

February 27, 2004
No. 9A

STATE OF NEW HAMPSHIRE

Web Site Address: www.gencourt.state.nh.us



Legislative

SENATE CALENDAR ADDENDUM

REPORTS & AMENDMENTS

REPORTS

INSURANCE

SB 367, relative to the New Hampshire Insurance Guaranty Association Act.

Ought to pass with amendment, Vote 2-0

Senator Flanders for the committee.

TRANSPORTATION

SB 532-FN, exempting biodiesel from the road toll.

Ought to pass with amendment, Vote 4-0

Senator Flanders for the committee.

WILDLIFE & RECREATION

SB 512-FN, relative to improving public boat access to Lake Sunapee.

Ought to pass with amendment, Vote 2-1

Senator Gatsas for the committee.

AMENDMENTS

Insurance

March 3, 2004

2004-0642s

01/10

Amendment to SB 367

Amend the title of the bill by replacing it with the following:

AN ACT relative to the New Hampshire Insurance Guaranty Association Act of 2004.

Amend the title of chapter 404-H and RSA 404-H:1 as inserted by section 1 of the bill by replacing them with the following:

NEW HAMPSHIRE INSURANCE GUARANTY ASSOCIATION ACT OF 2004

404-H:1 Title. This chapter shall be known and may be cited as the New Hampshire Insurance Guaranty Association Act of 2004.

Amend the introductory paragraph of RSA 404-H:3 as inserted by section 1 of the bill by replacing it with the following:

404-H:3 Scope. This chapter shall apply to insurers with orders of liquidation with findings of insolvency that are first entered after the effective date of this chapter and shall apply to all kinds of direct insurance, but shall not be applicable to the following:

Amend RSA 404-H:5, VI as inserted by section 1 of the bill by replacing it with the following:

VI. "Claimant" means any insured making a claim or any person instituting a liability claim, including a workers' compensation claim, provided that no person who is an affiliate of the insolvent insurer at the time the policy was issued or at the time of the insured event may be a claimant.

Amend RSA 404-H:8, I(d) through (g) as inserted by section 1 of the bill by replacing them with the following:

(d) Notwithstanding any other provisions of this chapter, except in the case of a claim for benefits under workers' compensation coverage, a covered claim shall not include a claim filed with the association after the earlier of:

(1) 18 months after the date of the order of liquidation; or

(2) The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred-but-not-reported losses.

(e) Notwithstanding any other provisions of this chapter, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to or on behalf of an insured, its affiliates, and additional insureds on covered claims shall cease when \$10,000,000 shall have been paid in the aggregate by the association to or on behalf of that insured, its affiliates, and additional insureds on covered claims arising under the policy or policies of any one insolvent insurer.

(f) If the association determines that there may be more than one claimant having a covered claim against the association under the policy or policies of any one insolvent insurer, the association may establish a plan to allocate amounts payable by the association in such manner as the association in its discretion deems equitable.

(g) Be deemed the insurer only to the extent of the association's obligation on the covered claims and to such extent, subject to the limitations provided in this chapter, shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including but not limited to the right to pursue and retain salvage and subrogation recoverables on paid covered claims obligations. The association shall not be deemed the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal jurisdiction of the courts of any jurisdiction.

Amend RSA 404-H:8, I(m) as inserted by section 1 of the bill by replacing it with the following:

(m) Notwithstanding any of the powers of the commissioner as liquidator as provided for in RSA 402-C, the association shall have the final authority with respect to the processing and settlement of covered claims for which it becomes responsible pursuant to this chapter, including authority for the use of records of the insolvent insurer directly related to covered claims. At the conclusion of the association's responsibility with respect to any insolvent insurer, any original records of said insolvent insurer then in the possession of the association shall be turned over to the liquidator for ultimate disposal in accordance with RSA 402-C. The association shall cooperate with any agent to the extent possible in identifying policyholders of the agent and the insolvent insurer.

