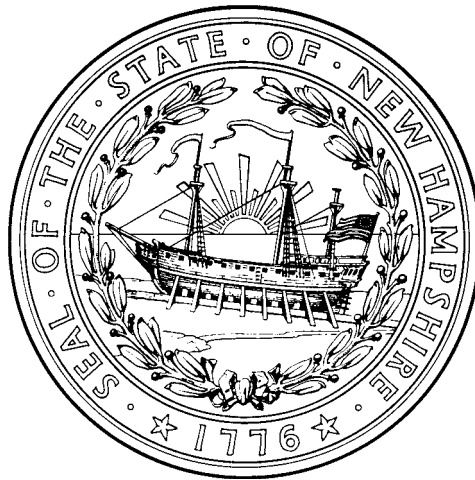


October 28, 2009  
Nos. 20-21

# **STATE OF NEW HAMPSHIRE**

Web Site Address: [www.gencourt.state.nh.us](http://www.gencourt.state.nh.us)



**161<sup>st</sup> Session of the New Hampshire General Court**

**Legislative Proceedings**

## **SENATE JOURNAL**

**ADJOURNMENT – JUNE 24, 2009 SESSION**

**COMMENCEMENT – OCTOBER 28, 2009 SESSION**

# SENATE JOURNAL 20 *(continued)*

*June 24, 2009*

**Out of Recess.**

## **MOTION TO ADJOURN FROM LATE SESSION**

Sen. Hassan moved that the Senate adjourn from the Late Session.

**Motion adopted.**

**Adjournment from the Late Session.**

# SENATE JOURNAL 21

*October 28, 2009*

The Senate reconvened at 11 a.m., a quorum being present.

The Reverend Canon Charles LaFond, chaplain to the Senate, offered the following meditative thoughts and prayer:

This evening, Jed Rardin, the chaplain to the House, will be descending on my farm with 18 of his kids from his church, and we're going to make pottery and eat potato-and-cheese soup and hot bread loaded with butter. And we will consider what it means to make *holy* choices. I love working with youth because they so naturally choose truth. They're more likely to use the space between speaking to test what has been said rather than using that time to internally rehearse their rebuttal.

When I lead church meetings, I encourage everyone to let five seconds of silence hang between statements; it seems incredibly long. The silence slows down the conversation. The silence allows time to process what has been said. And the silence helps our heart to assist our brain. So that what is said is more likely to be kind, true and only spoken if it improves on the silence. Let us pray:

*Life-giver, thank You for the life we live. Wait for us in the silence so that when we speak, there is integrity to our words and loving kindness one step behind them.* *Amen*

Sen. Merrill led the Pledge of Allegiance.

## **INTRODUCTION OF GUESTS AND PRESENTATIONS**

**Sen. D'Allesandro welcomed Jean Marshall, constituent of Manchester and wife of Sergeant at Arms Carleton "Kit" Marshall.**

**RESOLUTION** presented by Sen. Fuller Clark to Eric Nash in recognition of being named NH State Department of Education's 2010 "Teacher of the Year," from Winnacunnet High School in Hampton.

**Sen. Bradley introduced Rep. Lee Quandt, Congressional candidate Bob Bestani, and welcomed Amanda Grace, James and family, visitors from Homestead, Florida, New Hampshire's State Capitol being their 22<sup>nd</sup> state capitol visitation.**

**RESOLUTION** presented by Sen. Kelly to students of Keene Middle School in recognition of their participation in the "Chain of Commitment" program, a "powerful symbol of students' stand against substance abuse." Principal Dorothy Frazier and George Piers, Red Ribbon Week program coordinator, were also recognized. Student representative Sarah Dintino addressed the Senate, noting that the Keene program was done in collaboration with the Westmoreland School program.

President Larsen announced that the resignation of "Kit" Marshall as Sergeant at Arms had been accepted.

**NOMINATION FOR ASSISTANT CLERK OF THE SENATE**

President Larsen asked for nominations for Assistant Clerk of the Senate.

Sen. D'Allesandro nominated the Honorable Carleton "Kit" Marshall for Assistant Clerk of the Senate.

Sen. Downing seconded the nomination.

There were no further nominations.

**Nomination adopted.**

**The Honorable Carleton "Kit" Marshall was elected Assistant Clerk of the New Hampshire Senate.**

**OATH OF THE SENATE'S ELECTED STAFF OFFICERS**

President Larsen duly administered the Oath of Office to the Assistant Clerk of the Senate:

PRESIDENT LARSEN: Please raise your right hand and where appropriate state your name and repeat after me:

I, Carleton K. Marshall, do solemnly swear that I will bear faith and true allegiance to the United States of America and to the State of New Hampshire, and will support the Constitution thereof. So help me God.

