, March 1, 2011.

Effective Date: March 1, 2011



# Amendments

Sen. Merrill, Dist. 21  
January 11, 2011  
2011-0011s  
06/01

Amendment to SB 1-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 Resolution of Disputes. RSA 273-A:12, VII is repealed and reenacted to read as follows:

4 VII. For collective bargaining agreements entered into after the effective date of this section,  
5 if the impasse is not resolved at the time of the expiration of the parties' agreement, the agreement  
6 shall terminate. If such impasse remains unresolved 2 years after the expiration of the parties'  
7 agreement, the terms of such agreement shall be reinstated until a new agreement shall be executed.



2011-0011s

AMENDED ANALYSIS

This bill requires the terms of a collective bargaining agreement to terminate if an impasse is not resolved at the time of the expiration of such agreement. This bill requires the reinstatement of the provisions of the terminated agreement if no new agreement is reached within 2 years.

# Committee Minutes

*ATTENDANCE*

**SENATE CALENDAR NOTICE  
PUBLIC AND MUNICIPAL AFFAIRS**

- ✓ Senator John Barnes, Jr. Chairman
- ✓ Senator Jeanie Forrester V Chairman
- ✓ Senator David Boutin
- ✓ Senator Amanda Merrill
- ✓ Senator Nancy Stiles

*START : 10:00 Am*  
*STOP : 12:08 pm*

For Use by Senate Clerk's Office ONLY

Bill Status

Docket

Calendar

Proof:  Calendar  Bill Status

Date: January 5, 2011

**HEARINGS**

**Tuesday**

**1/11/2011**

**PUBLIC AND MUNICIPAL AFFAIRS**

**State House 100**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** Please Note Room Change from LOB 101 to State House 100.

- 9:00 AM SB11-L relative to the police commission in the town of Hooksett.
- 9:20 AM SB16 relative to amendments to warrant articles.
- 9:45 AM SB15 relative to the duties of tax collectors and town clerks.
- 10:00 AM SB1-FN-L eliminating the automatic continuation requirement for public employee collective bargaining agreements.

**Sponsors:**

**SB1-FN-L**

- |                     |                       |                   |                       |
|---------------------|-----------------------|-------------------|-----------------------|
| Sen. Bob Odell      | Sen. John Barnes, Jr. | Sen. David Boutin | Sen. Jeb Bradley      |
| Sen. Peter Bragdon  | Sen. Sharon Carson    | Sen. Tom De Blois | Sen. Jeanie Forrester |
| Sen. James Forsythe | Sen. John Gallus      | Sen. Fenton Groen | Sen. Gary Lambert     |
| Sen. Jim Luther     | Sen. Chuck Morse      | Sen. Jim Rausch   | Sen. Andy Sanborn     |
| Sen. Nancy Stiles   | Sen. Raymond White    |                   |                       |

**SB11-L**

- |                   |                       |                 |                  |
|-------------------|-----------------------|-----------------|------------------|
| Sen. David Boutin | Sen. John Barnes, Jr. | Rep. David Hess | Rep. Molly Smith |
| Rep. Todd Smith   | Rep. Frank Kotowski   |                 |                  |

**SB16**

- |                       |                       |                    |                     |
|-----------------------|-----------------------|--------------------|---------------------|
| Sen. John Barnes, Jr. | Rep. Kathleen Hoelzel | Sen. David Boutin  | Rep. Norman Major   |
| Rep. Joe Duarte       | Rep. Shawn Jasper     | Rep. Gene Chandler | Sen. Sharon Carson  |
| Sen. James Forsythe   | Sen. John Gallus      | Sen. Gary Lambert  | Sen. Amanda Merrill |
| Sen. Bob Odell        | Sen. Russell Prescott | Sen. Nancy Stiles  | Sen. Raymond White  |

**SB15**

- Sen. Peter Bragdon

# Public and Municipal Affairs Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Deb Martone, Legislative Aide

**RE:** Hearing report on SB 1 – FN - AN ACT eliminating the automatic continuation requirement for public employee collective bargaining agreements.

**HEARING DATE:** January 11, 2011

**MEMBERS OF THE COMMITTEE PRESENT:** Senators Barnes, Forrester, Merrill, Boutin and Stiles.

**MEMBERS OF THE COMMITTEE ABSENT:** No one

**Sponsor(s):** Senators Odell, Barnes, Boutin, Bradley, Bragdon, Carson, De Blois, Forrester, Forsythe, Gallus, Groen, Lambert, Luther, Morse, Rausch, Sanborn, Stiles and White.

**What the bill does:** eliminates the requirement that the terms of a collective bargaining agreement automatically continue if an impasse is not resolved at the time of the expiration of such agreement.

**Who supports the bill:** Senators Odell, Barnes, Boutin, Bradley, Bragdon, Carson, De Blois, Forrester, Forsythe, Gallus, Groen, Lambert, Luther, Morse, Rausch, Sanborn, Stiles and White; Representatives Shawn Jasper, Kathleen Hoelzel, Seth Cohn and Jeffrey St. Cyr; Richard Nichols, Town of Hampton; Richard Bauries, Town of Swanzey; James Carnie, Monadnock Regional School District; Mark Joyce, NH School Administrators Association; Bill Dermody, Russell Marcoux, Jim Scanlon and Christopher Bundazian, Town of Bedford; Paula Baumuel, City of Laconia; Steve Fournier, Town of North Hampton; Betsy Miller, NH Association of Counties; Guy Scaife, Town of Milford; Kevin Smith and Ellen Kolb, Cornerstone Action; Debra Livingston and James Elsesser, Fall Mountain Regional School District; Attorney Pierre Chabot, Wadleigh, Starr & Peters, P.L.L.C.; David Juvet, Business and Industry Association; Attorney Ted Comstock, NH School Boards Association; Frank Bourque, Town of Raymond; Peter Buckingham, Raymond Taxpayers; Attorney Cordell Johnston, NH Municipal Association;

Vincent Paul Migliore; George Lambert, Litchfield; Harriet Cady, Deerfield; Dianna Fogarty, Portsmouth.

Who opposes the bill: Senator Amanda Merrill, Representative Marjorie Porter; Rick Twombly, Arthur Pippo and Rhonda Wesolowsky, NEA/NH; Laura Hainey and Attorney Terri Donovan, AFT-NH; Scott McGilvray, Manchester Education Association; Andrew Slipp, USW; Bill Graham, NH Troopers Association; Emmanuel Krasner, Dover Professional Employee Association; Jess Clark and Mark MacKenzie, NH AFL-CIO; Dave Lang, Professional Firefighters of NH; Jay Ward and Diana Lacey, SEA; Jack Nguyen; Dennis Caza, Teamsters; Ed Foley, Sheet Metal Workers Local 17-Hooksett; Joe Casey, IBEW Local Union 490;

Summary of testimony received:

- Senator Odell introduced the legislation and explained the bill will have an extraordinarily important impact on the state's municipalities, school districts and counties, and the taxpayers that support those local government entities.
- The bill corrects a mistake made by the Legislature during the 2008 session and removes an unfunded mandate that was foisted upon local governments at that time.
- The current evergreen law requires the continuation of existing contract terms during the interim between the expiration of an existing contract and the adoption of a new agreement, meaning that although a contract has ended, pay increases and other monetary benefits such as educational credit raises must be continued until a new contract is reached.
- These automatic increases can result in long-term expenses on the employer that were never approved and were not budgeted by the local government at the time of contracting.
- This clause tilts the negotiations in favor of public employee labor unions at the expense of the taxpayer.
- SB 1 will repeal this mandate and allow bargaining units and employers to negotiate on a fair and equal basis, and will ensure that every entity is treated equally by the repeal.
- It is Senator Odell's intention that SB 1 become law upon passage and that it apply to all local government entities, including those entities which have

negotiated contracts while the evergreen law was in effect.

- SB 1 will not prevent a bargaining unit and a local government entity from agreeing to include an evergreen provision in a labor contract if that is what they choose to negotiate. An evergreen clause can be negotiated by the contracting parties who must jointly decide whether or not to include it in a new contract.
- This is an issue of local control. The Legislature should not dictate the terms of contracts from Concord, and should not be forcing the costs of ongoing pay and benefit increases upon counties, municipalities and school districts.
- Senator Odell encouraged quick action on the bill, without amendment.
- Senator Forrester asked why the bill had a fiscal note. Senator Odell indicated the bill had no impact on state spending, and was surprised to see it.
- Representative Jasper echoed Senator Odell's comments. The Legislature made a mistake interfering with collective bargaining agreements, which created problems on the local level. Voters hesitate to pass contracts which include an evergreen clause.
- Senator Merrill asked if the Town of Hudson enacted an evergreen clause. Representative Jasper replied they had not.
- Senator Merrill introduced Amendment #2011-0011s. If the impasse is unresolved two years after the expiration of the agreement, the previous agreement would be reinstated. This gives the parties two extra years to renegotiate. The amendment presents a reasonable compromise. It sets up a timeframe in which the evergreen clause is put off for two years for further negotiations.
- Senator Stiles wondered if the evergreen clause was not included at the local level, but forced by the state, why wait out the two years? Senator Merrill indicated by having the two years built in, there is an incentive to reach agreement. She believes it brings more balance between the parties.
- Senator Forrester asked how the term two years was chosen. Senator Merrill replied that it just seemed reasonable.
- Attorney Cordell Johnston testified the NH Municipal Association very much supports the bill. It is a top legislative priority of the membership.



