

HEAC Legislative Report – 6/8/10
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The governor has called the House and Senate to a special session on June 9, to work on the budget. There are also bills Laid on the Table which could see action.

House Deadlines

Wednesday, September 15, 2010	First day for House incumbents running for reelection to file LSRs with complete information
Friday, October 1, 2010 (3:00 p.m.)	Last day prior to the General election for House incumbents running for reelection to file LSRs with complete information
Monday, November 1, 2010	Last day to file Interim Study reports
Monday, November 15, 2010	First day for all Representatives to file LSRs with complete information. 10 day sign off period begins
Friday, December 3, 2010 (3:00 p.m.)	Last day to file House LSRs with complete information
Wednesday, January 12, 2011 (noon)	Last day to sign off all House LSRs, including petitions, other than petitions involving the election or qualifications of a member to serve in the House.
Wednesday, February 2, 2011	Last day to introduce HBs etc. and amend House Rules by majority vote.

Senate Deadlines:
TBA

The deadline for filing intent to run for office in the primary election is Friday, June 11.

College access

- SB503 - relative to unique pupil identification.

Sponsors: (Prime) Molly Kelly, Bob Odell

This bill:

I. Requires early childhood programs and postsecondary institutions to submit a report to the department of education containing information on certain pupil indicators and requires the department of education to collect and integrate such information into the data warehouse.

II. Requires early childhood programs and postsecondary institutions to participate in the unique pupil identification system.

- 05/13/2010 – House votes OTP/AM amendment #1824h (HEC majority amendment)
- 05/24/2010 - Committee of Conference Meeting
- 05/27/2010 - Conference Committee Report #2159, House Amendment + New Amendment
- 06/02/2010 – House adopts Conference Committee Report on a roll call vote of 218-142
- 06/02/2010 – Senate adopts Conference Committee Report on a voice vote
- New language in bill reads:
193-E:5 Unique Pupil Identification.

I. The department of education shall, using federal funds only, implement and maintain a unique pupil identification system on a statewide basis that complies with the following requirements:

(p) New Hampshire home educated pupils pursuing an education in a postsecondary institution who have not been assigned a unique pupil identifier may, without penalty, opt out of being included in the unique pupil identification system for postsecondary pupils.

There were also a number of bills that had the potential to affect the operation of HEAC.

Right-to-Know Law

- HB53 – relative to the definition of "public body" under the right-to-know law.
Sponsors: (Prime)
This bill clarifies the definition of "public body" for the purposes of the right-to-know law.
 - 05/06/2010– Senate Public and Municipal Affairs Committee hearing
 - 05/06/2010 – Committee votes 5-0 OTP
 - 05/12/2010 – Senate voted OTP on a voice vote
 - 05/19/2010 – Passed House and Senate Enrolled Bills Committees
 - This bill as passed does not affect the council.

Other

- SB440 - (New Title) relative to executive branch ethics and establishing a committee to study the impact of implementing a 10-hour per day, 4-day week for state employees.
Sponsors: (Prime) Amanda Merrill, Sheila Roberge, Janet Wall
 - 04/21/2010 – House rejected amendment #1309h, approved floor amendment #1497h (Rep Harding) and voted OTP/AM on a voice (requires commissioners of state agencies to report to study committee on effect of changing work week)
 - 05/25/2010 – Committee of Conference meeting
 - 05/27/2010 – Committee of Conference report filed
 - 06/02/2010 – House adopts Conference Committee Report on a voice vote
 - 06/02/2010 – Senate adopts Conference Committee Report on a voice vote
 - This bill as passed would probably not affect administration of home education by the DOE. It requires commissioners of many state agencies, but not the commissioner of education, to report to a study committee on the effect of changing the work week of state employees.

Sunseting

- HB2 in 2009 contained the following language:
"144:87 Boards, Commissions, and Councils; Expiration Date.
I.(a) Except as provided in subparagraph (b), all non-regulatory boards, commissions, councils, advisory committees, and task forces in state government created by statute or administrative rule shall expire on June 30, 2011, unless reinstated by the general court. The office of legislative services shall provide a list of all such boards, commissions, councils, advisory committees, and task forces in state government created by statute or administrative rule to the speaker of the house of representatives, the senate president, and the governor on or before September 30, 2009."
 - The chair of the committee charged with performing a review is Rep Laurie Harding. There do not appear to be any future meetings scheduled for this committee.

