

# Bill as Introduced

HB 1340 - AS INTRODUCED

2010 SESSION

10-2233

05/03

HOUSE BILL            **1340**

AN ACT                relative to condominium liens for assessments.

SPONSORS:            Rep. Infantine, Hills 13

COMMITTEE:          Commerce and Consumer Affairs

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ANALYSIS

This bill provides that certain condominium liens for unpaid monthly common expenses may be granted priority over the first mortgage and may form the basis for a foreclosure sale initiated by the unit owners' association.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Ten*

AN ACT relative to condominium liens for assessments.

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

1 1 Condominium Act; Lien for Assessments. Amend RSA 356-B:46, I to read as follows:

2 I.(a) The unit owners' association shall have a lien on every condominium unit for unpaid  
3 assessments levied against that condominium unit in accordance with the provisions of this chapter  
4 and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The  
5 said lien, once perfected, shall be prior to all other liens and encumbrances except [(a)] (1) real estate  
6 tax liens on that condominium unit, [(b)] (2) liens and encumbrances recorded prior to the  
7 recordation of the declaration, and [(c)] (3) sums unpaid on any first mortgages or first deeds of trust  
8 encumbering that condominium unit and securing institutional lenders.

9 (b) The provisions of this paragraph shall not affect the priority of mechanics' and  
10 materialmen's liens.

11 (c) *Notwithstanding subparagraph (a), the lien for regular monthly common*  
12 *expenses assessments unpaid during the 6-month period immediately preceding the filing of*  
13 *the memorandum specified in paragraph III, together with all costs of collection, including*  
14 *reasonable attorney's fees shall be prior to the first mortgage; provided that the unit owners'*  
15 *association sends the unit owner and the institutional lender holding the first mortgage*  
16 *written notice of the delinquency by certified mail and first class mail; and additionally, sends*  
17 *such lender notice by certified mail and first class mail of its intent to file said memorandum*  
18 *of lien. The lien shall not include any amounts attributable to special assessments, late*  
19 *charges, fines, penalties, or interest assessed by the unit owners' association. In giving the*  
20 *foregoing notices, the unit owners' association may rely on the records of the applicable*  
21 *registry of deeds as to the address of the first institutional lender unless such lender has*  
22 *notified the unit owners' association by certified mail of a further or different address.*

23 2 Lien for Assessment; Notice Prior to Foreclosure Sale. Amend RSA 356-B:46, VI to read as follows:

24 VI. *After 30 days prior written notice by certified and first class mail to the unit*  
25 *owner and the first mortgagee of record, of the delinquency and the intent to foreclose, the*  
26 *lien perfected by paragraph III may be foreclosed by the unit owners' association under the*  
27 *power of sale in accordance with the provisions for mortgagees set forth in RSA 479:25.*

28 When payment or satisfaction is made of a debt secured by the lien perfected by paragraph III, said  
29 lien shall be released in the same manner as required by RSA 479:7 for mortgages. For the purposes  
30 of this section, the principal officer of the unit owners' association, or such other officer or officers as  
31 the condominium instruments may specify, shall be deemed the duly authorized agent of the lien  
32 creditor and shall discharge said lien.

33 3 Effective Date. This act shall take effect January 1, 2011.

HB 1340 - AS AMENDED BY THE HOUSE

03Mar2010... 0658h

2010 SESSION

10-2233  
05/03

HOUSE BILL            **1340**

AN ACT                relative to condominium liens for assessments.

SPONSORS:            Rep. Infantine, Hills 13

COMMITTEE:           Commerce and Consumer Affairs

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AMENDED ANALYSIS

This bill provides that under certain circumstances, condominium liens for unpaid monthly common expenses may be granted priority over the first mortgage.

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4 and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The  
5 said lien, once perfected, shall be prior to all other liens and encumbrances except [(a)] (1) real estate  
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7 recordation of the declaration, and [(c)] (3) sums unpaid on any first mortgages or first deeds of trust  
8 encumbering that condominium unit and securing institutional lenders.

9           (b) The provisions of this paragraph shall not affect the priority of mechanics' and  
10 materialmen's liens.

11           (c) *Notwithstanding subparagraph (a), the lien for regular monthly common*  
12 *assessments unpaid with respect to a residential condominium unit during the 6-month*  
13 *period immediately preceding the filing of the memorandum specified in paragraph III,*  
14 *together with all costs of collection, including reasonable attorney's fees, shall be prior to*  
15 *the first mortgage; provided that the unit owners' association sends, within 70 days of the*  
16 *occurrence of any delinquency, the unit owner and the institutional lender holding the*  
17 *first mortgage written notice of the delinquency by certified mail and first class mail that*  
18 *the account is at least 60 days delinquent; and additionally, sends such lender notice by*  
19 *certified mail and first class mail, at least 30 days prior, of its intent to file said*  
20 *memorandum of lien. The lien shall not include any amounts attributable to special*  
21 *assessments, late charges, fines, penalties, or interest assessed by the unit owners'*  
22 *association, nor shall the lien apply to regular assessments or costs of collection coming*  
23 *due prior to the effective date of this section. In giving the foregoing notices, the unit*  
24 *owners' association may rely on the records of the applicable registry of deeds as to the*  
25 *address of the first institutional lender unless such lender has notified the unit owners'*  
26 *association by certified mail of a different address.*

27           (d) *The priority lien rights established under subparagraph (c) shall not entitle*  
28 *or permit the unit owners' association to assert more than one priority lien unless and*  
29 *until the existing priority lien is first discharged by the unit owners' association. The*

1 *priority lien rights established under subparagraph (c) also shall not apply to any*  
2 *mortgage executed prior to the effective date of this section.*

3 *(e) After notification to the first mortgage institutional lender of a delinquency,*  
4 *in addition to any previously agreed to or required escrow amounts, the institutional*  
5 *lender may also require a residential unit owner to place an amount equal to not more*  
6 *than 6 months of current regular assessments in escrow to cover the cost of any*  
7 *delinquency.*

8 2 Effective Date. This act shall take effect January 1, 2011.