- The existing law essentially makes every collective bargaining agreement last forever. Thus, employee compensation and costs to taxpayers can only be ratcheted up.
- Voters have been unwilling to approve collective bargaining agreements with scheduled pay increases when they know those increases will continue indefinitely.
- Repealing this law will not leave public employees unprotected. Under NH law, when a public employee collective bargaining agreement expires, the employer may not unilaterally change the terms of employment while a new agreement is being negotiated. Public employers must continue to pay employees at the same level—but without pay increases—until a new agreement is reached.
- RSA 273-A:12, VII should be repealed as soon as possible.
- Senator Barnes asked Attorney Johnston if he wished to comment on the amendment. Attorney Johnston indicated the amendment was a compromise, that it is better than the current law, but that the original bill is even better. He urged the Committee to leave the bill as is.
- Mark MacKenzie, President of the AFL-CIO, indicated he was part of the group who looked at this issue previously. There was a great deal of controversy when the law changed in 2008. He can understand why people are upset.
- Mr. MacKenzie urged the Committee to slow down. What are they trying to do? He believes there is a good reason to take a second look before the law is repealed.
- Senator Stiles inquired why this should be directed by the state. Mr. MacKenzie replied there is a chronic problem in collective bargaining, and that the state needs to take an active role to keep a balance.
- Emmanuel Krasner of the Farmington/Dover Professional Employee Association stated SB 1 is an unwarranted interference, after the fact, with contracts that people have already negotiated. It deprives people of rights for which they have negotiated. It is fundamentally unfair, and the repeal should not affect any contracts in effect.
- Attorney Ted Comstock, a labor relations specialist for the School Boards Association, stated SB 1 is a very important bill which their association fully supports. It has a huge impact on bargaining and taxpayers.

- Current law is not good public policy. Automatic pay increases have not been negotiated.
- There is a disincentive to negotiate. School boards have done their best to deal with the impact of evergreen law. The law needs to be repealed.
- Attorney Comstock also submitted testimony by Attorney Kathleen Peahl urging the Committee to pass SB 1.
- Dave Lang, President of the Professional Firefighters of NH, stated that currently it is true, there is no explicit ending process in negotiations. If there is no resolution, it goes to impasse and fact finding. A recommended settlement is not binding on either party. He described it as a merry-go-round—constantly going around and around and never stopping.
- Mr. Lang referenced written testimony submitted by Matt Newton, President of the Professional Firefighters of Hampton. They have been without a contract for six years and the town has suffered. Mr. Newton urged opposition to the repeal.
- Mr. Lang urged the Committee to consider Senator Merrill's amendment.
- Richard Nicols, Chairman of the Hampton Board of Selectmen, spoke in favor of SB 1. All contracts are "status quo" since 2006.
- During 2010 negotiations, the Town took the position they would only enter into tentative agreements if there were a provision that would eliminate or suspend the pay scale, thus wage increases would be limited to one time and/or cost of living driven increases, shielding the town from the impact of HB 1436.
- Eliminating the automatic continuation requirement will serve to enhance equality at the bargaining table, as well as improve the probability of reaching tentative agreements and gaining approval of the voters.
- Peter Buckingham, a teacher and Budget Committee member in Raymond, urged support of the bill. The evergreen clause forces voters to vote on issues they don't have a choice on.
- Representative St. Cyr serves on his local school board. He's concerned with automatic step increases. Current law makes it difficult for local bodies to negotiate contracts with evergreen clauses. He supports SB 1.
- Diana Lacey, the President of SEA, has worked on this issue for many years. She is a contract negotiator for the state. She indicated she has

witnessed firsthand the stalled tactics that management uses.

- When the law was amended in 2008 it eliminated the abuses of the collective bargaining processes, leveled the playing field and turned the tide for taxpayers.
- Ms. Lacey indicated a substantive incentive is needed to reach contract resolution. She wondered where the good faith is in this effort. What is the state's interest in this? What happened to negotiators doing their job and getting the people's work done? She opposes SB 1.
- Debra Livingston, Superintendent of the Fall Mountain Regional School District, spoke in favor of SB 1. If current law remains in effect, it removes bargaining changes for their school district. It would result in unintended consequences.
- Jim Elsesser, Chairman of the Fall Mountain Regional School Board, has been negotiating contracts for fifteen years. They have not had a successor agreement to trigger the evergreen clause. He recommends passage of the bill.
- Rhonda Wesolowsky of NEA/NH, representing teachers, opposes the bill. Historically, teachers start at a lower pay, approximately \$27,500. Their step schedule is not automatic, it is performance based. Most teachers are not on step, but will get an increase if there is an evergreen clause.
- Jim Scanlon, Bedford Town Councilor, spoke in favor of SB 1. Six out of the seven town councilors favor the bill. Evergreen continuance is an economic anachronism. Don't let it continue.
- Rick Twombly of NEA/NH stated that since the passage of the evergreen legislation in 2008, 115 contracts have been ratified statewide. He submitted a list for the Committee. He wants to dispel the myth that evergreen spells the end of contract negotiations.
- Mr. Twombly also submitted a copy of the NH Public Employee Labor Relations Board ruling in the case of the Education Association of Pembroke v. the Pembroke School District.
- Rather than passing this bill unamended, Mr. Twombly indicated he thought the Legislature would not want to disturb the ability of locals to negotiate an evergreen clause.
- Senator Stiles asked Mr. Twombly if he knew how many contracts with an evergreen clause *were not* ratified. He replied that he was aware of at least

two. Senator Stiles then asked Mr. Twombly to supply that number to the Committee.

- Mark Joyce, speaking on behalf of the NH School Administrators Association urged strong support of the bill as proposed. With approval of SB 1, evergreen clauses will cease to exist and cease to be applicable. Sen. Merrill's amendment is complex and unworkable for school districts.
- Richard Bauries, President of the Monadnock Schools' Taxpayers, has a problem with evergreen. Healthcare costs are tied to evergreen clauses, and they are both unsustainable and wrong. It results in both front-loading and back-loading contracts. How will we pay for it? We cannot afford it.
- Laura Hainey, AFT-NH President, stated opposition to the bill and supports the amendment. She stressed to the Committee that if they chose to repeal RSA 273-A:12, VII, that they give parties time to renegotiate the impact of the change.
- Attorney Terri Donovan, Director of Field Services and Collective Bargaining for AFT-NH, also opposes the repeal of the evergreen law. She stated the enactment of the law did not provide automatic protections. Current law does not give an unfair advantage to unions. This is an issue of local control. To repeal the law outright places the Legislature at the bargaining table.
- Attached to Attorney Donovan's testimony is a copy of the articles which will appear on the official ballot of the 2010 Timberlane Regional School District Warrant.
- Betsy Miller of the NH Association of Counties testified in support of SB 1, and opposes evergreen. This bill gives local control back to taxpayers.
- Former Representative Harriet Cady of Deerfield stated that her town has not passed any contracts since the inception of evergreen. It is a union negotiation tool, and should not be law. It is also a violation of Article 28A.
- Scott McGilvray of the Manchester Education Association, and a teacher at Memorial High School for twenty-three years, took a personal day away from his classroom to come and testify in opposition to the bill. His association represents 1200 teachers, and he has negotiated many contracts. He indicated the focus of all contracts centers on cost of living, healthcare and working conditions. Over half of their teachers do not do step increases.

- Mr. McGilvray's association reopened their current contract at the halfway point of a three-year agreement and fairly bargained concessions of healthcare and cost of living. They gave back \$1.2M to the City of Manchester.
- Manchester teachers experience a high rate of turnover due to low starting pay and difficult working conditions. There is an incentive to negotiate fairly.
- James Carnie, member of the Monadnock School Board since 1982, is concerned about the position school boards have been put in. He'd like to keep some aspects of evergreen, such as step increases, but not be bound by long contracts. The state is mandating through evergreen that school districts continue with contracts that were never negotiated. No state unfunded mandates—repeal evergreen.
- Bill Dermody, Vice Chair of the Bedford Town Council, voiced support of the repeal of the evergreen clause. He urged rapid passage of the bill, to level the playing field for contracts currently on the table this year.
- Steve Fournier, Hampton Town Administrator, supports repeal of the law. The costs of evergreen are not only step increases. They are revised healthcare plans as well.
- Guy Scaife, Milford Town Administrator, supports SB 1. His responsibilities include bargaining, and he understands the ramifications of not having a contract. There is an impact to employee morale. The proposed amendment would be difficult to administer and is unnecessary.
- Dianna Fogarty, Portsmouth Human Resources Director, supports SB 1. With 850 employees, 84% of their budget is personnel costs, including salary and wages. Evergreen ties the hand of governing bodies. Passage of this bill will benefit taxpayers.

**Action:** A motion of Ought to Pass on Amendment #2011-0011s made by Senator Merrill failed without a second on the motion. A motion of Ought to Pass on the bill, made by Senator Barnes and seconded by Senator Stiles passed by a vote of 4-1. Senator Barnes will report the bill out of committee.

**Follow-up:** Rick Twombly, NEA/NH, to supply to Senator Stiles the number of contracts with an evergreen clause that *were not* ratified.

dam

[file: SB 1 report]

Date: January 12, 2011

# Speakers

# Senate Public and Municipal Affairs Committee: Sign-In Sheet

①

Date: January 11, 2011      Time: 10:00 a.m. Public Hearing on SB 1-FN

SB 1-FN

Eliminating the automatic continuation requirement for public employee collective bargaining agreements.

Name	Representing	Please Check				
		Support	Oppose	Speaking?	Yes	No
✓ RICHARD NICIBUS	TOWN of Hampton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ RICHARD BAURIS	" of SWANZEE	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ [unclear]	Manchester Reg. Sch. Dist. " of [unclear]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ RAY WHITE	SEN DISTRICT 9	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Sen. Bragdon	Dist. 11	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Sen. Bradley	Dist. 3	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ MARK JOYCE	NHSAA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ RICK TROMBLY	NEA-NH	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Laura Hainey	AFT-UIT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ TERRI DONOVAN	AFT-NH	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ BILL DERMODY	TOWN OF BEDFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ SENATOR JOHN GALUS	DISTRICT 1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Sen Jim Rausch	District 19	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ PAULA BAUMGEL	CITY OF LACONIA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ RUSSELL MARCOW	Bedford	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Steve Fournier	Town of North Hampton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Betsy Miller	NH Assn. of Counties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Guy Scatfe	TOWN of Milford	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ SCOTT McGUIRE	MANCHESTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>













# Senate Public and Municipal Affairs Committee: Sign-In Sheet

⑦

Date: January 11, 2011      Time: 10:00 a.m. Public Hearing on SB 1-FN

SB 1-FN

Eliminating the automatic continuation requirement for public employee collective bargaining agreements.

