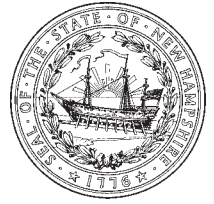


STATE OF NEW HAMPSHIRE

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SENATE JOURNAL 7 *(Cont.)*



March 6, 2003

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

SENATE JOURNAL 8

March 13, 2003

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, Chaplain to the Senate, offered the prayer.

O God, You are the Creator by whom we are each fearfully and wonderfully made. Give us eyes wide open enough to see within each other that thumbprint of Your sacred touch, for then we will know how to behave.
Amen.

Senator Odell led the Pledge of Allegiance.

INTRODUCTION OF GUESTS COMMITTEE REPORTS

SB 165, relative to the voluntary dissolution of nondepository trust companies. Ought to pass with amendment, Banks Committee. Vote 5-0. Senator Odell for the committee.

Banks

March 7, 2003

2003-0593s

06/01

Amendment to SB 165

Amend RSA 392:43 as inserted by section 1 of the bill by replacing it with the following:

392:43 Voluntary Dissolution of Nondepository Trust Company. A trust company organized as a nondepository institution under the provisions of RSA 392 or under the provisions of RSA 392-A may voluntarily dissolve in the manner provided in this chapter. Such dissolution may be accomplished by the liquida-

tion of the trust company or by reorganizing the trust company into a domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership that does not have banking or trust powers, and in both instances surrendering its trust company charter to the board of trust company incorporation. A trust company that reorganizes into any other entity pursuant to this section shall not engage in any activity that is authorized only for a bank or a trust company.

Amend RSA 392:46 and 392:47 as inserted by section 1 of the bill by replacing them with the following:

392:46 Approval of Voluntary Dissolution; Filing Fee.

I. A nondepository trust company seeking to dissolve its charter shall file an application for dissolution with the board of trust company incorporation accompanied by a filing fee of \$1500 payable to the bank commissioner. The bank commissioner shall examine the application for completeness and compliance with the requirements of this section, the domestic business entity laws applicable to the requested type of liquidation or reorganization, and its rules. The application shall include a comprehensive plan of dissolution setting forth the disposition of all assets and liabilities, in reasonable detail to effect the liquidation or reorganization. Among other things, the plan of dissolution shall provide for the discharge or assumption of all of the nondepository trust company's known or unknown claims and liabilities and the transfer of all of its responsibilities as a trustee to a successor trustee or¶ trustees. Additionally, the filing shall include such other certifications, affidavits, documents or information with respect to the dissolution as the board may require to understand how such assets and liabilities will be disposed of, the time table for effecting disposition of such assets and liabilities, and the applicant's proposal for dealing with any claims that are asserted after the dissolution has been completed. The bank commissioner may conduct a special examination of the applicant for purposes of evaluating the application. Cost of the special examination shall be paid by the applicant.

II. If the bank commissioner finds that the application for dissolution is incomplete, the bank commissioner shall return it for completion not later than 60 days after it is filed. If the application is found to be complete by the bank commissioner, he or she shall so notify the board in writing and shall report any information he or she has obtained from an examination of the applicant to the board. Not later than 30 days thereafter, the board shall hold a hearing for the purpose of determining whether the plan of dissolution disposes of the assets and liabilities in a lawful manner, is fair and equitable to all interested persons, has no adverse effect on the business of banking in the state and in general carries out the purposes and intentions of RSA 392:43-45. Not later than 30 days thereafter, the board shall either approve or not approve the application. If the board approves the application, then the applicant may proceed with the dissolution under the plan, subject to such conditions that the board may prescribe. If the applicant subsequently determines that the plan of dissolution must be amended to complete the dissolution, it shall file an amended plan with the board and obtain its approval to proceed under the amended plan. If the board does not approve the application or amended plan, if any, the applicant may appeal the decision pursuant to RSA 541.