CHAPTER 142  
HB 1340 - FINAL VERSION

03Mar2010... 0658h

2010 SESSION

10-2233  
05/03

HOUSE BILL            **1340**

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SPONSORS:            Rep. Infantine, Hills 13

COMMITTEE:           Commerce and Consumer Affairs

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CHAPTER 142  
HB 1340 - FINAL VERSION

03Mar2010... 0658h

10-2233

05/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Ten*

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23 *due prior to the effective date of this section. In giving the foregoing notices, the unit*  
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CHAPTER 142  
HB 1340 - FINAL VERSION  
- Page 2 -

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6 *than 6 months of current regular assessments in escrow to cover the cost of any*  
7 *delinquency.*

8 142:2 Effective Date. This act shall take effect January 1, 2011.

9 Approved: June 14, 2010

10 Effective Date: January 1, 2011

# Committee Minutes

**AMENDED**  
**SENATE CALENDAR NOTICE**  
**COMMERCE, LABOR AND CONSUMER PROTECTION**

Printed: 04/09/2010 at 11:18 am

- ✓ Senator Margaret Hassan Chairman
- ✓ Senator Betsi DeVries V Chairman
- ✓ Senator Deborah Reynolds
- ✓ Senator Jacalyn Cilley
- ✓ Senator Peter Bragdon
- ✓ Senator Sheila Roberge

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: April 9, 2010**

**HEARINGS**

**Tuesday**

**5/4/2010**

**COMMERCE, LABOR AND CONSUMER PROTECTION**

**LOB 102**

**8:30 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** Please note the addition of HB 1393. Please note the time changes for HB 1340, HB 1366, HB 1370, HB 1371 and HB 1470.

- |           |        |  |
|-----------|--------|--|
| 8:30 AM   | HB1393 | (New Title) relative to the treatment of New Hampshire investment trusts.                                  |
| ✓ 8:45 AM | HB1340 | relative to condominium liens for assessments.   |
| 9:00 AM   | HB1366 | making certain technical corrections in the insurance laws.  |
| 9:15 AM   | HB1370 | requiring independent medical examination practitioners to file a report with the insurance department.    |
| 9:30 AM   | HB1371 | allowing recording of an examination by health care providers performing independent medical examinations. |
| 9:45 AM   | HB1470 | establishing a committee to study laws relating to condominium and homeowners' associations.               |

**Sponsors:**

**HB1393**

Rep. John DeJoic

**HB1340**

Rep. William Infantine

**HB1366**

Rep. Edward Butler

**HB1370**

Rep. Patrick Long

**HB1371**

Rep. Patrick Long

**HB1470**

Rep. Suzanne Harvey

Sen. Sharon Carson

Rep. L. Mike Kappler

Rep. Susan Almy

Rep. Paul Hackel

Sen. Amanda Merrill

START: 9:31 AM

END: 10:05 AM

Richard Parsons 271-3093

Sen. Margaret Hassan

Chairman

**Commerce, Labor & Consumer Protection Committee  
Hearing Report**

**To:** Members of the Senate  
**From:** Greg Silverman, *Legislative Aide*  
**Re:** Hearing report on **HB1340** - relative to condominium liens for assessments.  
**Hearing date:** May 4<sup>th</sup>, 2010

**Members of the Committee Present:** Senator Hassan, District 23; Senator DeVries, District 18; Senator Reynolds, District 2; Senator Roberge, District 9; Senator Cilley, District 6; Senator Bragdon, District 11.

**Members of the Committee Absent:** None.

**Sponsors:** Rep. Infantine, Hills 13.

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**What the bill does:** This bill provides that under certain circumstances, condominium liens for unpaid monthly common expenses may be granted priority over the first mortgage.

**Who supports this bill:** Rep, William Infantine, Hills 13; Dean Cowan, Island Shores; Jerry Little, NHBA; Jeff Rubinson, CAI NH; Dave Collins, NH Credit Union; Thomas Dushard, CAI NH; Bess Mosley, Springbrook Condos Portsmouth; Tom Walters, President of Condominium in Londonderry; David DeBaie, Century Village Condo in Londonderry.

**Who opposes this bill:** None.

**Summary of testimony received:**

Rep. Infantine, Hills 13.

- Prime Sponsor.
- Currently a lien on a condo is given less priority than a mortgage payment.
- This bill provides protections for Condo associations in their recovery of past fees.
- The original bill was met with opposition from the Banking Assn.
  - As amended by the House increases fairness and responsibility for both sides.
- This bill only effects mortgages after the effective passage date and 6 months of total fees.
  - Doesn't include special assessments or penalties.
- 17 other states have passed more aggressive laws and they haven't caused financial institutions to stop doing business with condominiums.

Tom Walters, President of Condominium in Londonderry.

- Supports HB1340.
- Fees are the main lifeblood of a Condo Association.
  - Foreclosure leads to ballooning uncollectable debt and underfunded financial reserves.
  - Collecting more fees on those already paying is fundamentally unfair.

Gerry Little, NH Bankers Assn.

- Supports HB1340.

- As amended by the House represents a reasonable compromise between maintaining a viable secured lending environment and the desire of Condominium association managers to access alternative sources of revenue to offset late payments from delinquent units.
- A win-win for all stakeholders.

Thomas Dushard, President of Evergreen Management.