Amend RSA 404-H:8, IV as inserted by section 1 of the bill by replacing it with the following:

IV. In the event of an insolvency resulting in covered claims payable by the association in excess of its capacity to pay from assessments collected under RSA 404-H:8, I(h), and for which the association is unable to borrow funds pursuant to RSA 404-H:8, II(b), the state may award a guarantee as follows:

(a) Upon recommendation of the commissioner, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans made to the association for the purpose of paying claims under RSA 404-H:8, I. Such state guarantee, when combined with all other currently outstanding guarantees in effect shall not at any time exceed the limit established in RSA 162-A:22. The full faith and credit of the state shall be pledged for any such guarantee, but the total outstanding amount of principal guaranteed by the state under this section shall not exceed, in the aggregate at any time, \$25,000,000, nor shall the guarantee cause the contingent credit limit of RSA 162-A:22 to be exceeded. The commissioner, in consultation with the authority, shall establish appropriate guidelines to insure that the guarantee is used to facilitate the prompt payment of claims under RSA 404-H:8, I for which the association is unable to reasonably finance through the borrowing authority established under RSA 404-H:8, II(b).

(b) The state's guarantee of a loan made to the association under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the association. Such guarantee agreement shall contain such terms and conditions as the commissioner, in consultation with the authority, and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment and maintenance of reserves. The guarantee agreement shall specifically require that the proceeds of a guaranteed loan shall only be used for payment of claims under RSA 404-H:8. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with the section shall be executed on behalf of the state by the commissioner and the chairperson, vice chairperson, or executive director of the authority, and the state treasurer. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

(c) The authority shall have no financial obligation for the guarantees issued under this section, said guarantees being the obligation of the state as set forth in this section.

Amend RSA 404-H:9, IV(e) as inserted by section 1 of the bill by replacing it with the following:

(e) Provide that notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to and filing with the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

Amend RSA 404-H:16 as inserted by section 1 of the bill by replacing it with the following:

404-H:16 Recognition of Assessments in Rates. The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. Such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Amend RSA 404-H:18 as inserted by section 1 of the bill by replacing it with the following:

404-H:18 Stay of Proceedings. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall, subject to waiver by the association in specific cases, be stayed for 6 months and such additional time thereafter as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in this state, whichever is later.

Amend RSA 404-B:5, IV as inserted by section 2 of the bill by replacing it with the following:

IV. "Covered claim" means a net unpaid claim, in excess of \$50 (after application of all deductions or commissions as provided for by any contract of insurance) including one for unearned premiums, which arises out of and is within coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer after the effective date of this chapter is declared insolvent by the superior court, and (a) the claimant or insured is a resident of this state at the time of the insured event; or (b) the property from which the claim arises is permanently located in this state. Claims may not be cumulated by assignment to avoid the application of the \$50 deductible provision. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. Any such claim asserted against an insured or an insurer which has become insolvent shall have as its exclusive remedy a direct claim against the assets of the insolvent insurer filed with the liquidator as provided for in RSA 402-C in a maximum amount not to exceed the policy limits of the insured. ***For an order of liquidation with a finding of insolvency issued on or after August 23, 2003,*** "covered claim" shall also not include an unpaid claim of an insured or third party liability claimant whose net worth as of December 31 of the year [next] preceding the date the insurer becomes an insolvent insurer exceeds \$25,000,000; provided, that an insured's or third party liability claimant's net worth on such date shall be deemed to include the aggregate net worth of the insured or third party liability claimant and all of its affiliates as calculated on a consolidated basis.

Amend the bill by deleting section 3 and renumbering the original section 4 to read as 3.

2004-0642s

AMENDED ANALYSIS

This bill establishes the New Hampshire Insurance Guaranty Association Act of 2004.

This bill is a request of the insurance department.

Wildlife and Recreation

March 3, 2004

2004-0669s

03/10

Amendment to SB 512-FN

Amend the title of the bill by replacing it with the following:

AN ACT establishing a Lake Sunapee public access commission.

Amend the bill by replacing all after the enacting clause with the following:

