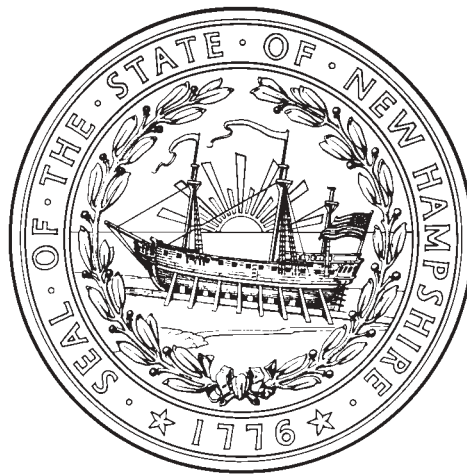


# **STATE OF NEW HAMPSHIRE**

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Legislative

## **SENATE JOURNAL**

**SPECIAL SESSION – SEPTEMBER 26, 2006 SESSION**

# SENATE JOURNAL

*September 26, 2006*

## SPECIAL SESSION

The Senate met at 1:00 p.m.

A quorum was present.

Senate Guest Chaplain, The Reverend Janet Lombardo, from Trinity Episcopal Church in Tilton, New Hampshire led the Senate in prayer.

*Lord of the alphabet and the multiplication table, show these women and men how, in all they do, to spell and calculate in ways that honor the people for whom the ballots were printed. And remind them to look around today and to realize how privileged they are to have been a part of this group. Amen*

Senator Gallus led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS

### PETITION FOR THE CALLING OF A SPECIAL SESSION

To the Secretary of State:

WHEREAS, the New Hampshire Supreme Court decided on August 17, 2006 in the case of Akins v. Secretary of State that the manner of conducting general elections with ballots prepared in accordance with RSA 656:5 is unconstitutional under the New Hampshire constitution;

WHEREAS, the next general election is scheduled to be held on November 7, 2006 and prior to such time the General Court is not scheduled to be in session to enact a statute for the preparation of general election ballots that satisfy the constitutional strictures of the Supreme Court;

WHEREAS, under Part 1, Article 11 of the New Hampshire constitution, "[e]very inhabitant of the state, having the proper qualification, has an equal right to be elected into office..." and under Part II, Article 22, the House of Representatives shall be the judge of the elections of its members and under Part II, Article 35, the Senate shall be the judge of the election of its members;

WHEREAS, the form of ballots for the elections in this state should be as specified by the people of the State acting through its elected members of the General Court and not as specified by, or as proposed to a trial court by, litigants in a private lawsuit;

WHEREAS, delay in the performance by the General Court of its obligation to specify the form of ballots for the general election in November may result in thousands of dollars in unforeseen and unbudgeted additional costs to municipalities;

WHEREAS, delay may also cause no acceptable form of a ballot to exist in the period following the September 12, 2006 primary elections and the state and municipalities to fail to meet one or more of the following statutory deadlines:

- October 6, 2006: last day for secretary of state to deliver federal overseas ballots to clerks. RSA 657:10
- October 6, 2006: last day for city council to set polling hours for general election. RSA 659:4
- October 24, 2006: last day for selectman to post warrant for general election. RSA 658:1
- October 24, 2006: last day for supervisors to prepare and post checklist for additional polling place. RSA 658:12
- October 28, 2006: last day for town clerks/supervisors to accept voter registration applications. RSA 659:12; RSA 654:8, II
- October 31, 2006: last day for Secretary of State to deliver general election ballots to clerks. RSA 656:20
- November 7, 2006: state general election. RSA 653:7; 654:7-a, 7-b.

WHEREAS, delay may further cause all elections to proceed under a non-statutory, judicially imposed scheme that will be subject to further challenge under state and federal laws and constitutional mandates;

WHEREAS, immediate legislative action is required to correct these problems to ensure that the State's general election in November, 2006 and its general elections thereafter are conducted in a manner that is in a constitutional and fair manner proposed by its elected representatives.