- Supports HB1340.
- The bill provides for a viable condominium association and increased lending accessibility.

**Action:** Senator Cilley moved the bill Ought to Pass. Senator DeVries seconded the motion. The committee voted 6-0 in favor. Senator Cilley will take the bill out.

RR

Date: May 4, 2010  
Time: 9:31 A.M.  
Room: LOB 102

The Senate Committee on Commerce, Labor and Consumer Protection held a hearing on the following:

HB1340 relative to condominium liens for assessments.

Members of Committee present: Senator Hassan  
Senator DeVries  
Senator Reynolds  
Senator Cilley  
Senator Bragdon  
Senator Roberge

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The Chair, Senator Margaret Wood Hassan, opened the hearing on HB1340 and invited the prime sponsor, Representative William Infantine, to introduce the legislation.

Representative William Infantine: Good morning. Thank you, Madam Chair. My name is Will Infantine. I represent Hillsborough 13, which is Ward 6 in Manchester. I am sole sponsor on House Bill 1340, which has to do with condominium fees.

As you well know, if you live in the condominium, you pay monthly fees and that money goes toward all the expenses associated with maintaining the condominium association. There are situations that occur where a member of a condominium association does not pay their condominium fees for a significant period of time, and it has caused some financial distress to many condominium associations. If an association tries to place any kind of a lien on the unit to try to somehow, somewhere, in sometime get those fees back, they are secondary to any first or second mortgage lien.

So, the attempt here was to try to provide some kind of protection to the associations where they would be able to recover some of their past due condominium fees. Obviously, this was met with opposition from the banking side lobby, and a number of rewrites and amendments were made to try to make it more palatable to both sides.

It was my attempt to make it more fair that each party had a certain responsibility because what I kept hearing was, "Well, it's your responsibility," "No, it's your responsibility." So, I tried to put a little responsibility on both sides.

Ultimately, what the bills does, number one, is only for mortgages after the bill becomes effective, which would be January 1<sup>st</sup> of 2011. We are not interfering with any existing contracts.

Number two, it is only for a six-month period of time the condominium fees could be accessed for. So, a condominium could not place a priority lien for any more than six months worth of fees. Now, that's just fees; it does not include penalties, special assessments, or any interest.

It also puts a requirement on the condominium associations that they must notify the banks at a certain time. One of the complaints the financial institutions had was how are we supposed to know? We don't know. We don't have any relationship with the condominium association management. How do we know? The association now has to provide a written notice to the banks. They then have the opportunity to try to rectify the problem, which includes, this bill allows the institutions to now be able to request an additional deposit up to six months worth of condominium fees for anyone who has been delinquent.

The only time a first priority lien for condominium fees would be paid would be if a financial institution were to foreclose. There is nothing in this bill that would allow the association to force any payment from the financial institution in the interim. Now, someone may be very current with their mortgage payments, but not with their condominium fees. This would only occur after a post-foreclosure.

So, I believe we have met all of the concerns of all the parties involved and I don't believe there is any significant opposition to the legislation as finally written. Because there's such, I will not get into a lot of details. But, I would be happy to take any questions.

Senator Margaret Wood Hassan, D. 23: Okay. I see Senator Reynolds, and then, Senator DeVries, and then, Senator Bragdon.

Senator Deborah R. Reynolds, D. 2: Thank you, Madam Chair, and thank you very much, Representative Infantine. The concern I have about this process, and I've done a fair amount of condominium law work through my career, and I'm very sympathetic about the assessments and trying to collect

them. I guess the scenario could occur, however, where the real estate is underwater so that the lender, when they do their foreclosure and they've given money up front as a purchase-money mortgage to buy a unit, let's say. And, the fair market value, as we know, of the real estate market is so depressed that the lender is going to have a deficiency. So, what you're really doing is creating a super-priority lien status so that regardless of what happens here, the lender is going to take more of a hit, and other junior lien holders are going to be effected as well. And, I'm just wondering if you could speak to that.

Representative Infantine: Yes. That was one of the concerns brought up by the financial institutions. On the flip side, you have to understand the condominium associations continue to maintain the asset even though they are not receiving any condominium fees. We felt that, because the associations continue to upkeep, and insurance, and all the other things, and the association, and because the bill now requires the condominium association to notify the financial institutions ahead of time, they have that ability to at least know what's going on and try to rectify the situation.

Is that a perfect situation? No. Is that still going to cause a possible additional expense to the financial institutions? Yes, it will. We tried to limit it, however, to six months. The average condominium association, a high-side fee would be \$300 a month. In six months, we didn't feel \$1,800 was a significant amount of money. Also, we didn't feel, based on the fact that 17 other states have passed laws that are much more aggressive than this one and doesn't seem to have caused the financial institutions to stop providing loans for condominiums in those states, that this was not a significant of enough dollar amount to cause that much harm on the financial institutions.

Senator Deborah R. Reynolds, D. 2: Thank you for answering the question.

Senator Margaret Wood Hassan, D. 23: Thank you. Senator DeVries.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair. And, Representative, thank you for bringing the legislation forward. And, would you believe, that I am quite familiar, as a property owner in a condominium association, with the issues that delinquencies can cost? My concern, and I am sure that you looked at it, would be historically going back to when I first was looking for a mortgage on my property, the particular development where I purchased hadn't gone through the necessary provisions to establish us for Fannie Mae, Freddie Mac FHA mortgages; there is an entire process. And, my concern is that we will be limiting to at least conventional mortgages if we put this sort of statute in place, and thus really limiting the



availability of the mortgage market to future potential condominium purchasers.