I, Carleton K. Marshall, do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all of the duties incumbent on me as the Assistant Senate Clerk, according to the best of my abilities, agreeably to the rules and regulations of the Constitution and laws of the State of New Hampshire. So help me God.

**Sen. Reynolds moved the adoption of the Amendment to Senate Rule 48.**

***PROPOSED AMENDMENT TO SENATE RULE 48*****Amendment to Senate Rule 48**

Amend Senate Rule 48 by replacing with the following:

48. Deadlines:

(a) Wednesday, October 28, 2009 – First day to file legislation for 2010 Session.

(b) The Office of Legislative Services shall not draft a Senate Bill, Senate Concurrent Resolution, or Senate Joint Resolution, unless a request by a member for drafting with complete information has been received not later than 4:00 p.m., Friday, November 06, 2009, for the 2010 Session.

(c) The last day to sign-off legislation for the above filing period shall be Wednesday, December 09, 2009, at 4:00 p.m.

**The question is on the adoption of the proposed amendment to Senate Rule 48.**

**Motion adopted by necessary 2/3 vote.**

**Without objection the Chair moved that the Clerk of the Senate shall read the title of the Veto Message only.**

**VETO****Veto Message of Governor John H. Lynch  
Regarding Senate Bill 88**

By the authority vested in me, pursuant to part II, article 44 of the New Hampshire Constitution, on July 1, 2009, I vetoed Senate Bill 88, an act relative to the recommendations of marital masters.

I am vetoing Senate Bill 88 because marital masters are not judicial officers within the meaning of the State Constitution and I believe this bill would vest marital masters with the characteristics of a judicial officer.

In 2007, the Supreme Court requested the introduction of Senate Bill 112 to allow the recommendations of marital masters to become final absent review and signature by a judge, unless a party requested review of the decision by a judge within 10 days. The Senate questioned the constitutionality of the Supreme Court's proposed legislation and passed a resolution asking the Supreme Court to issue an advisory opinion addressing

the constitutionality of SB 112. The Supreme Court ruled that SB 112 was unconstitutional because marital masters are not judicial officers within the meaning of the State Constitution and are only authorized to make recommendations that have no binding force upon the court. *Opinion of the Justices, 155 NH 524 (2007)*.

In its decision, the Supreme Court stated that it would not opine on whether the constitutional infirmity of SB 112 could be cured if parties to the case consented in advance to marital masters entering final judgment without the participation of a judge. Then, during this session, the Supreme Court requested the introduction of SB 88. This bill would allow marital masters to enter final judgment absent approval by a judge if the parties to the case consented in advance to the arrangement. The general court did not ask the Supreme Court to opine on the constitutionality of SB 88.

If marital masters are not judicial officers under the State Constitution and cannot make recommendations that have binding force upon the court, I question why the advance consent of parties to a case can override the requirements of the State Constitution. I also question the wisdom of asking our citizens to assume the additional responsibility and potential burden, during stressful cases in the family division, of deciding whether to allow a marital master to act as a judge.

Presently, under state law, the administrative judge of the judicial branch family division, with the concurrence of the supreme court, nominates marital masters for appointment by governor and council. Under the State Constitution, judges are nominated and appointed by the governor and council. If the desire is to have marital masters enter final judgments in court, the appropriate remedy would be to have them nominated and confirmed as judicial officers are appointed.

Respectfully submitted,

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Governor

Dated: July 1, 2009

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**The question is notwithstanding the Governor's Veto, shall SB 88 become law.**

**A roll call is required.**

**The following Senators voted Yes: None.**

**The following Senators voted No: Gallus, Reynolds, Bradley, Sgambati, Houde, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gilmour, Lasky, Carson, Larsen, Gatsas, Barnes, DeVries, Le-tourneau, D'Allesandro, Merrill, Downing, Hassan, Fuller Clark.**

**Yeas: 0 - Nays: 24**

**Governor's Veto on SB 88 is sustained.**

### HOUSE MESSAGES

The Clerk read the following House Messages:

*The House of Representatives has voted to sustain the Governor's veto on the following entitled House Bill:*

**HB 655**, extending senior active status to judges over 70 years of age.

*The House of Representatives has voted to sustain the Governor's veto on the following entitled House Bill:*

**HB 443**, relative to underground storage facility operator training and relative to requirements for guaranteed price plans and prepaid contracts for petroleum.