- HB1689-R exempting certain non-regulatory boards, commissions, councils, advisory committees, and task forces from repeal on June 30, 2011.
Sponsors: (Prime) Laurie Harding, Neil Kurk, Anne-Marie Irwin, Michael Downing, Jacalyn Cilley (*these are the five legislators serving on the study committee*)
 - 5/5/2010 – Senate voted to adopt floor amendment #1899s (Sen. Reynolds), committee amendment #1717s, and OTP/AM on a voice vote
 - 5/19/2010 – House concurs with Senate on a voice vote
 - This bill would exempt the Home Education Advisory Council from repeal

- HB1690-R making statutory changes required by the repeal of certain non-regulatory boards, commissions, councils, advisory committees, and task forces.
Sponsors: (Prime) Laurie Harding
 - 05/05/2010 – Senate voted OTP/AM on a voice vote
 - 05/19/2010 – House concurs with Senate amendment
 - This bill as passed does not affect the Home Education Advisory Council

The following two bills were filed in response to a court case where the judge, acting on the advice and recommendation of the marital master, ordered a parenting plan modified to reflect the wishes of the father to terminate a home education program and send the child to public school.

- HA1 – for the removal of Michael Garner, Marital master in the judicial branch family divisions in Laconia, Belknap county, from his said office.

Sponsors: Dan Itse, Paul Ingbretson, Alfred Baldasaro, Peyton Hinkle, Carl Seidel

- 1/10/2010 – introduce and referred to Joint Legislative Committee on Address
- 04/02/2010 – organizational meeting
- 04/16/2010 – public hearing
- 05/03/2010 – Committee votes 8-3 Ought Not To Pass
- 06/02/2010 – House concurs with majority report on a 220-106 roll call vote

Rep. Lucy M. Weber for the **Majority** of the Joint Committee on Address: This bill of address seeks the removal of Michael Garner, a marital master in the judicial branch family division. The basis for his removal is one post-divorce action. In this action, the marital master issued an order requiring a formerly home schooled 10 year old to attend public school in the upcoming school year. The sponsors assert that this order was based on an unconstitutional infringement on the mother's freedom of religion. They further argue on the basis of the orders in this single case that the marital master has a bias against religion, which necessitates his removal from office.

Special Procedural Rule 7, adopted by the committee in this as in prior address proceedings, sets out the constitutional requirement that “[t]he joint committee shall recommend the Address only if it meets the following three criteria, and shall include such determination in a committee report.

- a. The Address states a reasonable cause for removal.
- b. The reasons for the removal are fully and substantially stated.
- c. The reasons for removal are not grounds for impeachment.”

With respect to whether the bill states a reasonable cause for removal, the bipartisan majority finds it does not. The sponsors conceded that the address was brought on the basis of two orders made in a single case. The case is one in which parents who share decision-making responsibility for the child were unable to agree on the appropriate school placement. The mother, who had been home schooling the child, wanted to continue to do so. The father believed that a public school setting was more appropriate. Master Garner noted his reluctance to impose an educational decision on parents, and stated he had the authority to do so only because the parents were unable to agree. He based his decision to order public schooling on the advisability of a child experiencing a wide variety of “experiences, people, concepts and surroundings.” The magistrate specifically noted the court's obligation to avoid any consideration of the specific tenets of any of the parties' religion. The court recognized and preserved the right of each parent to provide the child with religious training and to teach the child his or her own religious beliefs. The magistrate's orders reveal not a bias against religion, but, on the contrary, a careful attempt to preserve to each parent their own religious freedom and the right to instruct their child in accordance with their beliefs. A second concern was raised about a possible bias against home schooling. Here again, the magistrate stated that home schooling is an approved method of education in this state. He noted that had the parents agreed on a home school plan, he would have been without any authority to change that decision. The majority notes that the issues complained of in the decision are ones of first impression in

this state, and the decisions are currently on appeal before the Supreme Court. The Supreme Court may ultimately find that the decisions were made in error. In that case, the remedy is reversal of the decision. Any further sanction for the master would be inappropriate. The majority is concerned that the serious nature of an address should not be used as a means by which litigants can express their disagreement or dissatisfaction with the rulings in discrete cases, particularly when significant legal or factual questions exist as to the validity of the litigant's claims. The majority finds that the requirement that the Address state a reasonable cause for removal is not met.