Name	Representing	Support	Oppose	Please Check		
Ed Foley	Sheet metal Worker LOCAL 17 Hocksett	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Joe Casey	Ipswich 490	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Rep. Timothy Horvath	Strafford 7	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Rep. Seth Cohn	MERRIMACK 10	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
George Lambert	Litchfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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## Senate Public and Municipal Affairs Committee: Sign-In Sheet

Date: January 11, 2011      Time: 10:00 am      Public Hearing on SB 1-FN

SB 1-FN      eliminating the automatic continuation requirement for public employee collective bargaining agreements.

Name	Representing	Please Check				
✓ Rep Shawn Jasper	House Leadership Town of Hudson	Support <input checked="" type="checkbox"/>	Oppose <input type="checkbox"/>	Speaking? <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
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# Testimony



**Testimony by Senator Bob Odell  
to the Senate Committee on Public and Municipal Affairs  
January 11, 2011**

Good morning, Mr. Chairman and members of the Senate Public and Municipal Affairs Committee.

My name is Bob Odell. I am honored to represent State Senate District 8 which is comprised of 20 municipalities in three counties: Sullivan, Cheshire and Merrimack.

It is a privilege for me to be before you to introduce Senate Bill 1 – commonly known as the “evergreen repeal bill” – which is cosponsored by 17 of my Senate colleagues.

Though the legislative language is short, this bill will have an extraordinarily important impact on the state’s municipalities, school districts, and counties, and the taxpayers that support those local government entities.

This bill corrects, what I believe, was a mistake made by the legislature during the 2008 session and removes an unfunded mandate that was foisted upon local governments at that time.

The current evergreen law requires the continuation of existing contract terms during the interim between the expiration of an existing contract and the adoption of a new agreement.

This means that although a contract has ended, pay increases and other monetary benefits such as educational credit raises, for example, must be continued until a new contract is reached.

These automatic increases can result in long-term expenses on the employer that were never approved and were not budgeted by the local government at the time of contracting.

At a time when we’re all being asked to tighten our belts, this clause tilts the negotiations in favor of public employee labor unions at the expense of the taxpayer.

Senate Bill 1 will repeal this mandate and allow bargaining units and employers to negotiate on a fair and equal basis.

It is my intention, as the Prime Sponsor, that SB 1 become law upon passage and that it apply to all local government entities. That includes those entities which have negotiated contracts while the evergreen law was in effect.

Senate Bill 1 will ensure that every entity is treated equally by the repeal.

26 A 2: 2

To be clear, however, Senate Bill 1 will not prevent a bargaining unit and a local government entity from agreeing to include an evergreen provision in a labor contract if that is what they choose to negotiate. That is the way it should be – like all other parts of a labor agreement – an evergreen clause can be negotiated by the contracting parties who must jointly decide whether or not to include it in a new contract.

This is an issue of local control. The legislature should not dictate the terms of contracts from Concord, and should certainly not be forcing the costs of ongoing pay and benefit increases upon counties, municipalities and school districts.

With local governments facing upcoming deadlines for budget planning and approvals, I encourage the committee to take executive action quickly on this bill and send it to the Senate floor where I anticipate a quick and positive vote.

Thank you for your attention and support of this very important bill.



## **New Hampshire Municipal Association**

January 11, 2011

Hon. John S. Barnes, Jr., Chairman  
Senate Public & Municipal Affairs Committee  
State House Room 302  
Concord, New Hampshire 03301

*Re: SB 1*

Dear Senator Barnes:

I write to express the strong support of the New Hampshire Municipal Association for SB 1, which would repeal RSA 273-A:12, VII, a statute that mandates the continuation of all terms of an expired public employee collective bargaining agreement until a new agreement is reached. The repeal of this statute is one of the Municipal Association's highest priorities, adopted overwhelmingly as a legislative policy for 2011-12 at our legislative policy conference in September.

It is common sense that when two parties enter into an agreement that is to last a particular period of time, the terms of the agreement are negotiated with due regard for prevailing conditions, economic and otherwise, and with an understanding that the terms are limited in time. If the parties agree to a series of pay increases over three years, this is because they agree that those increases are appropriate for that limited period. A municipal employer cannot predict economic conditions or its own personnel needs forever; that is why collective bargaining agreements have termination dates.

The existing law, enacted in 2008, violates this understanding by essentially making every collective bargaining agreement last forever. Salary increases negotiated at the beginning of the contract's term will continue indefinitely, regardless of changed conditions, unless the employer agrees to even greater increases in a new contract. Employee representatives will never have an incentive to negotiate an agreement that is less attractive than the expired agreement. Thus, employee compensation, and costs to taxpayers, can only be ratcheted up.

Municipal employers, labor unions, and citizens understand this, and that is significant factor behind a number of labor impasses that have occurred around the state since this law was passed. Voters have been understandably unwilling to approve collective bargaining agreements with scheduled pay increases when they know those increases will continue indefinitely. Although most of these situations have involved

Hon. John S. Barnes, Jr.

January 11, 2011

Page 2 of 2

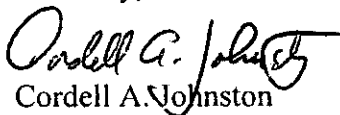
school districts, it is only a matter of time before cities and towns begin to experience the same problems.

Repealing this law will not leave public employees unprotected. Under longstanding New Hampshire law, when a public employee collective bargaining agreement expires, the employer may not unilaterally change the terms of employment while a new agreement is being negotiated. This rule, known as the status quo doctrine, requires public employers to continue to pay employees at the same level—but without pay increases—until a new agreement is reached. This ensures that employees can never be required to take a step backward.

For these reasons, we believe RSA 273-A:12, VII should be repealed as soon as possible, and we urge the committee to recommend SB 1 as Ought to Pass.

Thank you very much for your consideration, and I would be happy to answer any questions you may have.

Sincerely,



Cordell A. Johnston  
Government Affairs Counsel

Testimony of Emmanuel Krasner January 11, 2011

SB-1 is a bad idea for different kinds of reasons. First, it is an unwarranted interference, after the fact, with contracts that people have already negotiated. Second, it deprives people of rights for which they have negotiated.

On the first point, the law which SB-1 is designed to rescind, RSA 273-A:12, VII, did not affect any existing Collective Bargaining Agreements when it was passed. It only affected agreements which were made after the law became effective when both sides knew that the Evergreen Law was in place. Each side knew what it was bargaining and each side knew what the playing field looked like. Management knew that it might have to pay step raises if a new contract wasn't reached and management was free to negotiate concessions from the employee representative to offset that. I am sure that management took that action. Certainly, you or I would if we were sitting in the manager's chair negotiating a contract.

So both sides negotiated their contract knowing that the Evergreen Clause was there and taking it into account. Notice was placed in the warrant articles before Town Meetings so voters knew they were committing themselves to pay steps if the contract expired and there was no new contract. Now, the passage of SB-1 would change the terms of the contracts after people had negotiated their agreements with the fact of the evergreen clause in mind. It would be unfair and improper, because one side would still have whatever concessions it had negotiated, knowing the Evergreen Clause was there, and the other side, having made the concessions, now would lose the benefit of the Evergreen Law. If the new law is passed, it should have a provision, just the way SB 1496 did, that would make it apply only to new contracts being negotiated after its passage.

The second issue, and I believe the more important one, is that the old rule violated basic contract law. Under the old rule, an employer might decide that an employee with more experience was more valuable, than an employee with less experience. The employer could elect to pay someone with more experience a higher wage or salary, because they were more valuable. That is not a decision an employer has to make, but it is a decision that most employers have made. Under the old law, a public employer could decide that an employee with eight years of experience was more valuable, than someone with seven years of experience. It could decide to pay someone who had eight years of experience more money, than they paid someone with seven years experience. When there is a Collective Bargaining Agreement, the employer is not saying I'm going to pay Joe Jones a certain amount of money, or Debbie Smith a certain amount of money. The employer is saying I am going to pay an employee with eight years of experience more money, than an employee with seven years of experience, because that employee is more valuable to me. Once the employer has made that decision and enters into a contract, the employer has made a promise that employees with eight years of experience will be paid more than employees with seven years. That is a deal. That is an agreement. However, under the proposed rule, the employer could, if the contract expired, pay an employee with eight years of experience the same amount it pays an employee with seven years of experience. If the impasse continued into another year, then an employee with nine years of experience would still be getting paid the same amount as an employee with seven years experience. The employer would be getting the benefit of the more valuable employee, but would not be paying for it. The employee would be providing service based on whatever greater experience and expertise

developed over a year or two years, but not get paid for it as agreed under the contract.

Someone may argue that they don't think that an employer really doesn't benefit, because an employee has more experience. That may be. If an employer doesn't think experience is valuable, then the employer should not negotiate a pay system that rewards experience. It can negotiate a different kind of pay system. But if the employer does negotiate a pay scale that says experience is valuable, then the employer should be required to live up to its word. The Evergreen Law says that – live up to your word. If the contract has been expired for two years and you are supposed to be living by the contract in all other ways, then you should live by the contract in this way, too. If you have agreed to pay somebody with eight years of experience a certain amount of money, pay him that. Live up to your word.

So, SB-1 is fundamentally unfair in two ways. One is, it changes the rules after people have made their deal. Secondly, it lets one side break its word and not live up to its contract. If there is one thing we should be encouraging people to do in this day, it is to keep their word.

Thank you.