*The House of Representatives has voted to override the Governor's veto on the following entitled House Bill:*

**HB 648-FN**, relative to the use of marijuana for medicinal purposes.

### GOVERNOR'S VETO MESSAGE ON HB 648-FN

By the authority vested in me, pursuant to part II, article 44 of the New Hampshire Constitution, on July 10, 2009, I vetoed HB 648-FN, an act relative to the use of marijuana for medicinal purposes.

I have tremendous compassion for people who believe medical marijuana will help alleviate the symptoms of serious illnesses and the side effects of medical treatment. Although opinion of the medical community

on the efficacy of medical marijuana remains mixed, I have been open, and remain open, to allowing tightly controlled usage of marijuana for appropriate medical purposes. But in making laws it is not enough to have an idea worthy of consideration, the details of the legislation must also be right.

I recognize that the sponsors of this legislation, and the members of the conference committee, worked hard to attempt to address the concerns raised about this legislation. However, after consulting with representatives of the appropriate state agencies and law enforcement officials, I believe this legislation still has too many defects to move forward.

Law enforcement officials have raised legitimate public safety concerns regarding the cultivation and distribution of marijuana. These concerns have not been adequately addressed in this bill. Marijuana is an addictive drug that has the potential to pose significant health dangers to its users, and it remains the most widely abused illegal drug in this State. I am concerned about the quantities of the drug made available to patients and caregivers under this bill, particularly because there are different types of marijuana and the potency of marijuana can vary greatly depending on how it is cultivated. I am troubled by the potential for unauthorized redistribution of marijuana from compassion centers. In addition to patients and designated caregivers, an unlimited number of "volunteers" can receive registry cards and receive the full protections afforded under this legislation to authorized cardholders. The provisions made for law enforcement to check on the status of an individual who asserts protection under the proposed law are too narrow.

There are also many inconsistencies and structural problems in the legislation that would greatly complicate its administration and would pose barriers to controls aimed at preventing the unauthorized use of marijuana. The bill does not clearly restrict the use of marijuana to those persons who are suffering severe pain, seizures or nausea as a result of a qualifying medical condition. The bill requires compassion centers to hold a license to cultivate and distribute marijuana for medicinal purposes, but the bill does not contain clear provisions regarding a licensing process or standards. Compassion centers can be penalized for distributing amounts of marijuana that exceed permissible limitations, without the compassion centers having the means to know how much marijuana the patient already possesses. Caregivers in some instances are required to control the dosage of marijuana without any real means to accomplish this task. The bill leaves unclear the authority of a landlord to control the use of marijuana on rented property and in common areas of property. While the bill contemplates self-funding, there have been inadequate fiscal studies. The Department of Health and Human Services' administrative responsibilities are of such a magnitude under this legislation that the fees potentially would be so great as to deny access to anyone but the wealthiest of our citizens, resulting in potential inequities.

I understand and empathize with the advocates for allowing medical marijuana use in New Hampshire. However, the fact remains that marijuana use for any purpose remains illegal under federal law. Therefore, if we are to allow its use in New Hampshire for medical purposes, we must ensure that we are implementing the right policy. We cannot set a lower bar for medical marijuana than we do for other controlled substances, and we cannot implement a law that still has serious flaws.

Therefore, I am regretfully vetoing HB 648-FN.

Respectfully submitted,  
John H. Lynch  
Governor

Dated: July 10, 2009

\* \* \* \* \*

**The question is notwithstanding the Governor's Veto, shall HB 648-FN become law.**

**A roll call is required.**

**The following Senators voted Yes: Gallus, Reynolds, Sgambati, Houde, Cilley, Janeway, Kelly, Gilmour, Lasky, Larsen, D'Allesandro, Merrill, Hassan, Fuller Clark.**

**The following Senators voted No: Bradley, Odell, Roberge, Bragdon, Carson, Gatsas, Barnes, DeVries, Letourneau, Downing.**

**Yeas: 14 - Nays: 10**

**Governor's Veto on HB 648-FN is sustained.**

**MOTION TO ADJOURN FROM EARLY SESSION**

Sen. Hassan moved that the Senate now adjourn from the Early Session, that the business of the Late Session be in order at the present time; and that when we adjourn, we adjourn to the Call of the Chair.