III. Upon completion of all actions required under the plan of dissolution and conditions, if any, prescribed by the board of incorporation, necessary to liquidate the trust company or to effect the reorganization, the applicant shall submit a written report of its actions to the board of incorporation and the applicant's board of directors shall certify, under oath, that it is true and correct. Following receipt of the report, the bank commissioner may examine the trust company to determine whether the commissioner is satisfied that all required actions have been taken to liquidate or reorganize the trust company in accordance with the plan of dissolution and any conditions prescribed by the board. Not later than 60 days after the filing of the report, the board of incorporation shall examine the report and the bank commissioner's findings, and, if it is satisfied, shall so notify the applicant in writing that the dissolution has been completed and is final. Thereupon, the applicant shall surrender its charter to the board, and the board shall issue a certificate of dissolution to be filed with the secretary of state pursuant to RSA 392:47. If the board is not satisfied that all required actions have been taken, it shall notify the applicant in writing what additional actions shall be taken to be eligible for a certificate of dissolution. The board shall establish a deadline for the submission of evidence that the additional actions have been taken. The board may extend the deadline for good cause shown. If the applicant fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the board of incorporation, the board shall notify the applicant in writing that its application is not approved, and the applicant may appeal the decision pursuant to RSA 541.

IV. The board may adopt rules, pursuant to RSA 541-A, relative to the procedures and requirements for a dissolution pursuant to RSA 392:43-47.

392:47 Procedure; Effect; Recording Fee. When the board of trust company incorporation approves a voluntary dissolution application, the applicant shall file the certificate of dissolution in the office of the secretary of state, accompanied by a fee of \$35. In the case of a reorganization, the applicant shall also file the documents required by the secretary of state for domestic business entities to complete a statutory reorganization of the type approved by the board, including the organizational instruments for the reorganized entity. The secretary of state shall record the certificate and other documents, if any, and issue a certificate evidencing such liquidation or reorganization, as applicable. When the secretary of state has issued a certificate evidencing the liquidation or reorganization, as applicable, the dissolving banking corporation, limited liability company, limited liability partnership or limited partnership shall be deemed to have been voluntarily dissolved or reorganized, as applicable, with the same effect as if such voluntary dissolution or reorganization had been effected by a domestic business corporation, limited liability company, limited partnership, or limited liability partnership, by making the filings required of such domestic business entities under the provisions of state law applicable to such domestic business entities.

Amend RSA 392-A:3 as inserted by section 2 of the bill by replacing it with the following:

392-A:3 Capital; Other Funds. A merchant bank shall maintain capital at a level which is commensurate with the risk undertaken in connection with its loans, investments, and other activities, as determined ***annually*** by its board of directors, if it is a corporation, or its equivalent governing body if it is any other type of business entity, but in no event shall its capital be less than 6 percent of its assets. The initial capital of a merchant bank shall consist of common stock in the amount of at least \$2,500,000 paid in the form of cash or its equivalent. The balance of any capital required by the board of trust company incorporation may consist of preferred stock or other equity capital, subordinated notes, or debentures, as approved by said board. Notwithstanding the foregoing, the capital structure of a New Hampshire financial institution that reorganizes into a merchant bank may continue in the same form and amount as existed at the time of reorganization, provided that the capital is at least \$2,500,000. A merchant bank may borrow funds to engage in the merchant banking business only from accredited investors. Following the organization or reorganization of a merchant bank, if the bank commissioner finds that the capital is inadequate based on the risk profile of its investments, the bank commissioner may require that the capital be increased by an amount necessary to protect the safety and soundness of the merchant bank. ***A merchant bank may voluntarily dissolve, either by liquidation or reorganization into another type of business entity, in accordance with the provisions of RSA 392.***

Amend RSA 293-A:11.09 as inserted by section 3 of the bill by replacing it with the following:

293-A:11.09 Approval of Conversion of a Corporation. A corporation may convert to a limited liability company organized under the laws of the state of New Hampshire upon the authorization of such conversion in accordance with this section and fulfillment of the requirements of RSA 304-C:17-a. The board of directors of the corporation shall adopt a plan of conversion and shall submit the plan of conversion for approval of the shareholders in the manner provided for shareholder approval of a plan of merger under RSA 293-A:11.03 for a merger requiring shareholder approval. After a plan of conversion is authorized and at any time before the certificate of conversion is filed, the planned conversion may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedures set forth in the plan of conversion, or if none is set forth, in the manner determined by the board of directors. ***The term "corporation," as used in this section, shall include nondepository trust companies incorporated as banking corporations under the provisions of RSA 392 or RSA 392-A. Such nondepository trust companies shall be entitled to employ the procedures provided in this section to voluntarily dissolve their trust company charters pursuant to RSA 392:43-47 and to reorganize as domestic business corporations subject to the provisions of this statute.***