Representative Infantine: From the documents that I have read, Senator, Freddie Mae and Fannie Mac do accept, will provide lending where there is a priority lien. The issue that the financial institutions and the banking lobby brought up was similar to that. They seemed to feel a little more secure in the fact that they would be able to issue or request an additional assessment. So, if they were notified of a situation, they could then contact the debtor and say, "Well, you know you are behind on your condo fees, this would be a situation that we would be responsible for up to six months and we would like you to escrow some additional money." Since that was given to them, and since they were given the notification, I think that they felt that would be an alright tradeoff.

And again, as I just mentioned, other states have done this, other states have enacted laws, which I think are much more...this was a very good compromise bill compared to some of the other ones in other states, including Massachusetts, and they didn't see any reduction in the number of financial institutions that were willing to lend to condominiums.

Senator Betsi DeVries, D. 18: Thank you for having looked at that.

Senator Margaret Wood Hassan, D. 23: Thank you. Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. Thank you, Representative. Two things. One, I thought you mentioned that this would only come into play during a foreclosure. And, my knowledge of liens is limited and fortunately not firsthand. But, I thought that if someone puts a lien on your property and then you sell it to somebody else, then that's when that lien gets paid off. So, is that how this works? Or, if someone sells their condo and has enough to pay off the bank but not enough to pay off the late fees, does the condo association still step in?

Representative Infantine: Good question. I did state that this would only come in effect in a foreclosure and that is incorrect. It is correct in the standpoint that it would be for the financial institutions when they would have to pay a priority lien. If the individual were to sell the unit, and there was a lien put on it, they would obviously, at closing, have to satisfy both whatever mortgage lien they had plus this lien to be able to go forward.

In the third scenario, if they had a foreclosure or even a bank assistance sale, if you will, and there wasn't enough to pay off the mortgage. Or, if there was enough to pay off the mortgage, would the lender still be responsible for...

excuse me, yes, the first priority would be this six months fees before then the lender would receive their money. So, yes, the bank could possibly be out that amount of money.

Senator Peter E. Bragdon, D. 11: Thank you. One more question?

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Peter E. Bragdon, D. 11: The question, the notification part is great, I think, because obviously to let the bank know that is holding the mortgage. The question is there was some discussion earlier on about mortgage and mortgages and how they are recorded with the registry of deeds. And, it seems these days that three quarters of all mortgages are registered under the mortgage electronic registration system, or MERS, but that gives no indication as to who the bank actually is that holds the mortgage. And so, how is the condo association going to determine who actually holds the mortgage? They can send a notice to MERS, but that doesn't go to, let's say, Wells Fargo or whoever might actually hold the mortgage.

Representative Infantine: There was some discussion to that, Senator, in one of the last rounds of negotiations as to what the responsibility of the condominiums. And, I believe it is outlined in the bill mentioned where the records applicable registry of deeds as to the first institution lender.

I'm not aware of this entity that you discuss so I am going to have to defer that question because I am not going to be able to answer it accurately.

Senator Peter E. Bragdon, D. 11: Okay. Thank you.

Senator Margaret Wood Hassan, D. 23: Senator DeVries had another question.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair. Representative, if you could educate me on how mechanics' liens will be handled with the priority lien in place. I see in the legislation that "the provisions of this paragraph shall not affect the priority of mechanics' and materialmen's liens." But, maybe you could just educate me when there is both a mechanics lien, a priority lien for the condominium association, and a mortgage company in line, how do you see that playing out in a foreclosure?

Representative Infantine: I don't mean to be evasive. We had these discussions. The process in place is very long and drawn out and I will not do

it justice. I know there is an attorney behind me that will do a better job at doing it. I would just mess it up, Senator, I'm sorry.

Senator Betsi DeVries, D. 18: Not a problem. I feel the same way. Thank you.

Representative Infantine: That's why I'm an insurance agent and not a lawyer.

Senator Margaret Wood Hassan, D. 23: Any other questions? Seeing none, thank you very much. So, is it Tom Walters? Hi, come on up.

Tom Walters: Good morning, and thank you, Senators, for listening to me. My name is Tom Walters. I'm President of the Century Village 2 Condo Association in Londonderry.

And, much of what I was going to say has been mentioned already. So, in the interest of time, I just wanted to mention to you that obviously the fees are the lifeblood of condo associations. What we are seeing is a ballooning uncollectable debt, overdue condo fees, and from our standpoint financially it means our reserves are underfunded, it means that the services are still being provided to condo units. And we're in a financial position now where we are kind of between a rock and a hard place, and all we can do, our only option then, is to really impose more fees and assessments on the folks that are already rather conscientiously paying their fees. So, that's problematic for us.

We have about 8% to 10% of our units that are now moving at somewhat glacial speed through either foreclosure or bankruptcy. And while we are waiting patiently for those things, we are obviously providing services to those units.

So, I just want to thank you for your support. To say that there are thousands of voters across the State. I think that our condo owners would thank you for supporting this bill. We, just as a snapshot, we wrote off \$44,000 in fees last year, bad uncollectible fees last year, and we are in line in the next month or two to write off a similar amount. So, it is a fairly significant problem for condo associations, I'm guessing across the state, and we very much appreciate your support on this. Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. I think you got a couple, wow; I'm going to go right around the table. Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. I've got some real concerns about tying this to being a first lien. So, I'm wondering if you've considered any other way of having, you know, if you are renting something, you have them pay in advance, first month, last month, that sort of thing. Are there other approaches that you considered? I'm sensitive to the, you know, the problem that you have.

Mr. Walters: Well, from our standpoint, we do have some fees in place. But, I can say that some of the issues here are folks that are behind for 90 days and beyond. These are chronic problems that are folks as they go through the system.

Senator Jacalyn L. Cilley, D. 6: Brief follow up?