The second flaw that the majority finds in the bill of address is grounded in the language of Part II, Article 73 of the New Hampshire Constitution, which states that “[t]he governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature...” In 2000, when Michael Garner became a marital master, appointments to the position were made solely by the judicial branch. Michael Garner has continued as an at-will employee of the judicial branch to this day. He has never been commissioned by the Governor and Council. He has never held a commission of any kind. Under the plain meaning of the language of Article 73, he cannot be subject to address. Moreover, the purpose of Article 73 is to allow for the removal, when necessary, of judges who cannot be removed from office except by impeachment or address. This is not the case with marital masters. Under the family division court rules, the administrative judge may at any time respond to a complaint against a marital master and “take whatever action is appropriate, including termination.”

Part II, Article 73 also specifies that the grounds for an address “shall not be a cause which is a sufficient cause for impeachment.” Part II, Article 38 defines the causes for impeachment as “bribery, corruption, malpractice or maladministration, in office.” The relevant definition of “malpractice” in Webster’s New World Collegiate Dictionary is “[m]isconduct or improper practice in any professional or official position.”

The majority notes that even if they had found that the actions complained of rose to the level of reasonable cause for removal, the actions, being in the course of the magistrate’s regular duties in his official position, would have fallen under the plain meaning of the word malpractice, and the offense, had there been one, would have been impeachable, and therefore not addressable. The minority argues that more time was necessary to consider and discuss the materials presented by the sponsors. The majority is convinced that no amount of delay or discussion could possibly have transformed Marital Master Gardner into a “commissioned officer” as required by the constitution as a condition for address. For all the foregoing reasons, the majority recommends a vote of ought not to pass. **Vote 8-3**

Rep. Robert H. Rowe for the **Minority** of the Joint Committee on Address: A house address is a procedure authorized under Part 2, Article 73 of our Constitution whereby the House and Senate can advise the Governor and Executive Council of an appointed public official that the House and Senate believe is not behaving well and recommend the official be removed. A house address can be a process for the removal of a judge, marital master, attorney general or another public official appointed by the Governor and Executive Council for life or a term of years. In HA 1 the address was against Marital Master Michael Garner. The normal process is for a joint House and Senate committee to be appointed to investigate the behavior of the official, in this case Marital Master Michael Garner. The procedural rule established by the joint committee was to use the first day in the process to allow the sponsors (just like a regular House bill introduction) to present their facts, then the joint committee would hear comments from the public. We established that there would then be a two-week delay after the introduction to allow the named party to prepare and present a rebuttal to the joint committee. On the introduction

day, the sponsors and members of the public presented their claim that Marital Master Garner “exceeded his constitutional authority and acted badly, resulting in the failure to preserve the religious rights of a citizen appearing before him ... when he recommended to the presiding justice an order removing a child from an educational setting on the basis of religious prejudice.” On the introduction day, the committee was given voluminous material at the start of the hearing, without providing for an opportunity for members to read the material before a motion of “ought not to pass” was offered at the close of presentations. The minority requested time to absorb the material handed out and receive the response from Marital Master Garner, but the committee voted it down. Subsequently, no opportunity was given for discussion of the prior vote. The issue before the committee was important, and dealt with constitutional rights. It is the opinion of the minority that the committee reached its decision without adequate time to discuss the issues involved. The process was flawed and the minority oppose the majority motion and request HA 1 be returned to the committee so the matter may be heard on the merits.

- HA2 – for the removal of Lucinda Sadler, district court judge, from her said office.
Sponsors: Dan Itse, Paul Ingbretson, Alfred Baldasaro, Peyton Hinkle, Carl Seidel
 - 1/10/2010 – introduce and referred to Joint Legislative Committee on Address
 - 04/02/2010 – organizational meeting
 - 05/03/2010 – public hearing
 - 05/10/2010 – Committee votes 6-4 Ought Not To Pass
 - 06/02/2010 – House voted to lay the address on the table on a 220-106 roll call vote

Rep. Lucy M. Weber for the **Majority** of the Joint Committee on Address: This bill of address seeks the removal of Lucinda Sadler, a judge in the judicial branch family division. The complaint against Judge Sadler is that she approved and signed orders written by Marital Master Philip Cross and Marital Master Michael Garner. The orders complained of are the same orders that were the basis for HA 1 for the removal of Michael Garner and HA 3 for the removal of Philip Cross. The orders all pertain to some of the most highly contested divorce cases in the state.

Special Procedural Rule 7, adopted by the committee in this as in prior address proceedings, sets out the constitutional requirement that “[t]he joint committee shall recommend the address only if it meets the following three criteria, and shall include such determination in a committee report.

- a. The Address states a reasonable cause for removal.
- b. The reasons for the removal are fully and substantially stated.
- c. The reasons for removal are not grounds for impeachment.”