Amend the bill by replacing section 5 with the following:

5 Effective Date. This act shall take effect 60 days after its passage.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 146, relative to eligible costs for training grants in the job training program for economic growth. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Prescott for the committee.

Adopted.

Ordered to third reading.

SB 70, creating the Great Bay Estuary district and making an appropriation therefor. Environment Committee. Ought to pass, Vote 3-0. Senator Cohen for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 115, establishing a commission to study implementing a recommendation of the New Hampshire estuaries project management plan and establishing the estuary alliance for sewerage treatment. Environment Committee. Ought to pass, Senator Vote 3-0. Cohen for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 155, establishing a commission to study issues relative to large groundwater withdrawals. Environment Committee. Ought to pass with amendment, Vote 5-0.

Senator Johnson for the committee.

Environment

March 7, 2003

2003-0595s

06/01

Amendment to SB 155

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

AN ACT establishing a commission to study issues relative to water withdrawals.

Amend the bill by replacing sections 1-3 with the following:

1 Commission Established. The general court recognizes that the waters of New Hampshire are a precious and invaluable resource upon which there is an ever increasing demand for existing, new, and competing uses. The general court further recognizes that an adequate supply of groundwater for domestic, agricultural, industrial, and recreational uses and for fish and wildlife is essential to the health, safety, and welfare of the people of New Hampshire. Therefore, there is hereby established a commission to study ways to clarify the hierarchy of water uses while considering existing private property rights, to bring a balanced approach to water use among residential, public water supply, industrial, commercial, agricultural, recreational and other water users, and to review the current process by which all such new water users may reasonably and efficiently use state water resources, including consideration of potential regional impacts and local water management issues, in order to best protect and preserve an adequate supply of water for the state.

2 Membership and Compensation.

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

- (a) Three members of the senate, appointed by the president of the senate.
- (b) Three members of the house of representatives, appointed by the speaker of the house.
- (c) A representative of public water supplier interests, nominated by the New Hampshire Water Works Association, and appointed by the governor.
- (d) The commissioner of the department of environmental services, or designee.
- (e) The director of the water division of the department of environmental services, or designee.
- (f) A representative of the International Bottled Water Association, nominated by the association and appointed by the governor.
- (g) Two members of the public, appointed by the governor.
- (h) Two representatives of different business water users, nominated by the Business and Industry Association of New Hampshire, and appointed by the governor.
- (i) A representative of municipal interests, nominated by the New Hampshire Municipal Association, and appointed by the governor.
- (j) A representative of the Society for the Protection of New Hampshire Forests, nominated by the society, and appointed by the governor.

(k) A representative of the New Hampshire Farm Bureau, nominated by the bureau, and appointed by the governor.

(l) A representative of Ski New Hampshire, nominated by the organization, and appointed by the governor.

(m) A representative of the joint board of professional engineers, architects, land surveyors, foresters, professional geologists, and natural scientists who shall be a hydrologist, geologist, or engineer, appointed by the governor.

(n) A representative of the New Hampshire Association of Conservation Commissions, nominated by the association and appointed by the governor.

(o) Two representatives, one representing construction activities and another representing mining, nominated by the Associated General Contractors of New Hampshire, and appointed by the governor.

II. 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 ways to bring a balanced approach to water use among residential, public water supply, industrial, commercial, agricultural, energy, recreational, and other water users, and to improve the current process by which new water users may reasonably and efficiently use state water resources, including consideration of potential regional impacts and local water management issues, in order to best protect and preserve an adequate supply of water for the state with particular attention to groundwater. This study shall include consideration of issues such as potential impacts on New Hampshire's environment, other water users, municipalities, and the state's economy. The commission may address other issues pertinent to water.