**STATE OF NEW HAMPSHIRE**  
**PUBLIC EMPLOYEE LABOR RELATIONS BOARD**

**Education Association of Pembroke**

**v.**

**Pembroke School District**

**Case No. E-0088-02**  
**Decision No. 2010-241**

**Appearances:**

Lorri Hayes, NEA-NH, Concord, New Hampshire for the Complainant

Kathleen Peahl, Esq., Wadleigh, Starr & Peters, PLLC, Manchester, New Hampshire, for the Respondent

**Background:**

The Education Association of Pembroke (Association) filed an unfair labor practice complaint against the District on March 4, 2010. The Association complains that during collective bargaining in 2009 and 2010 the District violated RSA 273-A:5, 1 (a), (e) and (g) on account of: 1) the School Board's bargaining proposal that the parties identify increases set forth in the contractual wage schedule as cost of living adjustments and not a pay plan subject to continuation under RSA 273-A:12; 2) the manner in which the School Board presented its bargaining proposal and its characterization of its proposal as a "deal breaker"; and 3) the School Board's proposals concerning a change in health plans including a proposal to change to a plan available through the Local Government Center given one school board member's status as a

board member of the Local Government Center and this individual's service on the School Board's negotiating team. The Association asks the board to find that the District has violated RSA 273-A and order the District to cease and desist from its unlawful course of conduct, its refusal to negotiate in good faith, and its failure to comply with RSA 273-A.

The District denies that it has violated any provision of RSA 273-A and contends that its conduct during collective bargaining has been proper and that its bargaining proposals concerning cost of living adjustments are legitimate efforts to address and mitigate the costs of RSA 273-A:12 on the District.

After the Association filed the complaint it requested and obtained a delay in further proceedings in order to allow additional time to resolve matters by agreement. The PELRB subsequently scheduled the case for hearing on June 28, 2010, but at the Association's request the hearing was continued and rescheduled to August 24, 2010. On that date this Board held a hearing at the offices of the PELRB in Concord. The parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Both parties have filed post-hearing briefs.

On September 23, 2010 the New Hampshire School Boards Association (NHSBA) filed a Petition to Intervene as Amicus Curiae and included an Amicus Brief. The Association objects to allowing the NHSBA to have party status in these proceedings but does not object to the NHSBA's submission of an amicus brief. Any request by the NHSBA to intervene and obtain party status in these proceedings is denied. However, the NHSBA's amicus brief is accepted into the record. On September 23, 2010 the District submitted a request for findings of fact. Rulings on such requests are only required under RSA 541-A:35 when they are submitted in accordance with this Board's rules, set forth in Pub 100-300. The District's requests will not be



acted upon since they are not authorized under Board's rules, the Board did not request them in this case, and this decision includes separately stated findings of fact which are the basis for this decision.

### **Findings of Fact**

1. The Education Association of Pembroke, NEA-NH is the certified exclusive representative of certain employees, including teachers, who work in the Pembroke School District.

2. The District is a public employer within the meaning of RSA 273-A:1, IX.

3. After June 1, 2009 the Association and the Pembroke School District School Board began the process of negotiating a successor contract to their July 1, 2007 to June 30, 2010 Collective Bargaining Agreement (2007-10 CBA). *See* Joint Exhibit A. Wages for bargaining unit employees in the 2007-10 CBA are presented in "Appendix A Pembroke Salary Schedule 2007/08," "Appendix B Pembroke Salary Schedule 2008/09," and "Appendix C Pembroke Salary Schedule 2009/10." Each appendix contains four different salary tracks with 14 different steps for each track.

4. Roger Miknitis, a teacher with 31 years experience and with service on five negotiating teams, served as the chief negotiator for the Association.

5. Clint Hanson, the chairman of the Pembroke School Board, served on the School Board's negotiating team as chief negotiator. Mr. Hanson has served on the School Board since 1987 and has been involved in the negotiation of numerous collective bargaining agreements. Mr. Hanson has served as president of the NHSBA and during the time period in question was a board member of the Local Government Center Health Insurance Trust. He does not receive

compensation for this service, and he will not receive any financial benefit if LGC Healthsource becomes the new provider.

6. The parties met on September 8, 2009 and reached agreement on preliminary matters, such as ground rules and the need to reach a new collective bargaining agreement.

7. The parties subsequently met for negotiations and exchanged proposals on September 24 and October 1, 2009. The School Board bargaining proposals include changing health insurance carriers from Blue Cross-Blue Shield to LGC Healthsource.

8. During the September 24, 2009 negotiations Mr. Hanson referenced the "evergreen law" which the parties understand to refer to the following language added to RSA 273-A:12, effective July 15, 2008:

RSA 273-A:12, VII. For collective bargaining agreements entered into after the effective date of this section, if the impasse is not resolved at the time of the expiration of the parties' agreement, the terms of the collective bargaining agreement shall continue in force and effect, including but not limited to the continuation of any pay plan included in the agreement, until a new agreement shall be executed. Provided, however, that for the purposes of this paragraph, the terms shall not include cost of living increases and nothing in this paragraph shall require payments of cost of living increases during the time period between contracts.

At this first meeting there was a casual reference to the evergreen law and Mr. Hanson informed the Association that language contained in a Gilford collective bargaining agreement might be an acceptable way to address the evergreen law. The Gilford language Mr. Hanson referenced is set forth in Joint Exhibit K and was acceptable to the Association. However, at the time he made these representations Mr. Hanson had not actually reviewed the Gilford language, and he subsequently withdrew this suggestion when he discovered that the Gilford contract did not address the evergreen law in the manner he originally believed.

9. During the October 1, 2009 negotiations, Mr. Hanson presented the school board's proposal for new language to be inserted in Article V, Compensation as follows (School Board COLA proposal):

The compensation detailed in the appropriate Appendices noted in this paragraph represent cost of living adjustments agreed to by both parties and do not constitute a pay plan subject to continuation as noted in RSA 273-A:12, paragraph VII.

10. During negotiations Mr. Hanson made it very clear that he strongly disagreed with the evergreen law. At times he has referred to the evergreen law as "asinine" and he openly acknowledged his negative views about the evergreen law during the course of the adjudicatory hearing in this matter. He was adamant in his statements and demeanor that the School Board's evergreen law proposal was a "deal breaker" in the sense that the parties could not finalize a collective bargaining agreement without an agreement on the evergreen law that was acceptable to the School Board.

11. Both parties understood the purpose of the School Board's COLA proposal was to avoid the new statutory requirement that pay plans, including those which provide for annual step increases, continue during any interval between the expiration of collective bargaining agreements entered into after July 15, 2008 and successor collective bargaining agreements.

12. The pay plan referred to in the School Board's COLA proposal contains a schedule of different compensation levels based upon four different categories or pay grades (BA, BA+15, MA, MA+15) and 14 different steps within each pay grade. Nothing in the pay plan or in the evidence submitted into the record established that it was prepared based upon cost of living adjustments (COLA) or that the listed compensation amounts in fact represent a COLA.

13. When the Association questioned the characterization of the pay plan as a COLA Mr. Hanson responded that the pay plan was a COLA because he was calling it that.

14. The Association treated the School Board's COLA proposal as a request that the Association give up its rights under the evergreen law, something the Association refused to do.

15. The School Board's COLA proposal led to impasse in negotiations, and the Association filed a petition with the PELRB for appointment of a mediator on October 28, 2009. On November 5, 2009 the parties met again, on their own, and the Association presented a wage proposal which included step increases that would be subject to the evergreen law. In response, the School Board reaffirmed that it would not agree to a proposal which included "evergreened" step increases.

16. The parties proceeded to mediation on November 23, 2009 but were unable to resolve the outstanding issues. The School Board remained steadfast in its support for its COLA proposal at the mediation.

17. The Association presented another proposal to the School Board on January 14, 2010 which also contained wage proposals that would be "evergreened." On January 27, 2010 the School Board responded with its own proposal on wages and continued to maintain its earlier position that any scheduled salary increases must be treated as a COLA that is not subject to the evergreen law.

18. Throughout the October 2009 to March 2010 time period, the School Board maintained that its COLA proposal was a deal breaker, and that a new collective bargaining agreement was not possible without an agreement on evergreen that was acceptable to it.

19. On May 6, 2010, after the Association filed this complaint, the parties returned to the bargaining table. During this round of negotiations the School Board finally abandoned its COLA proposal and instead made a wage proposal based on merit pay which did not provide for or include steps.

## Decision and Order

### Decision Summary:

The Pembroke School District has committed an unfair labor practice in violation of RSA 273-A:5, I (e) because of the manner in which it presented and maintained its COLA proposal, a non-mandatory subject of bargaining, during the September, 2009 to March, 2010 time period. The Association's claims based upon Mr. Hanson's demeanor and behavior during negotiations, his status as a board member of the Local Government Center Health Insurance Trust, and the School Board's proposals to change from a Blue Cross-Blue Shield health insurance program to a LGC Health Source program are denied.

### Jurisdiction:

The PELRB has primary jurisdiction of all alleged violations of RSA 273-A:5, *see* RSA 273-A:6.

### Discussion:

This case involves the parties' efforts to reach agreement on their first contract since the effective date of RSA 273-A:12, VII. Under that law pay plans contained in collective bargaining agreements entered into after July 15, 2008 (the effective date of the statute) will continue by law following the expiration of a collective bargaining agreement:

For collective bargaining agreements entered into after the effective date of this section, if the impasse is not resolved at the time of the expiration of the parties' agreement, *the terms of the collective bargaining agreement shall continue in force and effect, including but not limited to the continuation of any pay plan included in the agreement, until a new agreement shall be executed.* Provided, however, that for the purposes of this paragraph, the terms shall not include cost of living increases and nothing in this paragraph shall require payments of cost of living increases during the time period between contracts (emphasis added).