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Jacalyn L. Cilley, D. 6: Have you considered buying insurance through the association that everybody would pool when this happens?

Mr. Walters: To be honest with you, that is not a question that I could answer. I would have to ask our manager about that.

Senator Margaret Wood Hassan, D. 23: Thanks. Senator Reynolds.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Madam Chair. Thank you very much, Mr. Walters. It's a pleasure to have you here. And, I just want you to know that, as an owner of a commercial condominium and being a condominium lawyer, I have some knowledge and empathy with what you go through because you are all volunteers and spend a lot of time chasing after people.

One of the things that the association can do, and I think it is probably in your own declaration and bylaws, is, if you bring suit, collect attorneys' fees and costs and actually perfect an attachment on the unit as opposed to the lien so that if there is a sale, at least you are recouping that through that. I know that's not a nice neat way of doing it. And I think you are struggling with how to do this in a fair way. But, I just wanted to ask you about that. You know, I'm sure your legal counsel has talked to you about that in the past.

Mr. Walters: We have. I can tell you from experience on the board, we have had situations where that has happened. Our issue is much more with the units that are still in the process. They are still working their way through.

Senator Deborah R. Reynolds, D. 2: Sure. Thank you, thank you very much.

Senator Margaret Wood Hassan, D. 23: Thank you, Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Yes, I do have a question. Thank you very much for your testimony. Isn't it true that condominium associations do have the ability to withhold services from those who are behind in their fees, including use of parking if it is a common area, use of the actual road way if it is a private road, maybe even utilities, I'm not sure. There are things like that that are at your disposal, I believe. Is that correct?

Mr. Walters: I'm speaking off the top of my head, and again, I should really consult with the manager who is probably going, "Oh my god" right behind me. But there are some things that, yes, I'm guessing can be done. Their huge impact however, we really can't stop plowing the snow, we really can't stop mowing the lawn, we can't let the roof deteriorate and start to leak because that will affect connecting units.

So, in terms of what we can do collectively, that can be problematic without impacting on those neighbors who are paying their condo fees.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you. Any further questions? Seeing none, thank you very much. Mr. Little.

Jerry Little: Thank you, Senator. Morning, my name is Jerry Little. I am President of the New Hampshire Bankers Association. Pleased to be here today, and I'll be very, very quick.

Just here to let you know that there has been an awful lot of work put into this piece of legislation already. We consider it in its current form, as amended in the House, an acceptable compromise between our needs and desires to protect a viable secure lending environment in New Hampshire, and the needs of condominium associations and their managers to find alternative sources of revenue to make up for delinquent unit owners on their special assessments.

We believe that the amendments that have been made to the bill as it was submitted are significant and do create for us tools and opportunities to manage our exposure. Probably most importantly, the bill before you now is prospective, which is, I think, an important point to make to Senator

Reynolds in that banks can simply choose, if they wish, to say we are not in the condominium loan business. So, this isn't going to apply to the condo loans that are on the books at this point in time. It is only going to be on a moving forward basis. There's a constitutionality issue with amending those mortgage contracts retroactively.

So, since it is prospective, institutions can then do proper underwriting. They can simply say that we require more of a down payment or they can, as we have been told by a couple of our members already, consider whether or not it is the business they want to continue to be in because they can't gauge the risk. We are fine with that. If we're allowed the opportunity to make the decision going forward that this is a business we want to be in and we understand the risks, or we understand the risks and it is a business we don't want to be in, we are okay with that. It is a free, fair, and open market and that's how things work.

We also appreciate the fact that there is now a notice to the lender. We believe that this will help us in fact work with the condominium associations to help them manage their delinquency problem, much like mortgage contracts require people to maintain homeowners' insurance. We get notified by the insurance company if the homeowners' insurance is going to lapse. The bank can pick up the telephone, particularly the members that we represent, primarily New Hampshire local financial institutions. They have the ability to call and say, "Hey, look you really need to pay that. It is in the contract. You agreed to keep homeowners' insurance on the home" or "You agreed when you signed the contract to keep your condominium fees current and you are behind and we really need you to make that payment." And, that is a good bit of leverage that we can use to try to get those folks to stay current on their condo fees, and we think that that is good for us, it is good for the home owners, it is certainly good for the associations.

As well, if we get notified by an association that somebody has become delinquent, they are 70 days past due, this also changes state law so that we can then require that bar or to escrow for condominium fees at that point in time. So, if they are not escrowing currently, or if they are escrowing for taxes and insurance, we now have the option to say to them, "Unfortunately, the record shows that you are behind on your condo fees. We are going to adjust your monthly mortgage payments so that we are going to be collecting those condominium fees in advance and we'll pay them to the association on your behalf."

So, we think that the bill as amended is an acceptable compromise, and we urge you to support it as it stands before you today amended.

Senator Margaret Wood Hassan, D. 23: Thank you. Senator Cilley, and then, Senator DeVries.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. Thank you for your testimony, Jerry. I am frankly shocked that you were...I fully expected you to oppose this. I have some serious concerns with it but understand a bit better in light of your testimony. I guess the salient question here is, do you believe this will depress the potential for condominium buyers to access capital?

Mr. Little: It could make it a little bit more challenging. I think that there may be a few more hurdles. As I said, you know, if a lender is willing to do 90% loan to value generally on a piece of housing, they may say we are only going to do 80% or 85% on a condominium. They may be a bit more rigorous in the underwriting to make sure that the sources of income to pay the mortgage off are escrowable so that they know that it's much more likely that they are going to be repaid and that they won't fall into this situation of having the lien in the first place. But, that's the market. That's how it works.