Amend the bill by replacing section 5 with the following:

5 Report. The commission shall make an interim report of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003. The commission shall make a final report of its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before June 30, 2004.

2003-0595s

AMENDED ANALYSIS

This bill establishes a commission to study issues relative to water withdrawals.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 162, establishing a committee to study water resources. Environment Committee.

Ought to pass, Senator Vote 4-1. Prescott for the committee.

Adopted.

Ordered to third reading.

SB 205-FN, authorizing the state to accept the title of the dam and dikes at Smith Pond, Enfield, New Hampshire. Environment Committee. Re-refer to committee, Vote 5-0. Senator Below for the committee.

Committee report of re-refer is adopted.

SB 113, changing the name of Plymouth state college to Plymouth state university. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Kenney for the committee.

Adopted.

Ordered to third reading.

SB 145-FN-A, relative to the duties of the board of trustees of the department of regional community-technical colleges. Executive Departments and Administration Committee.

Ought to pass, Vote 3-0. Senator Peterson for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 157, establishing a committee to study the vesting of development rights. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-1. Senator Prescott for the committee.

Senate Executive Departments and Administration

March 6, 2003

2003-0563s

06/01

Amendment to SB 157

Amend subparagraph I(b) of section 2 of the bill by replacing it with the following:

(b) Three members of the house of representatives, appointed by the speaker of the house.

Amendment adopted.

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

March 10, 2003

2003-0616s

06/09

Floor Amendment to SB 157

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 210, relative to the administrative procedures of the real estate commission. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Prescott for the committee.

Executive Departments and Administration

March 6, 2003

2003-0582s

08/09

Amendment to SB 210

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

1 New Paragraph; Disciplinary Actions; Informal Disposition. Amend RSA 331-A:28 by inserting after paragraph III the following new paragraph:

IV. Informal dispositions and the provisions of RSA 541-A:31, V shall not be available to the commission.

2 Repeal. RSA 331-A:28, IV, relative to informal dispositions by the real estate board, is repealed.

3 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect January 1, 2005.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 212, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Prescott for the committee.

Senate Executive Departments and Administration

March 6, 2003

2003-0554s

03/10

Amendment to SB 212

Amend RSA 541-A:22, III(h) as inserted by section 2 of the bill by replacing it with the following:

(h) Require a submission of a social security number unless mandated by state or federal law.

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect July 1, 2004.

Senator Gatsas moved to divide the question.

The Chair ruled that the floor amendment was not devisable.

MOTION TO TABLE

Senator Below moved to have **SB 212** laid on the table.

Adopted.

LAI D ON THE TABLE

SB 212, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers.

HB 171, establishing a commission to assess the operating efficiency of state government. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Peterson for the committee.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Estabrook, Dist. 21

Sen. Below, Dist. 5

March 13, 2003

2003-0681s

05/09

Floor Amendment to HB 171

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The commission shall consist of:

(a) One member of the governor's office, appointed by the governor.

(b) One member of the house of representatives, appointed by the speaker of the house of representatives.

(c) One member of the senate, appointed by the senate president.

(d) Five members appointed by the governor, at least 2 of whom shall be non-management, non-supervisory, state employees.

(e) Five non-legislative members, appointed by the speaker of the house of representatives, at least 2 of whom shall be non-management, non-supervisory, state employees.

(f) Five non-legislative members, appointed by the senate president, at least 2 of whom shall be non-management, non-supervisory, state employees.

(g) One academic in public administration from the state university system, appointed by the chancellor of the university system of New Hampshire.

(h) One representative of a non-governmental organization that is dedicated to effective energy-conservation measures, appointed by the governor.

(i) One representative of the State Employees' Association of New Hampshire, appointed by that organization.

Question is on the motion of the adoption of the floor amendment.

A roll call was requested by Senator Below.

Seconded by Senator Barnes.

The following Senators voted Yes: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.

Yeas: 6 - Nays: 17

Floor amendment failed.

Question is on the committee report of ought to pass.

A roll call was requested by Senator Peterson.

Seconded by Senator Kenney.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.

The following Senators voted No:

Yeas: 23 - Nays: 0

Adopted.