NOW THEREFOR, we, the undersigned, believe that the welfare of the state requires a special session of the General Court for the immediate enactment of laws specifying the form of general election ballots and therefore, pursuant to RSA 16 petition for the calling of a special session of the General Court:

September 18, 2006

**SENATORS**

Barnes, John S., Jr.  
Boyce, Robert  
Clegg, Robert E., Jr.  
Gallus, John T.  
Gatsas, Theodore

Kenney, Joe  
Letourneau, Robert  
Martel, Andre  
Roberge, Sheila

**REPRESENTATIVES**

Albert, Russell  
Allan, Nelson  
Allen, Janet  
Babson, David L., Jr.  
Balboni, Michael A.  
Bergeron, Jean-Guy J.  
Berube, Roger  
Bettencourt, David J.  
Bickford, David  
Boehm, Ralph  
Boyce, Laurie J.  
Brown, Carolyn  
Buxton, Don  
Camm, Kevin L.  
Campbell, W. Packy  
Carson, Sharon  
Cataldo, Sam  
Chaplin, Dunc  
Christiansen, Lars  
Clark, Charles L.  
Desmarais, Vivian J.  
Dickinson, Howard C.  
Dowd, Jack  
Dowling, Patricia A.  
Dumaine, Dan  
Easson, Timothy  
Elliott, Nancy  
Emerson, Susan  
Fesh, Bob  
Field, William  
Flanders, Donald H.  
Francoeur, Bea  
Gionet, Edmond  
Giuda, Robert  
Goyette, Peter R.

Griffin, Mary E.  
Hagan, Barbara  
Ham, Bonnie  
Headd, James F.  
Hellwig, Steve  
Hinkle, Peyton  
Hopfgarten, Paul  
Introne, Robert  
Itse, Daniel C.  
Katsakiores, George N.  
Katsakiores, Phyllis  
Kennedy, Richard  
Lockwood, Priscilla  
Lund, Howie  
Marple, Dick  
Maybeck, Margie  
Mead, Robert  
Mirski, Paul  
Mooney, Maureen  
Newton, Cliff  
Ober, Lynne  
O'Brien, William L.  
Osgood, Phillip Joe  
Patten, Betsey  
Renzullo, Andrew  
Rosen, Ralph J.  
Rowe, Robert  
Soltani, Tony F.  
Sorg, Gregory M.  
Twombly, James  
Ulery, Jordan  
Villeneuve, Moe  
Waterhouse, Kevin  
Wendelboe, Fran  
Wheeler, James

**CALL FOR THE SPECIAL SESSION**

Dear Member of the General Court:

Pursuant to RSA 16:4 and 5, there were 15 affirmative votes as of 5:00 pm this day from members of the Senate and 211 affirmative votes from members of the House to hold a special session. As a result of this vote the members of each body shall convene at the State House on Tuesday, September 26, 2006 at 1:00 pm.

Respectfully yours,

William M. Gardner  
Secretary of State

**ROLL CALL OF THE SENATE**

**The Clerk called the roll which showed the following Senators present:**

**Gallus, Johnson, Kenney, Boyce, Burling, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.**

**There were 23 members present.**

**RESIGNATION OF STATE SENATOR**

Senator Clegg was recognized to read a letter of resignation:

SENATOR CLEGG: Mr. President, I stand to read the resignation of our colleague Dick Green. It says, "Dear Mr. President, It is with mixed feelings that I write this letter of resignation from the New Hampshire State Senate as the Senator from District 6, representing the communities of Barrington, Madbury, Nottingham, Somersworth, and Rochester. I hereby notify you that I have changed my domicile outside of the District from which I was elected. This action requires me to resign from my position as Senator of District 6. It has been my honor to have had the opportunity to serve as a State Senator. I want to thank the voters for bestowing upon me this great opportunity to serve as their representative. To my colleagues in the State Senate, I want to thank each and everyone one of you for your friendship, respect, and professionalism towards me and my family during my tenure. Serving six years in this great institution has been both humbling and rewarding. Those members of the Senate staff who I have had the opportunity to work with, I could not have been as effective without your many hours of support and hard work. To you, Senator Gatsas, President of this legislative body, your leadership, understanding and total commitment to the ideals of good government has been greatly appreciated by me and many of my Senate colleagues. Even though I will no longer be a member of the Senate, I will always remember my six years as a Senator with fondness, positive memories, and (a) great respect for the people who make the system work.