Under the prior law, as explained by court and PELRB decisions, "evergreen" provisions calling for the continuation of a contract after its expiration date were deemed a cost item requiring

legislative approval<sup>1</sup> before a pay plan could be enforced to obtain step increases during intervals between contracts. See *Monadnock Education Association, NEA-New Hampshire v. Monadnock Regional School District*, PELRB Decision No. 2007-034 and *Appeal of Alton School District*, 140 N.H. 303, 315-316 (1995).<sup>2</sup>

There are several well established principles in public sector collective bargaining in New Hampshire relevant to our analysis of the School Board's conduct in this case. Both parties have an obligation to bargain in good faith, which means bargaining with the intent but not the obligation to reach agreement. Both parties must bargain subject to applicable law, including the various provisions of RSA 273-A like RSA 273-A:12, VII, despite any objections to or disagreements with such laws. Additionally, the nature and extent of a party's obligation to bargain a particular proposal presented to it, and the corresponding right of the party making a particular proposal to pursue it, differs depending on whether the proposal concerns a mandatory, permissive, or prohibited subject of bargaining. In this regard, the court has outlined a three part test to apply to determine the proper categorization of a particular proposal:

First, to be negotiable, the subject matter of the proposed contract provision must not be reserved to the exclusive managerial authority of the public employer by the constitution, or by statute or statutorily adopted regulation.... Second, the proposal must primarily affect the terms and conditions of employment, rather than matters of broad managerial policy....Third, if the proposal were incorporated into a negotiated agreement, neither the resulting contract provision nor the applicable grievance process may interfere with public control of governmental functions contrary to the provisions of RSA 273-A:1, XI. A

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<sup>1</sup> Voters at town meeting, city council, town council, or board of aldermen, see RSA 273-A:3, II.

<sup>2</sup> "To avoid judicially imposed "status quo" there are three collectively bargained alternatives. The first, as was attempted in Alton, is the "evergreen" provision, where the collective bargaining agreement, at the end of the stated term, renews itself automatically until the successor agreement is ratified. Obviously, as we say above, this agreement must be ratified by the legislative body, said body being fully informed of its terms and aware of its financial impact, or, in bargaining parlance, *Sanbornized*. The second is the limited "evergreen" provision that we see in the Rochester contract. This provides for an extension of the contract during the period of negotiation. This also must have the informed ratification of the legislative body and bears the risk of the specter of judicially imposed "status quo" should bargaining be abandoned. The third is a "status quo" clause where the precise terms of the post-term relationship are spelled out by the parties. This is also a cost item requiring informed legislative ratification, but, being bargained, would avoid further dispute."

proposal that fails the first part of the test is a prohibited subject of bargaining. A proposal that satisfies the first part of the test, but fails parts two or three, is a permissible topic of negotiations, and a proposal that satisfies all three parts is a mandatory subject of bargaining.

*In re Appeal of Nashua Police Commission*, 149 N.H. 688 (2003)(citations omitted).

The distinctions that must be made between various subjects of bargaining means, for example, that a public employer subject to RSA 273-A collective bargaining may not make unilateral changes to terms and conditions of employment, like wages, that are mandatory subjects of bargaining. *See, e.g., Appeal of City of Nashua Board of Education*, 141 N.H. 768, 772-73 (1997). In contrast, unilateral employer changes in areas which constitute permissive subjects of bargaining, like a just cause discipline proposal, are allowed, but parties may also agree to bargain such matters. *Id. at 773; Appeal of State*, 138 N.H. 716, 724 (1994)(union discipline proposal not subject to mandatory bargaining, but state may choose to bargain the proposal); *Appeal of International Association of Firefighters*, 123 N.H. 404, 408 (1983)(fire department platoon size was a permissive subject of bargaining and city could have properly refused to bargain the union's proposal). Because of this difference between mandatory and permissive proposals, the School Board's right to pursue non-mandatory proposals in negotiations with the Association is limited; it is in fact entirely dependent upon the Association's willingness to bargain and reach agreement on the matter. Additionally, because parties are obligated to bargain mandatory proposals, a failure to reach agreement on mandatory subjects can lead to impasse, resulting in mediation and fact finding pursuant to RSA 273-A:12. However, a failure to reach agreement on permissive proposals does not, in general, justify an impasse in negotiations since there is no obligation to bargain such proposals at all.

Therefore, we consider the School Board's conduct in this case, and its COLA proposal in particular, within this general framework. With respect to the phrase "cost of living

adjustment” (COLA), we note that it is a fairly common term. It is used in RSA 273-A:12, VII but is not given any special definition. Under applicable rules of statutory construction, the term should be assigned its plain and ordinary meaning. *See Appeal of State Employees’ Association of New Hampshire, SEIU Local 1984*, 158 N.H. 258 (2009). A cost of living adjustment is “[a]n increase or decrease in wages based on the fluctuation of the Consumer Price Index or any local measure of changes in prices.” *Roberts Dictionary of Industrial Relations*, 4<sup>th</sup> Ed., 1994. A “cost of living clause” is “[a] provision, commonly in labor agreements, and also in certain pension or retirement programs, giving an automatic wage or benefit increase tied in some way to cost-of-living rises in the economy. Cost of living is usually measured by the Consumer Price Index.” *Black’s Law Dictionary*, 5<sup>th</sup> ed., 1983. The School Board’s COLA proposal does not satisfy either of these definitions, nor has the District cited any other commonly used meaning of the phrase “cost of living adjustment” that would justify its application to the pay plan at issue in this case. The School Board did not in fact propose to negotiate a cost of living adjustment but was attempting to have the Association agree to a fiction which would, in the School Board’s estimation, prevent the continuation of the referenced pay plan, including step increases, during any future interval between collective bargaining agreements.

We agree with the Association that the School Board’s COLA proposal concerned a non-mandatory subject of bargaining and find that the School Board improperly presented and pursued the proposal for approximately five months and in the process violated its legal obligation to bargain in good faith as set forth in RSA 273-A:5, I (e)(to refuse to negotiate in good faith with the exclusive representative of a bargaining unit). The continuation of pay plans following the expiration of a collective bargaining agreement is now required by law pursuant to RSA 273-A:12, VII.



We find that the Association acted well within its rights and in accordance with its responsibilities at the bargaining table when it properly and promptly rejected the School Board's COLA proposal. At that point it was incumbent upon the School Board to proceed with good faith negotiations on remaining subjects. The School Board failed to do so and instead adamantly and inappropriately continued to insist on its COLA proposal for months, effectively and improperly bringing productive negotiations to a standstill. As noted in Finding of Fact 19, the School Board's intransigence was only broken by the filing of this unfair labor practice complaint. The School Board's attitude throughout this time period was motivated for the most part by its open disdain for the continuation language in RSA 273-A:12, VII, and in this regard the School Board clearly permitted its disagreement with the applicable law to improperly dictate and guide its conduct in negotiations. In the process the School Board abdicated its obligation to negotiate with the Association subject to and within the parameters of applicable law.


The balance of the Association's complaint concerns Mr. Hanson's behavior and attitude in negotiations, his status as a board member of the Local Government Center Health Trust, and the School Board's proposal to switch health insurance carriers from Blue Cross-Blue Shield to LGC Healthsource. It is true that Mr. Hanson was vehement and forceful in presenting and maintaining the School Board's COLA proposal. However, with the exception of his involvement in presenting and maintaining the School Board COLA proposal, which he repeatedly characterized as a "deal breaker" and with respect to which he took a hard bargaining position, all of which was improper, as noted, we find his demeanor at the bargaining table was otherwise within acceptable limits. As to his service as a board member of the Local Government Center Health Trust, there is nothing in RSA 273-A that prohibits someone with this status from also serving as a member of a local school board and participating in collective

bargaining negotiations. We conclude that any question about the propriety of his involvement in negotiations in the circumstances of this case is beyond the purview of the PELRB. We also find nothing improper about the School Board's proposal to change to a Local Government Center Health Insurance provider.

Accordingly, we find that the School Board committed an unfair labor practice under RSA 273-A:5, I (e) because the manner in which it presented and maintained its COLA proposal violated its obligation to negotiate in good faith with the Association. The School Board shall post this decision for thirty days in a conspicuous place where it can be reviewed by bargaining unit employees. The School Board is ordered to cease and desist from engaging in such conduct during any and all future negotiations and to bargain in good faith with the Association subject to applicable law.

So ordered.

December 10, 2010.



Charles S. Temple, Esq. Alternate Chair

By unanimous vote of Alternate Chair Charles S. Temple, Esq., Board Member Kevin E. Cash and Alternate Board Member Sanford Roberts, Esq.

Distribution: Lorri Hayes  
Kathleen Peahl, Esq.