Ordered to third reading.

MOTION TO TAKE OFF THE TABLE

Senator Kenney moved to have **SCR 1**, taken off the table.

Adopted.

TAKEN OFF THE TABLE

SCR 1, urging a study of the operating efficiency of state government.

MOTION TO TABLE

Senator Clegg moved to have **SCR 1** laid on the table.

Adopted.

LAIID ON THE TABLE

SCR 1, urging a study of the operating efficiency of state government.

SB 84-FN, relative to eligibility for payment of medical benefits by the retirement system. Insurance Committee. Re-refer to committee, Vote 4-0. Senator Flanders for the committee.

Committee report of re-refer is adopted.

SB 152, relative to health insurance coverage for prosthetic devices. Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Martel for the committee.

Insurance
March 4, 2003
2003-0487s
05/10

Amendment to SB 152

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

1 New Section; Group Insurance; Coverage for Certain Prosthetic Devices. Amend RSA 415 by inserting after section 18-m the following new section:

415:18-n Coverage for Certain Prosthetic Devices.

I. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, except for supplemental policies covering a specified disease or other limited benefit, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for benefits for prosthetic devices that equal those benefits provided for under federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section. The reimbursement rate for prosthetic devices under this section shall be no less or greater than the amount provided in the payment schedule referenced in 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section.

II. In this section, "prosthetic device" means an artificial limb device to replace, in whole or in part, an arm or leg.

III. An insurer may require prior authorization for prosthetic devices in the same manner that prior authorization is required for any other covered benefit.

IV. Covered benefits are limited to the most appropriate, medically necessary model for normal activities of daily living that adequately meets the medical needs of the patient as determined by the insured's treating physician. In this paragraph, "normal activities of daily living" means those activities performed on a regular basis for work and in the home but does not include participation in high risk activities such as sky diving, extreme sports, or professional or competitive sports activities, including marathon running, triathlons, and Para Olympics.

V. An insurer may require that, if coverage is provided through a managed care plan, the benefits mandated pursuant to this section shall be covered benefits only if the prosthetic devices are provided by a vendor and prosthetic services are rendered by a provider who contracts with or is designated by the insurer, to the extent that an insurer provides in-network and out-of-network services, the coverage for the prosthetic device shall be offered no less extensively.

VI. The provisions of this section shall apply to group health service plan contracts issued pursuant to RSA 420-A, and to health maintenance organization policies and plans issued pursuant to RSA 420-B.

2 New Section; Individual Insurance; Coverage for Certain Prosthetic Devices. Amend RSA 415 by inserting after section 6-i the following new section:

415:6-j Coverage for Certain Prosthetic Devices.

I. Each insurer that issues or renews any individual policy of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance who are residents of this state, coverage for the provision of benefits for prosthetic devices that equal those benefits provided for under federal laws for health insurance for the aged and disabled pursuant to 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section. The reimbursement rate for prosthetic devices under this section shall be no less or greater than the amount provided in the payment schedule referenced in 42 U.S.C. sections 1395k, 1395l, and 1395m and 42 C.F.R. sections 414.202, 414.210, 414.228, and 410.100, as applicable to this section.

II. In this section, "prosthetic device" means an artificial limb device to replace, in whole or in part, an arm or leg.

III. An insurer may require prior authorization for prosthetic devices in the same manner that prior authorization is required for any other covered benefit.

IV. Covered benefits are limited to the most appropriate, medically necessary model for normal activities of daily living that adequately meets the medical needs of the patient as determined by the insured's treating physician. In this paragraph, "normal activities of daily living" means those activities performed on a regular basis for work and in the home but does not include participation in high risk activities such as sky diving, extreme sports, or professional or competitive sports activities, including marathon running, triathlons, and Para Olympics.

V. An insurer may require that, if coverage is provided through a managed care plan, the benefits mandated pursuant to this section shall be covered benefits only if the prosthetic devices are provided by a vendor and prosthetic services are rendered by a provider who contracts with or is designated by the insurer, to the extent that an insurer provides in-network and out-of-network services, the coverage for the prosthetic device shall be offered no less extensively.