With respect to whether the bill states a reasonable cause for removal, the majority finds it does not. The bill alleges that Judge Sadler abused her discretion or was negligent or incompetent in the performance of her duties by failing to make due inquiry before approving orders of the marital masters.

The bill alleges that the judge approved an order that held a parent in criminal contempt after a hearing noticed as a civil contempt hearing. There is no finding of criminal contempt. The complaining party concludes that he was held in criminal contempt on the basis of the terms of the order. An alternative reading of the order is that at the hearing, a determination of ability to pay the bail was made, precisely as required in an action for civil contempt.

Another paragraph complains that Judge Sadler approved an order changing a child’s educational placement on the basis of religious prejudice. A reading of orders in that case showed the master was extremely deferential to the religious beliefs of both parents, and made a decision on educational placement only because the parents were unable to agree on an educational placement, and had mutually exclusive desires as to the child’s placement. The orders carefully preserved to both parents the right to instruct the child as to their own religious beliefs, and to provide religious training of their own choice to the child.

Several of the actions stated as grounds for removal have been appealed to the New Hampshire Supreme Court, and have been upheld by that court on appeal. The remaining complaints set out in the bill of address might also, if fully substantiated, be grounds for appeal and possible reversal, but do not, even taken as a group, amount to reasonable cause for removal from office. The exceedingly contentious nature of these specific divorce proceedings has resulted in an elevated number of appeals.

A majority of the Joint Committee has already voted that the orders of the marital masters were not reasonable cause for them to be removed. It follows that the actions of the judge who read and approved those orders are likewise not reasonable cause for removal.

Part II, Article 73 of the New Hampshire Constitution specifies that the grounds for an address “shall not be a cause which is a sufficient cause for impeachment.” Part II, Article 38 defines the causes for impeachment as “bribery, corruption, malpractice or maladministration, in office.” The relevant definition of “malpractice” in Webster’s New World Collegiate Dictionary is “[m]isconduct or improper practice in any professional or official position.” The majority notes that even if they had found that the actions complained of rose to the level of reasonable cause for removal, the actions, being in the course of the judge’s regular duties in her official position, would have fallen under the plain meaning of the word malpractice, and the offense, had there been one, would have been impeachable, and therefore not addressable. For all the foregoing reasons the majority recommends a vote of ought not to pass. **Vote 6-4**

Rep. Andrew Renzullo for the **Minority** of the Joint Committee on Address: New Hampshire's founding fathers, when they crafted the New Hampshire Constitution, created a system of checks and balances. As part of that system, it empowered that branch most representative of the people, the Legislative, with the tools to ensure that the Executive and the Judiciary meet the people's high standards of justice and integrity embodied in the Constitution.

It should be noted that the constitution allows the Legislature to employ two modes of removal for judicial officers, a Bill of Address and Impeachment. Part II, Article 38 defines the causes for impeachment as “bribery, corruption, malpractice or maladministration, in office.” Part II, Article 73 allows that “The governor with consent of the council may remove any commissioned officer for reasonable cause upon the address of both houses of the legislature.” It also specifies that the grounds for an address “shall not be a cause which is a sufficient cause for impeachment.” Both by structure and tradition, the legislature has used these tools sparingly.

The joint committee heard testimony and accepted submissions concerning the rulings and actions of Judge Lucinda Sadler relative to several cases involving marital masters Philip Cross and Michael Garner. Both marital masters were under the "supervision" of Judge Sadler. The testimony and submissions the committee received, if taken at face value, showed a pattern of conduct inconsistent with the administration of justice. Unfortunately, the judge did not avail herself of the opportunity to counter or clarify these submissions. An argument has been made that statutorily, the judge is only providing the legal authority to enforce a master's ruling and is not ultimately accountable for the master's decision or behavior. However, it is claimed that marital masters are "at-will employees" of the judicial branch. If that is the case, then supervisory responsibilities for the marital master's conduct and work product must inure to the presiding judge.

In addition, the committee received testimony claiming a vastly inordinate number of Supreme Court appeals of Judge Sadler's decisions in comparison to other judges. Again, there was no clarifying rebuttal.

The legislature does not second guess the decisions of judges on a case-by-case basis. However, the legislature should determine whether a judge has behaved properly in hearing his/her cases. To allow this determination, the judge should provide the legislature the necessary information. The interests of justice demands judges to be held accountable. Based on the evidence provided, there is a reasonable argument that a recommendation of impeachment for maladministration could be made. However, lacking that option, the minority recommends the House pass the bill of address.