Warmest regards,

Richard "Dick" Green  
Former State Senator District 6  
1973-74, 2003-06

Cc: Secretary of State, William Gardner  
Cc: New Hampshire State Senators

**RESOLUTION**

Senator Clegg moved, BE IT RESOLVED, that the House of Representatives be informed that in pursuance of a petition from the Secretary of State, the Senate has assembled and is now ready to proceed with the business of the Special Session.

**RESOLUTION**

Senator Clegg moved, BE IT RESOLVED, that the 2006 Special Session Senate Rules be adopted by a majority vote.

**Adopted.**

**NEW HAMPSHIRE SENATE**  
**Rules of the Special Session**  
**September 26, 2006**

- |   |   |
|---|---|
| 1. Determination of quorum.   | 21. Bills amended only on second reading; filing of amendments. |
| 2. Members, decorum of.   | 22. President to sign bills, etc.                               |
| 3. Members, conduct when speaking.  | 23. Messages sent to House.                                     |
| 4. Members not to speak more than twice.  | 24. Messages, when received.                                    |
| 5. President shall recognize whom.  | 25. Voting; division of Senate.                                 |
| 6. Questions of order, appeal.  | 26. Visitors to Senate.   |
| 7. Member, absenting himself.   | 27. Hours of meeting.   |
| 8. Motions, order of preference.  | 28. Rules of Senate, how suspended.                             |
| 9. Questions postponed indefinitely not acted upon in same Special Session.           | 29. Rules of Senate, how rescinded.                             |
| 10. Questions, when divided.  | 30. Committee of the whole.                                     |
| 11. Objections to reading paper, how determined.                                      | 31. President may name member to chair.                         |
| 12. Roll Call, everyone must vote.  | 32. Senate staff; composition and duties.                       |
| 13. Galleries, clearing of.   | 33. Senate staff, days of employment.                           |
| 14. Reconsideration.  | 34. Conflict of Interest.                                       |
| 15. Petitions, introduction of.   | 35. Personal privilege.   |
| 16. Bills, introduction of.   | 36. Appeal, presiding officer ruling.                           |
| 17. Bills, drafting of.   | 37. Motions, no substitution under color of amendment.          |
| 18. Resolutions to be treated as bills.   | 38. Requisition Approval Required.                              |
| 19. Bills shall have three readings; Progress of; time for second and third readings. | 39. Requests to the Legislative Budget Assistant.               |
| 20. Bills, printing and distribution.   |   |

1. The President, having taken the chair, shall determine a quorum to be present in the Call for the Special Session and shall immediately call the members to order.

2. No member shall hold conversation with another while a member is speaking in debate, or use electronic devices, including but not limited to personal computers, and telephonic devices, without leave of the Senate.

3. Every member, wishing to speak, shall notify the President. When the member is recognized to speak he shall rise and address the President, and when he has finished shall then sit down.

4. No member shall speak more than twice on the same question on the same day without leave of the Senate President.

5. More than one member wishing to speak at the same time, the President shall decide who shall speak first.

6. The President shall preserve decorum and order. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.

7. No member shall absent himself without permission from the Senate.

8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter.

9. A question which is postponed indefinitely shall not be acted upon during the special session except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be reintroduced under cover of an amendment any bill, resolution or order. No motion to suspend this rule shall be permitted.

10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.

11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.

12. When the nays and yeas have been moved by a member and duly seconded by another member each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.

13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.

14. No vote shall be reconsidered, unless the motion for reconsideration is made by a member who voted with the prevailing side. The notice of such motion for reconsideration shall be given to the Senate or to the Clerk in open special session prior to adjournment or recess to the call of the chair on the same day on which the vote was passed in special session.