**Motion adopted.**

**Adjournment from the Early Session.**

**LATE SESSION  
ANNOUNCEMENTS**

SENATOR MERRILL (Rule 44): Madam President, in our house if somebody asks, "Did you get the paper?," it means: Did you stop at the end of the driveway to pick up *Foster's*? For 30 years hardly a day has gone by when I haven't looked at *Foster's Daily Democrat*, checking on state and local news, high school sports, and on Sundays, wedding pictures. And though I've had my disagreements with some *Foster's* editorials, I can't imagine not having and taking the opportunity to read them. Robert Foster served as publisher of his family-owned newspaper for over 60 years. When he died at his home in Dover last month at the age of 88, he left a rare publishing legacy dating to 1873, now passed on to another generation of Fosters. Just as important, he leaves a record of service to the city he loved, to his alma mater, and as a veteran of World War II and Korea, to his country. In his hometown, Mr. Foster's support was key to the success of the Woodman Institute, the Dover Ice Arena, and the newly opened Children's Museum, and in countless other ways he helped to shape the community of Dover. Mr. Foster graduated from Dover High School and then from the University of New Hampshire. A member of the hockey team, he remained an ardent supporter of UNH athletics. He was a trustee of the University from 1975 to 1979.

A few years back, while I was working in the UNH Undergraduate Research Program, I recruited a lively and personable student named Gregg Hayward to participate in our legislative breakfast, which some of you have attended, I know, here in Concord. I remember being touched by the fact that not only his parents were in attendance, but so were his grandparents, on his mother's side, Bob and Terri Foster. Gregg spoke at Bob Foster's funeral last month, describing his grandfather's advice to, in Gregg's words, "Be unafraid to seek out that 'place of pause' in our lives," and sharing an image of his grandfather out on his lawnmower at the end of the day, a "place of pause" for Bob Foster. As Gregg said, "It was a time when he would think about the newspaper and it's a time when he would think about the community, where he fit in it, how he could play a better part in it, and to all our betterment, how he could improve it." Please join me in sending condolences and best wishes to the Family of Robert Foster. Thank you, Madam President.

**Without objection President Larsen moved that all Rule 44's shall be entered into the permanent *Journal of the Senate*.**

**MOTION TO ADJOURN TO CALL OF THE CHAIR**

Sen. Hassan moved that the Senate adjourn to the Call of the Chair.

**Motion adopted.**

**The Senate is adjourned to the Call of the Chair.**

**The 1<sup>st</sup> year Session of the 161<sup>st</sup> General Court of the New Hampshire Senate stands adjourned to the Call of the Chair.**

**HOUSE MESSAGE**

As of this date, October 28, 2009, at 11:54 a.m., the House of Representatives has adjourned.

**OUTSTANDING BILLS**

**At the time of adjournment on October 28, 2009, the following Senate Bills remained on the table in the Senate:**

**CACR 11**, relating to funding of public education. Providing that the general court shall define an adequate education and distribute state funds for public education in a manner that alleviates local disparities.

**SB 21**, enabling certain persons to vote in primaries prior to turning 18 years of age.

**SB 34**, providing that registers of probate be present at the probate office in accordance with personnel rules established by the supreme court.

**SB 83**, establishing a committee to study net loss carry forward provisions under the business taxes.

**SB 84**, relative to the unused prescription drug program.

**SB 136-FN**, relative to the motor vehicle registration fee supporting a municipal and transportation improvement fund.

**SB 146-FN-A**, relative to liquor profits deposited into the alcohol abuse prevention and treatment fund.

**SB 164-FN-A**, relative to the expansion and funding of northern New Hampshire's electrical transmission system, and establishing the northern New Hampshire electrical transmission system improvement fund.

**SB 169-FN**, relative to games of chance and establishing a gaming oversight authority and video lottery gaming.

**SB 179-FN-A-L**, providing for the recovery of horse racing, and expanding gaming operations in the north country and at pari-mutuel locations.

**At the time of adjournment on October 28, 2009, the following House Bills remained on the table in the Senate:**

**HB 250**, relative to access to information in the abuse and neglect of adults registry and relative to persons providing child care or child placing services who are charged with a crime.

**HB 383**, relative to passenger restraints.

**HB 411**, relative to the safety of retirement accounts.

**HB 468-FN-L**, relative to caps on total billings by the state to the counties for nursing home care.

**HB 556-FN**, repealing the death penalty.

**HB 574-FN-L**, authorizing liens for unpaid building code violations and requiring landlord agents for restricted rental property.

**HB 694**, adopting the uniform child abduction prevention act.

**At the time of adjournment on October 28, 2009, the following House Bill was not signed off in Committee of Conference:**

**HB 590-FN**, relative to the retirement age for group II members.