Senator Margaret Wood Hassan, D. 23: Thank you. Senator DeVries.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair. And, Jerry, Mr. Little, do you believe that the state programs New Hampshire has in the finance authority that utilize the Fannie Mae, and Freddie Mac, as well as have their own stipulations, will still be willing to write a mortgage?

Mr. Little: Well, I don't think I should speak for the Housing Finance Authority. I suspect they probably will. If they need to, they will probably take the same sort of underwriting steps that we expect our members to take and to simply adjust. They will calculate the risk and make decisions based upon it.

Senator Betsi DeVries, D. 18: Follow up question, if I can?

Senator Margaret Wood Hassan, D. 23: Yes.

Senator Betsi DeVries, D. 18: And you spoke about the escrow possibility. Would that only apply to our state-chartered banks? We couldn't engage that activity with a federally regulated bank. Could we? Or, mortgage company?

Mr. Little: Yeah, I'm certain that a federally regulated bank would be able to enjoy that benefit, as well. This is an amendment to condominium

law, not to banking law in the state. So, they would enjoy that benefit as well.

Senator Betsi DeVries, D. 18: Fabulous. Thank you.

Senator Margaret Wood Hassan, D. 23: Senator Bragdon.

Senator Peter E. Bragdon, D. 11: Thank you, Madam Chair. Thank you, Mr. Little. Again, back to the whole issue of how to find out who holds the mortgage. The bill seems to say you have to notify the holder of the first mortgage. My understanding from the prior MERS testimony was, when you go to registry of deeds, the registered mortgage holder is MERS even though it might be another bank somewhere else that holds the mortgage. I suspect for the banks in your group, maybe they do a lot of their own things and don't deal with MERS, but, I guess how does one find out who really holds the mortgage? And, I guess, secondarily, as this is written, if an association notifies MERS that there is a delinquency and "ABC Company" holds the mortgage, could "ABC" claim that the process wasn't followed, I was never notified?

Mr. Little: No. The important language is starting halfway through line 23 through line 26, where it describes how the notice shall be given and says that the "association may rely on the records of the applicable registry of deeds as to the address of the first institutional lender unless such lender has notified the unit owners' association by certified mail of a different address." Lenders are simply, if they are going to be doing business in more than one state, they need to know the laws in those individual states.

And so, MERS or whoever else might be purchasing mortgages, or servicing mortgages purchased on the secondary market in New Hampshire, will need to be aware of this, and that its incumbent on that mortgage holder to notify the condominium association that if there is a delinquency, then they are the person that needs to be notified. So, it puts the shoe on the other foot.

Senator Peter E. Bragdon, D. 11: Quick follow up on that.

Senator Margaret Wood Hassan, D. 23: Mhm.

Senator Peter E. Bragdon, D. 11: So, those two words, "may rely" basically allows the association to send it to that registered address and they have covered their bases. Right?

Mr. Little: Yes, Senator, unless they have been notified by somebody else that the person has been notified.



Senator Peter E. Bragdon, D. 11: Okay, great. Thank you.

Senator Margaret Wood Hassan, D. 23: Thank you very much. Thanks for your testimony. Is it Thomas Duchane? Good morning.

Thomas Ducharme: Good morning, members of the Committee. I'm Thomas Ducharme.

Senator Margaret Wood Hassan, D. 23: Sorry.

Mr. Ducharme: It's okay. I answer to a lot of things.

I am President of Evergreen Management, and I have been managing condominium associations for 26 years in New Hampshire and Massachusetts. We manage a little over 100 associations totaling about 8,000 units, and managing associations is all we do for a living. I'm the manager that the prior speaker, Tom Walters, was referring to sitting behind him. I'm the guy.

Senator Betsi DeVries, D. 18: We noticed.

Mr. Ducharme: So, what happens is, and the benefits of the bill which works, is a couple of things. Associations survive on the lifeblood of their fees, and we have had instances in the past where the problem is the association is not in control of the process. We are not in control of the workout. We are not in control of the foreclosure process. We don't know when it's going to be foreclosed on because of privacy requirements, which are understandable.

But, in the meantime, I am having to sit here and having to pay the lawn cutter, and pay the snow removal contractor, and fix the roofing, the light bill, pump the septic tank, and so forth. In a workout situation, and a lot of times when owners fall behind they now will work with their banks on a workout situation. We don't have any control over that workout situation. I don't know how long it is going to take or anything. And, I can tell you in my 26 years of doing this, when the borrower has been successful in working it out with the bank, that workout has never included the payment of past due condominium fees. So, now I am still back to having to go back after that owner saying, "Look, congratulations you kept your home, now I'm going to shut your water off or I'm going to tow your car." And those are options that while sitting at a board meeting are viable options for a board to have to speak to their owners about, from a political standpoint, it is not a good thing when it has to make the papers, as it recently did for to one association that

put a jersey barrier in front of someone's home. And, all the posts that were there, because the person hadn't paid their fees, there wasn't a single one that said "good job."

So, what happens is now in some cases that over the past two years owners have purchased their homes at a foreclosure. Six months later, we have had to impose a special assessment on the owners now because we've had \$30,000 to \$40,000 to \$50,000 of losses over the past two years because of a process we don't understand, we have no control over. And, unfortunately the lifespan of the physical plant does not cooperate with us. If the roofs are leaking, I can't say, "Can you wait a couple of years until we have worked our way through this economic mess and then we are going to be able to take care of it." I have to go fix the roofs.