15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.

16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor.

#### 17. Drafting of Bills

(a) Enactment of laws, as provided in the Petition which resulted in the Call for the Special Session, shall be by bill. No bill, bill amendment, order or resolution shall be introduced into the Senate the subject matter of which is not included in the final paragraph of the Petition which resulted in the Call for the Special Session.

(b) The Office of Legislative Services shall not accept a request to draft any bill, bill amendment, order or resolution the subject matter of which is not included in the final paragraph of the Petition which resulted in the Call for the Special Session.

18. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

19. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which may be accomplished by a conglomerate resolution. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.

20. After every bill shall have been read a second time, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the senate, and cause the same to be distributed to the members. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.

21. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents, or in the case of a committee amendment the name of the committee that recommended it, thereon. No amendment to any bill shall be proposed or allowed at any time or by any source except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.

22. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.

23. Messages shall be sent to the House of Representatives by the Clerk of the Senate.



24. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.

25. All questions shall be put by the President, and each member of the Senate present shall signify his assent or dissent by voting yea or nay, or shall abstain from voting by reason of a conflict pursuant to rule 34. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.

26. No person except members of the Senate and its officers, the Governor, Council members, the Secretary of State, the Treasurer, the Speaker of the House of Representatives and its officers and clerks, shall be admitted to the floor of the Senate while the Senate is in session, except by the invitation of the President, or some member with the President's consent.

27. The late session shall immediately follow the early session unless the Senate shall otherwise order.

28. No standing rule of the Senate shall be suspended unless two-thirds of the members present and voting vote in favor thereof. This rule shall not apply to Senate Rule 9.

29. No rule shall be rescinded unless the motion has been given and two-thirds of those present and voting vote therefore.

30. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairperson to preside in committee.

31. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.

32. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are currently elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.

33. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.

34. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.

35. Personal Privilege: A Senator may, as a matter of personal privilege, defend his/her position on a bill, his/her integrity, his/her record, or his/her conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his/her rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his/her choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.

36. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.

37. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.

38. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.

39. Any Senate member may make a request of the office of the Legislative Budget Assistant budget division, for technical staff assistance in the areas of finance, accounting and budgeting. The budget division may respond to that request when doing so will not interfere with the budget division's principle responsibilities as outlined in RSA 14:31-b, as determined by the Legislative Budget Assistant.

### INTRODUCTION OF SENATE BILL

Senator Clegg introduced and moved by a motion of ought to pass on **Special Session SB 1**, and shall be by this motion read a first and second time by the therein listed title.

**First and Second Reading**

06-4001

**Special Session Senate Bill 1**, relative to preparation of 2006 state general election ballots. (Sen. Clegg, Dist 14; Rep. O'Neil, Rock 15)

**The question is on the adoption of the motion of ought to pass on Special Session Senate Bill 1.**

**A roll call was requested by Senator Kenney.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**The following Senators voted No: Burling, Bragdon, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.**

**Yeas: 14 - Nays: 9**

**Adopted.**

**Ordered to third reading.**

**SPECIAL MOTION**

Senator Clegg requested that with his colleagues approval, that they enter the letter of resignation by Senator Green into the Permanent Journal.

**Adopted.**

**RESOLUTION**

Senator Clegg moved that Special Session Senate Bill 1 be, by this motion, read a third time, the title be the same as adopted and passed at the present time.

**Adopted.**

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**Special Session Senate Bill 1**, relative to preparation of 2006 state general election ballots.

**ANNOUNCEMENTS**

Senator Boyce (Rule #35).

Senator Burling (Rule #35).

Senator D'Allesandro (Rule #35).

Senator Larsen (Rule #35).

**RESOLUTION**

Senator Clegg moved that the Senate stand in recess to the Call of the Chair.

**Adopted.**

**In recess to the Call of the Chair.**

**HOUSE MESSAGE**

The House of Representatives, pursuant to a call from the Secretary of State, has assembled and is now ready to proceed with the business of the Special Session.