LOCAL CONTRACTS WITH EVERGREEN CLAUSE

Allenstown PPA	
Amherst SSA	
Ashland TA	
Assoc of Coastal Teachers	Rye
	Greenland
	Newington
Auburn EA	
Barnstead EA	
Bartlett EA	
Bethlehem EA	
Bow EA	
Brentwood TA	
Brookline ESSA	
Chester EA	
Claremont AMTE	
Claremont Assoc of Sec	
Colebrook EA	
Concord EA	
Concord EAA	
Concord EOPA	
Conway ESPA	
Cornish EA	
Derry EA	
EA of Pittsfield	
East Kingston EA	
Epping EA	
Exeter Co-op PA	
Exeter PA	
Farmington ESP	
Farmington TA	
Gilford EA	
Gilmanton EA	
Gorham TA	
Goshen-Lempster EA	
Gov Wentworth EA	
Groveton TA	
Hampstead EA	
Hampstead SPA	
Harrisville EA	
Haverhill EA	
Haverhill SS	
Hinsdale FT	
Hinsdale SSA	
Holderness EA	
Holderness SS	
Hollis EA	
Hollis ESSA	

LOCAL CONTRACTS WITH EVERGREEN CLAUSE

Hooksett EA	
Hooksett ESP	
Hopkinton EA	
Hopkinton ESS	
Jaffrey-Rindge EA	
Keene State Adjuncts	
Keane State EA	
Kensington EA	
Lafayette EA	
Lebanon SS	
Lin-Wood EA	
Lisbon AP	
Lisbon TA	
Litchfield EA	
Londonderry EA	
Lyme EA	
Madison EA	
Manchester EA	
Manchester ESPA	
Mascenic EA	
Mascenic ESSA	
Mascoma Valley Reg. EA	
Mascoma Valley Reg. SS	
Merrimack ESSA	
Merrimack Valley EA	
Milford TA	
Monroe ESP	
Mont Vernon EA	
Moultonborough SSA	
New Boston SSA	
Newfields PA	
Newfield TA	
Newmarket TA	
Newport SS	
Newport TA	
Northwood ESP	
Northwood TA	
Nottingham TA	
Oyster River ESPA	
Paraeducators at Kearsarge	
Plainfield EA	
Plainfield SS	
Plymouth EA	
Plymouth ESPA	
Rumney TA	
Pelham ESP	
Profile EA	

LOCAL CONTRACTS WITH EVERGREEN CLAUSE

Salem AFSP	
Salem EA	
Salem EPA	
Salem SCEA	
Seacoast ESPA	
Shaker Regional EA	
Somersworth Clerical and Aides	
Strafford EA	
Stratford TA	
Stratham TA	
Sunapee TA	
Sugar River EA	
Tamworth ESP	
Thornton SSA	
Thornton TA	
Unity EA	
Wakefield EA	
Wakefield Paras	
Wentworth EA	
Wilton-Lyndeborough CSSA	
Wilton-Lyndeborough CTA	
Winnisquam Reg. TA	
Westmoreland TA	



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**President**

Laura Hainey  
President  
Email: [lhainey@aft-nh.org](mailto:lhainey@aft-nh.org)

**STAFF**

Teresa D. Donovan, Esquire  
Director of Field Services  
& Collective Bargaining  
Email: [terido@metrocast.net](mailto:terido@metrocast.net)

Carter Florenti  
Office Assistant

# AFT-NH

January 11, 2011

Dear Senate Public and Municipal Affairs Committee Members,

AFT-NH is the State Affiliate of the American Federation of Teachers. The AFT has over one million members with over 4,000 members here in New Hampshire. These members are teachers, school support staff, police, higher education faculty and town employees. AFT-NH is a member of the New Hampshire AFL-CIO which represents over 45,000 working men and women.

We ask that you consider the following when making a recommendation on Senate Bill 1:

- No local contract was covered by the 2008 evergreen law until a new contract was negotiated between the union and employer and approved by the legislative body or voters.
- The financial impact of the evergreen law for these contracts has already been approved by the voters.
- There was advance notice prior to approving any contract the evergreen law would be triggered upon passage. This is a local control issue.
- Contracts were negotiated; there was give and take by both parties understanding the effects of the new law.

Lastly, I must stress that if you repeal RSA 273-A:12, VII that you give the parties the time to renegotiated the impact of the change.

If you have any questions I can be reached at (o) 603-223-0747, ©603-661-7293 or at [lhainey@aft-nh.org](mailto:lhainey@aft-nh.org)

Sincerely,

Laura Hainey  
AFT-NH President



# AFT-NH

Senate Public and Municipal Affairs Committee  
c/o Senator John Barnes, Chairperson  
Statehouse Room 302  
107 N. Main Street  
Concord NH 03301

553 Route 3A—Ruggles IV  
Bow, NH 03304  
Phone: 603-223-0747  
Fax: 603-226-0133  
E-mail: nhaf1@hotmail.com

**TESTIMONY**  
IN OPPOSITION TO SENATE BILL 1  
January 11, 2011

Honorable Members of the Committee:

My name is Terri Donovan and I am an attorney and Director of Field Services and Collective Bargaining for AFT-NH. AFT-NH is the state federation for the American Federation of Teachers. I am privileged to represent almost 4,000 public employees which include teachers, school support staff, police officers, and city and town workers. I am responsible for the negotiation and administration of 26 public sector contracts in NH.

Our Union has much in common with how we govern here in NH. AFT adheres to the principle of local control which is embedded in our state and national constitution. Our locals work collaboratively with their public employers and are active members in their communities.

I oppose the repeal of the evergreen law for the following reasons:

1. The enactment of the evergreen law did not provide automatic protection. The parties had to negotiate an agreement to become effective after July 15, 2008 which was approved by the local voters or appropriate legislative body after full disclosure of cost items. Only then was the evergreen law triggered.
2. We currently have some contracts that expired in 2009 and 2010. Those employees are not receiving step raises since no new contracts have been approved by the local voters or the legislative body.
3. We have a number of contracts that were negotiated and approved by the local voters after July 15, 2008 and for those employees, if they have a pay plan, they do receive annual step increases based on their service to the employer.

President

Laura Healey

President

Email: lhaaley@aft-nh.org

STAFF

Terresa D. Donovan, Esquire

*Director of Field Services*

*& Collective Bargaining*

Email: terred@mtcnet.net

Carla Fiorati

*Office Assistant*

4. As local voters attended their deliberative sessions and entered the voting booths they were advised in writing on the warrant articles that by approving the proposed contract that the law would be triggered. (Example of warrant article is attached.) There were also complete and full discussions at budget hearings and deliberative session regarding the cost implications. Please also note that many of these contracts require a satisfactory evaluation in order to receive your step increase.
5. Interesting to note for our teacher contracts that almost without exception more than half of the employees covered by a contract don't receive the benefit of the evergreen protection since they are at the top step and have no further advancement. Their pay raises are zero when there is an expired agreement.
6. We tackle a myriad of difficult issues in every negotiation. The cost of health insurance has posed the greatest challenge to employers and unions alike. Only through the negotiation process can the parties work together to achieve savings for the employer and an affordable health care plan to the employees.
7. The current evergreen law does not give an unfair advantage to unions. In fact, it merely honors a pay plan that has been mutually agreed upon between the union and employer and approved by the voters. Employers use these wage scales to attract and recruit new employees. Shouldn't these pay schedules have meaning? The evergreen legislation provides for some balance in funding from year to year and does not find taxpayers faced with contracts where there are efforts to make up lost steps causing spiking in budgetary costs in one year. Failure to grant steps creates serious inequities among and between employees. If a contract expired three years ago, a teacher that was hired then at Step 1 but now has three years experience will be on the same Step 1 as an employee hired this year. To fix this in one budget year is costly. Not to fix it is a contortion of the pay plan.
8. Finally, when the evergreen law was passed there was a transition period to give both the public employer and the union time to negotiate a new contract before the law was triggered by passage. All of the negotiations included a review of the cost of steps, cola's (many of locals have taken 0% for the last 2 years), health insurance, and implications of retirement system rate increases among other things. No one topic is discussed in isolation. Neither party is compelled to settle a contract.



Senate Testimony -SB 1  
Terri Donovan, AFT-NH  
Page Three

9. This is an issue of local control. For those employers, unions and communities that have approved contracts in good faith that have triggered the protections of the evergreen law, they did so with full knowledge of all of the cost implications. Those costs have already been approved by these communities. How is it that you can undo the will of the local voter?

10. To repeal this law outright places the legislature at the bargaining table. Outright repeal interferes with local control and reaches into the four corners of these contracts and changes one aspect of the terms and conditions that were duly negotiated and approved.

11. It is only fair and just that if you are going to recommend a change to the current law that you do not undo by legislative fiat those contracts that were lawfully entered into between the parties and approved by the local voters or legislative body. How is that honoring local control?

I respectfully request that you reject this version of Senate Bill 1.

If you have any specific questions or request for information, please feel free to contact me. My email address is [terri@d@metrocast.net](mailto:terri@d@metrocast.net) and my office phone number is 223-0747 ext. 12.

Thank you for your attention and consideration.

Respectfully,



Terri Donovan, Esquire  
Director of Field Services and Collective Bargaining  
AFT-NH

Home Address:

20 Donovan Road  
Gilmanton NH 03237

**ARTICLES WHICH WILL APPEAR ON OFFICIAL BALLOT**  
**2010 Timberlane Regional School District Warrant**

**Article 2 - Operating Budget**

Shall the Timberlane Regional School District raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling **\$61,764,677**? Should this article be defeated, the operating budget shall be **\$61,838,543** which is the same as last year, with certain adjustments required by previous action of the Timberlane Regional School District or by law; or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only. Note: Warrant Article 2 (the operating budget) does not include appropriations proposed under any other warrant articles. (MAJORITY VOTE REQUIRED)

*Recommended by the School Board 8-0*  
*Recommended by the Budget Committee 5-2*

**Article 3 - Timberlane Teachers' Association**

Shall the Timberlane Regional School District vote to approve the cost items included in the collective bargaining agreement reached between the Timberlane Teachers' Association and the Timberlane Regional School Board, which calls for the following increases in salaries and benefits:

**Cost Distribution**

	2010-2011	2011-2012
	Year 2	Year 3
Salaries (step <15 years service)	\$414,184	\$792,444
Longevity	\$6,000	\$87,900
1-Time 2.5% Payment (step >14 years service)	\$256,919	(\$256,919)
*Insurance	(\$173,955)	0
Professional Development	0	\$2,500
FICA	\$51,798	\$47,692
NH State Retirement	\$54,337	\$50,030
<b>TOTAL</b>	<b>\$609,284</b>	<b>\$723,646</b>

and further to raise and appropriate the sum of \$609,284 for the upcoming fiscal year, such sum representing the additional costs attributable to the increase in salaries and benefits required by the new agreement over those that would be paid at the current staffing levels in accordance with the most recent collective bargaining agreement? (MAJORITY VOTE REQUIRED)

*\* (The cost of the current insurance plan, as required by law, is budgeted in the 2010-11 operating budget. The negotiated contract includes an increase from a ten-dollar to twenty-dollar co-pay and an increase to the teachers' portion of the insurance premium that results in a reduction of health insurance costs by \$173,955 in Year 2 and increased savings to the district in Year 3 as shown above.)*

**ARTICLE EXPLANATIONS**

**Article 2:** The proposed 2010-2011 budget is \$61,764,677 representing a 1.71% increase over last year's budget. The budget drivers this year include significant increases in employee insurance rates, additional responsibility by the District for employee retirement cost that were previously incurred at the State level, transportation costs, special education out-of-district tuition costs, and additional obligations to the SAU.