So now, I have to call for a special assessment. When you call for special assessments, because 80 to 90% of an association's budget is fixed pricing, the insurance, the landscape, the snow guy, those are all by contract. The only two soft costs you actually have in an association budget are the maintenance, which means you don't have to do it. If you don't fix the light post today, nothing really happens tomorrow. Or, you don't fund your reserves, your savings account to fix things coming down the road. And, if you don't make the reserve payment today, nothing really happens until you have to go fix the roof, make the payment, replace the septic system, and when that comes up, it comes up very quickly. The roof doesn't stop leaking because I tell it to stop. So, now I have to raise the money to do that. And now the owners say, "Well, wait a minute here, why are we having an assessment when we haven't been funding our reserves?" "Why haven't we been funding our reserves?" Well, we lost \$30,000 to \$40,000 to \$50,000 over the last two years because of foreclosures. "Well, I thought the banks had to pay for that." That is true, but that is not accurate under the state law.

Currently, when a bank moves to foreclose, our liens are prior liens now, which are behind the first mortgage, are eliminated. Okay? In 26 years only once at a foreclosure auction via bank have I collected past due fees for an association. Only once. Because, in most cases, the mortgage value received at the time of the foreclosure is less than the market value of the home or the mortgage value of the home. I mean, if somebody could sell their home for more than their mortgage, they wouldn't be going through foreclosure. They would get out versus going through the foreclosure process which sits on your credit record for god knows how long.

So, it has, on the day-to-day ground level it has a huge impact. When we first proposed the bill, and we worked through with Representative Infantine, Mr. Little made some valid concerns. Well, what about the notice provision?

Valid point. Okay, that's fair. We would prefer that actually; we actually looked at it and said that would actually be a benefit if the banks could talk to the borrowers beforehand, two or three months when they are delinquent versus us getting to them when they are six months through the court process. A smaller number is used to work with the bigger number. So, it actually works out better.

We also put in the bill that if the banks said, "You know, this is the second time that we have had to talk to you in the past two years. We want you to put some money up now because it could be an issue down the road." We said that's fair too. We don't have that ability at this point. I always have to act after the fact when somebody stops paying their fees. I've got to go to court which takes forever now because we all know the courts are now taking more and more time off because of budget issues. The process takes longer and longer for the association to get their small claims payments done.

The next issue that came up was the constitutionality issue about retroactive contracts and we said well the bill would only be on mortgages that are written after January 1<sup>st</sup> of this coming year. That way, kind of everybody knows the ground rules. And we said, that's fair, too. We are kind of looking to protect the association and the average homeowner going forward.

It is very difficult to explain to the average homeowner, who is working hard to paying their fee, that I have to now hit you with a \$500 assessment because we lost these monies, and they say, "But we have to keep paying the operating expenses." Yes, and I say well that's not fair. Maybe not, but that's the way the rules are written in today's society that I have to deal with it.

So, I can tell you the priority lien is in place in 16 other states plus the District of Columbia. There is no empirical data to support any of those, including Massachusetts which has had this for the past 10 years, that there has been any decrease in mortgage lending to condominium associations. If anything, the bill actually helps provide a viable association and a better lending association for the banks to lend to because a bank wants to lend to a mortgage. When banks lend on a mortgage, they ask for the financial statements; we give them the financial statements; we have \$30,000 in the bank. Nobody knows we should have had 80 because that was a loss of the past two years.

So, it provides a greater protection for the banks that now at least at some point everybody will share in this issue. But, right now the associations are bearing it all by themselves. That going forward, if the associations know that at the time of foreclosure we are at least going to receive six months of

past due fees, that helps from a budgeting perspective. We are putting more money back into reserves; hence the fees can remain relatively stable and we are looking for special assessments.

So, as indicated, and the banking industry has come on board, I think it is because Mr. Little has probably decided to buy a condo probably for the first time in his life, has seen the light, so to speak. But, it was a good process in working with them in terms of meeting their needs; they wanted notification which we were able to grant.

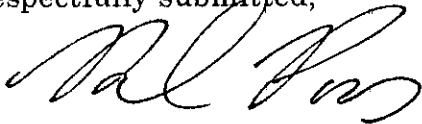
Senator Margaret Wood Hassan, D. 23: Thank you. Are there any questions? Seeing none, thank you very much for your testimony.

Mr. Ducharme: Thanks.

Senator Margaret Wood Hassan, D. 23: I'll note that that's all the speakers I have listed. Was there anybody else who wanted to speak on 1340? I'll note that all the other folks that signed in signed in in support. And, the list is here for the Committee to see if they would like. So, with that I am going to close the hearing on House Bill 1340.

Hearing closed at 10:05 A.M.

Respectfully submitted,



Richard Parsons  
Senate Committee Secretary

9/13/10

# Speakers





# Testimony



**HB 1340 – An act relative to condominium liens for assessments****Testimony of the New Hampshire Bankers Association  
Presented by Gerald H. Little, President****Before the Senate Commerce, Labor & Consumer Protection Committee  
Tuesday, May 4, 2010**

Chairwoman Hassan and members of the Senate Commerce, Labor & Consumer Protection Committee, the New Hampshire Bankers Association (NHBA) finds HB 1340 as amended by the House of Representatives to be a reasonable compromise between the important need to maintain a viable secured lending environment in New Hampshire and the desire of condominium association managers to access alternative sources of revenue to offset late payments from delinquent unit owners.

As amended by the House and before you today, HB 1340 would grant condominium associations a priority lien for up to six months of past due condominium fees, plus collection costs, over mortgages written after the enactment date.

As a rule, the NHBA opposes efforts to create priority lien status over first mortgages because they weaken our ability to conduct proper loan underwriting and make mortgages more expensive for all borrowers. However, in the case of HB 1340 as amended by the House, the application of the priority lien is prospective and includes a number of measures that would allow lenders to protect themselves by managing condominium fee delinquencies. Specifically:

- A condominium association would need to send written notice to the last recorded owner of a mortgage when a unit owner's assessment becomes 60 days past due.
- This would allow the lender to engage their borrower and remind them that failure to pay condo fees violates the mortgage contract and must be made current.
- Following notification of delinquency, if the unit owner refuses to cure the situation, a lender may require a borrower to escrow condo fees.
- This would allow the lender to bring the condo fees current and pay them on time going forward from the borrower's funds.