1 Commission Established. There is established a commission to study Lake Sunapee public access.

2 Membership and Compensation.

I. The members of the commission shall be as follows:

- (a) Two members of the senate, appointed by the president of the senate.
- (b) At least 3, but not more than 5 members of the house of representatives, at least half of whom shall represent districts with towns on Lake Sunapee, appointed by the speaker of the house of representatives.
- (c) At least 2, but not more than 3, representatives of governor and council, at least 2 of whom shall be executive councilors, appointed by the governor and council .
- (d) A representative of the fish and game department, appointed by the executive director.
- (e) A representative of the department of resources and economic development, division of parks and recreation, appointed by the commissioner.
- (f) A representative of the department of transportation, appointed by the commissioner.
- (g) A representative of the department of safety, division of safety services, appointed by the commissioner.
- (h) A representative of the department of environmental services, division of water appointed by the commissioner.
- (i) A representative of the fish and game commission, appointed by the chairman of the commission.
- (j) Two representatives of the town of Newbury, appointed by the board of selectmen.
- (k) A representative of the town of Sunapee, appointed by the board of selectmen.
- (l) A representative of the town of New London, appointed by the board of selectmen.
- (m) A representative of the town of Newport, appointed by the board of selectmen.
- (n) A representative of the New Hampshire Wildlife Federation, appointed by its president.
- (o) A representative of the Bradford Fish & Game Club, appointed by its president.
- (p) A representative of the Lake Sunapee Protective Association, appointed by its president.
- (q) Three members of the public, appointed by the governor and council, as follows:
 - (1) One representing motorized recreational boating interests
 - (2) One representing non-motorized recreational boating interests
 - (3) One representing swimming/state beach user recreational interests.

II. Each person or entity making appointments may appoint one alternate for each regular commission member appointed, who may sit and vote at meetings of the commission in the absence of the regular member.

III. The senate clerk shall notify all appointing authorities when this act takes effect and shall request that all initial letters of appointment be submitted to the senate clerk within 30 days. Letters of appointment may be amended at any time during the term of the commission.

IV. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

3 Duties. The commission shall study Lake Sunapee public access, including developing and evaluating options for improving public access to Lake Sunapee, and in particular improved public boat access, and making recommendations for further action and any needed legislation. Working with state agencies, which are hereby directed to cooperate with and support the work of the commission using existing staff and budgetary resources and such contributions, donations, gifts, and grants as may offered from other parties, the commission should develop and evaluate an optimal conceptual and schematic plan for a public boat access area at the Sunapee state beach and compare that with various development options at the Wild Goose site and any other plausible alternatives the commission might identify. The commission may also develop conceptual alternatives for long-term use and improvements to the Sunapee state park. Due consideration should be given to the interests of sportsmen and women, recreational boaters including both motorized and non-motorized boaters, the general public, including park and lake visitors, swimmers, picnickers, and area residents, and public safety considerations, as well as to maintaining or improving the capacity, quality, and financial viability of state beach park operations. The commission and state agencies represented on the commission are authorized to accept and expend contributions, donations, gifts, and grants for the purposes stated herein, including retaining the services of a facilitator or consultants.

4 Chairperson; Quorum. The members of the study commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. A majority of all members of the commission with appointment letters on file with the senate clerk shall constitute a quorum.

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the governor and council, the fish and game commission, the fish and game department, the department of resources and economic development, and the state library on or before November 30, 2004.

6 Effective Date. This act shall take effect upon its passage.

2004-0669s

AMENDED ANALYSIS

This bill establishes a Lake Sunapee public access commission.

Senate Transportation

March 3, 2004

2004-0677s

05/04

Amendment to SB 532-FN

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

2 New Paragraph; Road Tolls; Refunds; Biodiesel. Amend RSA 260:47 by inserting after paragraph VI the following new paragraph:

VII. Any distributor that sells or dispenses biodiesel or any blend of biodiesel with petroleum-based diesel fuel, where at least 20 percent of the blend by volume is biodiesel, shall be entitled to apply for a refund as provided in this section.

3 Biodiesel Refund; Report by Department of Safety. The department of safety shall report to the fiscal committee of the general court by October 1 of each year the number of gallons of biodiesel or qualifying biodiesel blend for which refunds were issued in the preceding fiscal year pursuant to RSA 260:47, VII. For the first year that the number of gallons equals or exceeds 1,000,000, the department shall also certify the number of gallons to the secretary of state.

4 Repeal. The following are repealed:

I. RSA 259:6-a, relative to biodiesel.

II. RSA 260:47, VII, relative to the biodiesel road toll refund.

5 Contingency. Section 4 of this act shall take effect upon the date that the department of safety certifies to the secretary of state that the number of gallons of biodiesel or qualifying biodiesel blend for which refunds were issued in the preceding fiscal year pursuant to RSA 260:47, VII equaled or exceeded 1,000,000, as provided in section 3 of this act.

6 Effective Date.

I. Section 4 of this act shall take effect as provided in section 5 of this act.

II. The remainder of this act shall take effect one year after its passage.