All efforts have been made by administration, the School Board and the Budget Committee to minimize the tax impact while preserving the quality of essential programs and facilities. The District supports a system of "continuous improvement" with this year's focus areas including curricular and program improvements that can be effectively implemented with minimal cost impact. Highlighted areas include continuation of the implementation of a new reading instruction program and associated "Response to Instruction" support system. We are continuing our focus on "purposeful use of technology" in the classroom and are excited to have successfully written a grant that will provide \$135,000 for mobile computing in middle school science. At the high school we are focusing on success for all students and preparing all students for college level work across the curriculum.

**Article 3:** Timberlane Regional School District currently negotiates with one union, the Timberlane Teachers' Association, an affiliate of the AFT. The previous contract expired in June of 2009. Negotiations between the union and the Timberlane School Board did not net an agreement in time for the March 2009 election. This school year the teachers have been working without a contract under the terms of the previous contract. A tentative agreement has been reached and will be voted on at the March 2010 election.

The terms of the agreement call for no salary adjustments for school year 2009-2010. The second year of the contract, 2010-2011, which is the year impacting this year's warrant, calls for a step increase for teachers with 1 to 13 years of service (Approximately 60% of the teachers). Teacher step placement is equal to the number of years of experience they have in the teaching field. Teachers who are off step with more than 14 years of experience (Approximately 40% of the teachers) will receive a 2.5% "one-time" payment during the next contractual year. There is no cost of living adjustment (COLA) associated with the agreement and the pay scale for teachers from the previous contract remains in force throughout this contract. The teachers' union also agreed to concessions in health insurance that will save the District \$173,955.

## ARTICLE EXPLANATIONS

*Note: Pursuant to RSA 273-A:12, if approved, the terms of this collective bargaining agreement, including the pay plan, but excluding cost of living increases, will continue in force and effect until a new agreement is executed.*

*Recommended by the School Board 8-0*

*Recommended by the Budget Committee 6-1*

### **Article 4 - Authorization for Special Meeting on Cost Items**

Shall the Timberlane Regional School District if Article 3 is defeated, authorize the Timberlane Regional School Board to call one special meeting, at its option, to address Article 3 cost items only? (MAJORITY VOTE REQUIRED)

*(Without this Article the District would have to petition Superior Court for a Special School District Meeting. This saves the District the expense of attorney fees and court costs).*

*Recommended by the School Board 8-0*

### **Article 5 - Capital Reserve Fund**

Shall the Timberlane Regional School District raise and appropriate up to \$100,000 to be placed in the School Building Construction, Reconstruction, Capital Improvement and Land Purchase Capital Reserve Fund established in 1996, with such amount to be transferred from the June 30, 2010 undesignated fund balance (surplus) available for transfer on July 1 of this year? (MAJORITY VOTE REQUIRED)

*(The funds for this article come from the 2009-2010 school budget surplus, not from additional taxes.)*

*Recommended by the School Board 8-0*

*Recommended by the Budget Committee 7-0*

### **Article 6 - Atkinson Academy Kitchen Renovation**

Shall the Timberlane Regional School District vote to raise and appropriate the sum of \$225,000 to renovate the kitchen at Atkinson Academy and to authorize the District to withdraw up to the sum of \$225,000 from the existing School Building Construction, Reconstruction, Capital Improvements and Land Purchase Capital Reserve Fund? (MAJORITY VOTE REQUIRED)

*(The funds for this article come from existing money in the District's Capital Reserve Fund, not from additional taxes. This article, therefore, will not increase the 2010 tax rate.)*

*Recommended by the School Board 8-0*

*Recommended by the Budget Committee 6-1*

### **Article 7 - General Acceptance of Reports**

Shall the Timberlane Regional School District accept reports of agents, auditors, and committees as written in the 2009 Annual Report? (MAJORITY VOTE REQUIRED)

*The final year of the contract, 2011-2012, provides for two step increases for teachers with less than 13 years of experience. This compensates for the step lost in the current year. Teachers who are off step in 2011-2012 will receive no raises or "one-time" payments during this contractual year; however, "longevity" is enhanced at a cost of \$87,900. The annual cost of the contract is as follows:*

1. 2009-2010 - a turnover savings of \$173,640
2. 2010-2011 - increase of \$609,284
3. 2011-2012 - increase of \$723,646

*The three year cost of the proposed contract is \$1,159,290 which compares favorably to the three year cost of the 2006-2009 contract of \$3,167,990.*

**Article 4:** *This article is suggested by the NH Department of Revenue Administration as a cost saving measure.*

**Article 5:** *This puts money aside for future capital improvements. Money is only put into this Capital Reserve Fund if surplus is available at the end of the year. No additional funds are raised by taxes.*

**Article 6:** *Approximately ten years ago the schools of the Timberlane Regional School District were renovated and additions were built to accommodate growth. One area that was not renovated at that time was the respective kitchens at the elementary schools. Several years ago the School Board contracted for a facility assessment of the kitchens. The resulting report found many to be in need of renovation as the report pointed to several deficiencies. Over the past years, the District has addressed many of the more modest findings in the report. Last year the District took the first step to address the more significant needs with a comprehensive renovation of the Danville Elementary kitchen. This year the District is proposing a warrant article for \$225,000 to renovate and expand the kitchen at the Atkinson Academy. This renovation will significantly improve safety and functionality and will update end-of-life equipment. The article proposes using the money from the Capital Improvements and Land Purchase Capital Reserve Fund which currently has a balance of \$430,000 and will not require raising additional taxes.*

**Article 7:** *Suggestions for improving the report are always welcomed.*

# WADLEIGH, STARR & PETERS, P.L.L.C.

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PIERRE A. CHABOT  
JOSEPH G. MATTSOON

January 10, 2011

Senator John Barnes, Chairman  
Senate Public and Municipal Affairs Committee

Re: Senate Bill 1

Dear Senator Barnes:

I am not writing on behalf of any individual school district or school board. However, I am writing to share with you some of my experiences in collective bargaining negotiations since the passage of the "evergreen" statute, RSA 273-A:12, VII, in July of 2008. I am currently representing several school boards in their negotiations with teachers for successor collective bargaining agreements and believe that this law has caused more disagreement at the bargaining table and has resulted in impasse being reached more often than under the prior law.

Because RSA 273-A:12, VII would obligate public employers to continue to fund salary increases attributable to advancement on a salary step schedule, even if no successor agreement were reached, many of the school boards I have been representing have proposed the elimination of the salary step schedule. In its place, school boards have proposed cost of living increases (which are exempted from continuation under RSA 273-A:12, VII), merit or performance based compensation, or combinations thereof. Teachers, however, have been unwilling to agree to any proposal that did not maintain the existing salary schedule. Thus, impasse has been declared. In addition to declaring impasse, unions have filed and are threatening to file unfair labor practice charges against school boards for attempting to negotiate a compensation system that would not result in automatic pay increases if a successor agreement were not reached. The Public Employee Labor Relations Board has already issued one decision on the subject and that case is in the process of being appealed to the Supreme Court.

The result of the evergreen law appears to be more contentious negotiations, fewer agreements being reached, and more potential litigation. None of this fosters harmonious relations between public employers and employees. It would seem that the evergreen statute has not served the interest of either public employers or employees. I would urge this Committee to pass Senate Bill 1.

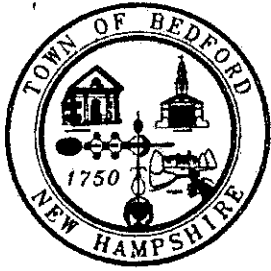
Sincerely,



Kathleen C. Peahl

KCP

Cc: Theodore Comstock, Esq.



# TOWN OF BEDFORD

Website: [www.ci.bedford.nh.us](http://www.ci.bedford.nh.us)

24 NORTH AMHERST ROAD • BEDFORD, NEW HAMPSHIRE 03110-5400

January 11, 2011

## SB 1 – FN “Evergreen Clause to collective bargaining”

Senator Barnes and members of the Public Affairs Committee:

My name is Russell Marcoux, Town Manager in Bedford, NH. I am here today as the Town Manager in Bedford, and also as a member of the General Government, Revenue and Intergovernmental Relation Committee of NHMA.

As you have heard from our two possibly three members of our Town Council, representatives of local governments and related districts are in favor of the REPEAL of Section VII, of RSA 273-A:12 dealing with Collective bargaining. This Legislation was also recommended as Action Item 2 in the NHMA-GGRIC Committee and approved by the NHMA membership at their September Legislative Conference.

Every year, communities, school districts and counties are faced with dealing with the largest portion of our budgets being fixed costs with very little discretion available to certain costs. Among those certain costs are the contents of negotiated labor contracts. However, this “evergreen clause” as it is called is NOT negotiated, but a legislated mandate that was last amended in 2008. With no subsequent contract negotiated, the terms of the collective bargaining agreement “...shall continue in force and effect, including but not limited to the continuation of any pay plan included in the agreement, until a new agreement shall be executed.”

With this clause in place, there is no incentive for bargaining units to negotiate a contract, especially when the economy in any particular region is having difficulty. One need only look to the number of outstanding contracts there are statewide in each of these municipal sectors. Labor negotiations and their terms should not be legislated but negotiated.

As a representative of local government, we ask that your committee and the full Senate move this legislation to the House with speed and consideration for our local sectors. It is little wonder that some labor groups with either contracts currently outstanding or will expire are now asking for extensions of their existing contracts.