We hope that the condominium fee delinquency management tools HB 1340 would create will help us work together with condominium managers to prevent such problems in the future.

# Voting Sheets

# Senate Commerce, Labor & Consumer Protection Committee

## EXECUTIVE SESSION

Bill # HB 1340

Hearing date: 5/4/10

Executive session date: 5/4/10

Motion of: OTP

VOTE: 6-0

<u>Made by</u>	Hassan <input type="checkbox"/>	<u>Seconded</u>	Hassan <input type="checkbox"/>	<u>Reported</u>	Hassan <input type="checkbox"/>
<u>Senator:</u>	DeVries <input type="checkbox"/>	<u>by Senator:</u>	DeVries <input checked="" type="checkbox"/>	<u>by Senator:</u>	DeVries <input type="checkbox"/>
	Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>
	Cilley <input checked="" type="checkbox"/>		Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>
	Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>
	Roberge <input type="checkbox"/>		Roberge <input type="checkbox"/>		Roberge <input type="checkbox"/>

Motion of: \_\_\_\_\_

VOTE: \_\_\_\_\_

<u>Made by</u>	Hassan <input type="checkbox"/>	<u>Seconded</u>	Hassan <input type="checkbox"/>	<u>Reported</u>	Hassan <input type="checkbox"/>
<u>Senator:</u>	DeVries <input type="checkbox"/>	<u>by Senator:</u>	DeVries <input type="checkbox"/>	<u>by Senator:</u>	DeVries <input type="checkbox"/>
	Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>		Reynolds <input type="checkbox"/>
	Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>
	Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>		Bragdon <input type="checkbox"/>
	Roberge <input type="checkbox"/>		Roberge <input type="checkbox"/>		Roberge <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Hassan, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator DeVries, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Reynolds	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cilley	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Bragdon	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*Amendments: \_\_\_\_\_

Notes: \_\_\_\_\_

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# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: May 4, 2010

THE COMMITTEE ON Commerce, Labor and Consumer Protection  
to which was referred House Bill 1340

AN ACT                      relative to condominium liens for assessments.

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

**OUGHT TO PASS**

BY A VOTE OF:    6-0

AMENDMENT #        s

Senator Jacalyn L. Cilley  
For the Committee

Danielle Barker 271-3093

## New Hampshire General Court - Bill Status System

**Docket of HB1340**

Docket Abbreviations

**Bill Title:** relative to condominium liens for assessments.*Official Docket of HB1340:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
01/06/2010	H	Introduced and Referred to Commerce and Consumer Affairs; <b>HJ 6</b> , PG.236
01/06/2010	H	Public Hearing: 1/7/2010 2:00 PM LOB 302
01/11/2010	H	Subcom Work Session: 1/26/2010 9:15 AM LOB 302 (Members: Reps Dowling, Keans, Kopka, Winters & Hunt)
01/26/2010	H	Subcommittee Work Session: 2/4/2010 9:00 AM LOB 302
01/27/2010	H	==CANCELLED== Executive Session: 2/4/2010 10:00 AM LOB 302
02/08/2010	H	Subcommittee Work Session: 2/11/2010 9:00 AM LOB 302
02/08/2010	H	Executive Session: 2/11/2010 10:00 AM LOB 302
02/16/2010	H	Committee Report: Ought to Pass with Amendment #0658h for Mar 3 CC (Vote 18-0); <b>HC 17</b> , PG.794
02/16/2010	H	Proposed Committee Amendment #0658h; <b>HC 17</b> , PG.850-851
03/03/2010	H	Amendment #0658h Adopted, VV; <b>HJ 20</b> PG.1099-1100
03/03/2010	H	Ought to Pass with Amendment #0658h: MA VV; <b>HJ 20</b> PG.1099-1100
03/24/2010	S	Introduced and Referred to Commerce, Labor and Consumer Protection; <b>SJ 11</b> , Pg.262
04/09/2010	S	Hearing: May 4, 2010, Room 102, LOB, 8:30 a.m.; <b>SC15</b>
04/09/2010	S	Hearing: === TIME CHANGE === May 4, 2010, Room 102, LOB, 8:45 a.m.; <b>SC16</b>
05/04/2010	S	Committee Report: Ought to Pass, 5/12/10; <b>SC19</b>
05/12/2010	S	Ought to Pass, MA, VV; OT3rdg; <b>SJ 18</b> , Pg.417
05/12/2010	S	Passed by Third Reading Resolution; <b>SJ 18</b> , Pg.497
05/19/2010	S	Enrolled; <b>SJ 20</b> , Pg.665
05/19/2010	H	Enrolled; <b>HJ 46</b> , PG.2244
06/16/2010	H	Signed by the Governor 06/14/2010; Effective 01/01/2011; Chapter 0142

NH House

NH Senate

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*New Hampshire General Court Information Systems*  
 107 North Main Street - State House Room 31, Concord NH 03301

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

HB1340 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY 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 on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: \_\_\_\_\_

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

\_\_\_\_ - AMENDMENT # \_\_\_\_\_      \_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_ - AMENDMENT # \_\_\_\_\_      \_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

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

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [ a thru g or a, b, c, d] here:   A  

EXECUTIVE SESSION REPORT

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

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK   10/4/10  

  
\_\_\_\_\_  
COMMITTEE SECRETARY