Thank you all and to the 18 Senators who co-signed this legislation.

---

Town Council / Town Manager  
Recreation • Information Systems  
(603) 472-5242

Finance & Personnel  
(603) 472-9869

Public Works Department • Highway Division  
Waste Management  
Phone: (603) 472-3070  
Fax: (603) 472-4572

Other Departments Fax: (603) 472-4573

Town Clerk • Tax Collector  
Motor Vehicle Registrations  
(603) 472-3550

Planning & Zoning • Assessing  
(603) 472-8104

**SB 1-FN Testimony:**

**Thank you Senator Barnes and members of the Committee:**

**I am Bill Dermody, Vice Chairman of the Bedford Town Council. I am accompanied this morning by Councilors Jim Scanlon and Chris Bandazian and Town Manager Russ Marcoux.**

**We are here to voice the support of the Town of Bedford to the repeal of the Evergreen clause. Six of our seven Town Councilors have been contacted and all voice support of the passage of Senate Bill One.**

**The Evergreen clause has enabled employee bargaining units to hold Town and School administrations hostage beyond the negotiated timeframes of their contracts by holding out on renewal negotiations. There may have been some well meaning intent in the original Evergreen legislation; however, as Towns have experienced, the end result is an unbalanced playing field when contract renewals are addressed. The unanticipated consequence has been at the expense of the taxpayers.**

**Bedford has three bargaining units, two of the contracts are up for renewal later this year. The passage of Senate Bill One will have an immediate effect upon the Town's ability to conduct our negotiations. Bedford would not have its' hands tied when we seek affordable and equitable wage agreements with these bargaining units.**

**Repeal of the Evergreen clause by passing Senate Bill One will afford Bedford the level playing field we seek prior to entering into contract negotiations with our unions.**

**Thank you**

**Testimony before the Senate Public and Municipal Affairs Committee  
Jan. 11, 2011  
By Dianna Fogarty  
Human Resources Director, City of Portsmouth**

Good morning. My name is Dianna Fogarty as the Human Resources Director for the City of Portsmouth, I appear before you today in strong support of Senate Bill 1-FN to eliminate the automatic continuation requirement for public employee collective bargaining agreements.

In the City of Portsmouth, which has over 850 employees, personnel costs comprise 84 percent of our total budget. As is occurring in towns and cities across our state, the City of Portsmouth is facing a budget crisis and working hard to try to control costs. However, because the law mandates that we continue increases and benefits at the same level, our hands are tied from freezing salaries in these tough economic times. The "evergreen clause" makes it impossible for a governing body of any community to control costs and we feel this keenly in Portsmouth where, as I noted, employee pay and benefits make up more than four-fifths of our budget.

Currently, the City of Portsmouth has five unsettled union contracts from June 30, 2008, when all 15 of our employee contracts expired. These five contracts involve over 200 employees – almost one-fourth of our workforce. With the evergreen clause in place, there is no incentive for these unions to settle their contracts.

We believe passage of SB 1-FN to end the "evergreen clause" will benefit New Hampshire taxpayers because it will give municipalities an important tool to control costs, which is needed now more than ever because of the current difficult economic times.

Thank you.

## Senate Bill One Testimony

- My name is Richard Nichols, I am the Chairman of the Town of Hampton Board of Selectmen
- Along with Attorney Matt Upton, I represented the town in contract negotiations with our six unions, during 2010.
- I am here to speak in favor of Senate Bill 1.
- In Hampton, the last CBA's with the unions were approved in 2003 and all contracts have been in "Status-Quo" since 2006.
- Six proposed tentative agreements were rejected by the voters in March 2008 and three in 2009.
- The margin that they were rejected by in 2009, roughly 2:1, was substantially greater than those in March of 2008.
- There is a consensus that the increase in voter opposition in 2009 was primarily driven by the requirement in Alton and Sanborn case-law, to warn the public of the future costs associated with the so-called "mandatory evergreen" provision in the statutes. As you know, HB-1436 created RSA 273-A:12 VII which became effective in July of 2008.
- In the 2010 negotiations, the Town took the position that we would only enter into tentative agreements if there were a provision that would eliminate or suspend the pay scale, thus wage increases would be limited to one time and/or cost of living driven increases, shielding the town from the impact of HB-1436.
- The Selectmen were concerned that the implications of the "mandatory evergreen" legislation tilted the playing field in favor of the unions, and that there would be little incentive for the unions to return to the bargaining table in the future, particularly in a disinflationary or deflationary economic environment.
- While we were able to reach tentative agreements at the bargaining table with two of the six unions, I believe our position on the pay plan was the primary factor that resulted in the Town reaching impasse with the two Police and two Fire unions.
- Eliminating the automatic continuation requirement will serve to enhance equality at the bargaining table, as well as improve the probability of reaching tentative agreements and gaining approval of the voters.
- Thank you for giving me with an opportunity to provide input from the Town of Hampton on this very important piece of legislation.



January 11, 2011

Dear Committee Members,

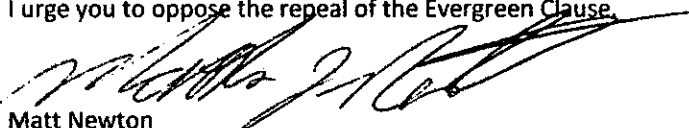
My name is Matt Newton and I am the president of the Professional Firefighters of Hampton IAFF Local 2664. Hampton firefighters have been out of contract for six years now, and our town has suffered from it. I urge members of the Senate Public and Municipal Affairs Committee to oppose the repeal of the Evergreen Clause (SB1-FN).

The Evergreen Clause assures that the employee pay plan agreed to by the employers and employees continues if an agreed upon contract cannot be reached. If a contract negotiation reaches impasse and remains that way for an extended period of time, without an evergreen clause major costs can build up that will then need to be addressed in the next contract. This leaves cities and towns to pay for large amounts of retroactive pay and can be extremely expensive. The retroactive pay must be paid out by the taxpayers of cities and towns. The Evergreen clause assures our communities will never face paying those bulk salary payouts when a contract is finally reached. A gradual payout is more financially affective, and less overwhelming to our cities and towns. The town of Hampton is currently facing a downward spiral when it comes to these retroactive costs. We have been out of a contract for more than 6 years and our town will face huge costs in order to bring our fire department up to parity with other departments.

In addition, many people believe that the evergreen clause provides for the automatic adjustment of cost of living adjustments which it does not. It only addresses employee pay plans.

Having strong, loyal, and dedicated members to serve our cities and towns is imperative to our state. These active employees in the community are taking their skills and services to other towns that are able to guarantee job security. Simply put, repealing the Evergreen Clause costs the taxpayers money, and puts their safety on the line. We certainly cannot imagine a system where no one comes to your rescue when your house is on fire, or no one comes to your aid when you are in need. Unfortunately, in Hampton, and many other towns and cities in this state, this is becoming a reality.

I urge you to oppose the repeal of the Evergreen Clause.



Matt Newton  
President  
Professional Firefighters of Hampton  
IAFF Local 2664

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: January 13, 2011

THE COMMITTEE ON Public and Municipal Affairs

to which was referred Senate Bill 1-FN

AN ACT                    eliminating the automatic continuation requirement for  
public employee collective bargaining agreements.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS**

BY A VOTE OF:    4-1

AMENDMENT #        s

Senator John S. Barnes, Jr.  
For the Committee

Debra Martone 271-3092

## New Hampshire General Court - Bill Status System

**Docket of SB1**

Docket Abbreviations

**Bill Title:** eliminating the automatic continuation requirement for public employee collective bargaining agreements.

*Official Docket of SB1:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/1/2011	S	Introduced 1/5/2011 and Referred to Public and Municipal Affairs, <b>SJ 1</b> , Pg.19
1/5/2011	S	Hearing: 1/11/2011, Room 100, State House, 10:00 a.m.; <b>SC6</b>
1/13/2011	S	Committee Report: Ought to Pass, 1/19/2011; <b>SC7</b>
1/19/2011	S	Ought to Pass, <b>RC 19Y-5N, MA; OT3rdg; SJ 3</b> , Pg.26
1/19/2011	S	Passed by Third Reading Resolution; <b>SJ 3</b> , Pg.29
1/20/2011	H	Introduced (in Recess from 1/6/2011) and Referred to Labor, Industrial and Rehabilitative Services; <b>HJ 11</b> , PG.178
1/25/2011	H	Public Hearing: 2/1/2011 3:00 PM LOB 307
2/2/2011	H	Executive Session: 2/8/2011 2:00 PM LOB 307
2/10/2011	H	Majority Committee Report: Ought to Pass for Feb 15 (Vote 13-4; RC); <b>HC 13</b> , PG.235
2/10/2011	H	Minority Committee Report: Inexpedient to Legislate; <b>HC 13</b> , PG.235
2/15/2011	H	Special Order to Feb 16: MA Without Objection; <b>HJ 17</b> , PG.378
2/16/2011	H	Ought to Pass: MA <b>RC 282-70; HJ 19</b> , PG.412-415
2/16/2011	S	Enrolled; <b>SJ 7</b> , Pg.65
2/16/2011	H	Enrolled; <b>HJ 19</b> , PG.439
3/1/2011	S	Law Without Signature 3/1/11; Eff. Date 3/1/11, Chapter 0003; Art 44, Pt II, NH Constitution

NH House

NH Senate

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NH House

NH Senate

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB 1 ORIGINAL REFERRAL

\_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

**ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:**

- AMENDMENT # 2011-0045 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_\_ - AMENDMENT # \_\_\_\_\_ \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

**ALL AVAILABLE VERSIONS OF THE BILL:**

AS INTRODUCED \_\_\_\_\_ AS AMENDED BY THE HOUSE  
 FINAL VERSION \_\_\_\_\_ AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

AMENDED FISCAL NOTE.

DATE DELIVERED TO SENATE CLERK

07/27/11

BY:

Debra A. Martone  
COMMITTEE AIDE