3 Effective Date. This act shall take effect January 1, 2004.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 158, adding a county commissioner member to the New Hampshire retirement system board of trustees. Insurance Committee. Inexpedient to Legislate, Vote 4-0. Senator Prescott for the committee.

Committee report of inexpedient to legislate is adopted.

SB 183-FN, relative to membership in the retirement system for part-time attorneys general. Insurance Committee. Inexpedient to Legislate, Vote 4-0. Senator Flanders for the committee.

Committee report of inexpedient to legislate is adopted.

SB 223-FN-A, relative to fees for copies of motor vehicle records and relative to the fire standards and training and emergency medical services fund. Insurance Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

Adopted.

Ordered to third reading.

SB 36-FN, relative to driving under the influence of a controlled drug and relative to protective custody of a person impaired by drugs. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary

March 6, 2003

2003-0564s

03/01

Amendment to SB 36-FN

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

AN ACT relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

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

1 Place of Commitment; Expense of Protective Custody. Amend RSA 30-B:15, III to read as follows:

III. The expense of lodging persons in a county correctional facility under the protective custody of a peace officer under ***RSA 172:15*** or RSA 172-B:3 shall be a charge upon the county.

2 New Paragraphs; Study, Treatment, and Care of Inebriates; Definitions. Amend RSA 172:1 by inserting after paragraph XXV the following new paragraphs:

XXVI. "Incapacitated" means that a person as a result of his or her use of drugs is in a state of intoxication, or mental confusion resulting from withdrawal, such that:

(a) He or she appears to need medical care or supervision by approved drug treatment personnel to assure his or her safety; or

(b) He or she appears to present a direct active or passive threat to the safety of others.

XXVII. "Intoxicated" means a condition in which the mental or physical functioning of an individual is substantially impaired as a result of the presence of drugs in his or her system.

XXVIII. "Protective custody" means a civil status in which an incapacitated person is detained by a peace officer for the purposes of:

- (a) Assuring the safety of the individual or the public or both; and
- (b) Assisting the individual to return to a functional condition.

XXIX. "Designated drug counselor" means a person approved by the commissioner to evaluate and treat drug users and drug abusers. A "designated drug counselor" may be, but is not required to be, a certified alcohol and drug abuse counselor.

3 New Section; Study, Treatment, and Care of Inebriates; Treatment and Services. Amend RSA 172 by inserting after section 14 the following new section:

172:15 Treatment and Services.

I. When a peace officer encounters a person who, in the judgment of the officer, is intoxicated as defined in RSA 172:1, XXVII, the officer may take such person into protective custody and shall take whichever of the following actions is, in the judgment of the officer, the most appropriate to ensure the safety and welfare of the public, the individual, or both:

- (a) Assist the person, if the person consents, to his or her home, an approved drug treatment program, or some other appropriate location; or
- (b) Release the person to some other person assuming responsibility for the intoxicated person; or
- (c) Lodge the person in a local jail or county correctional facility for said person's protection, for up to 24 hours or until the keeper of said jail or facility judges the person to be no longer intoxicated.

II. When a peace officer encounters a person who, in the judgment of the officer, is incapacitated as defined in RSA 172:1, XXVI, the officer may take such person into protective custody and shall take whichever of the following actions is, in the judgment of the officer, the most appropriate to ensure the safety and welfare of the public, the individual, or both:

(a) Transport the person to an approved drug treatment program with detoxification capabilities or to the emergency room of a licensed general hospital for treatment, except that if a designated drug counselor exists in the vicinity and is available, the person may be released to the counselor at any location mutually agreeable between the officer and the counselor. The period of protective custody shall end when the person is released to a designated drug counselor, a clinical staff person of an approved drug treatment program with detoxification capabilities, or a professional medical staff person at a licensed general hospital emergency room. The person may be released to his or her own devices if at any time the officer judges the person to be no longer incapacitated. Protective custody shall in no event exceed 24 hours.

(b) Lodge the person in protective custody in a local jail or county correctional facility for up to 24 hours, or until judged by the keeper of the facility to be no longer incapacitated, or until a designated drug counselor has arranged transportation for the person to an approved drug treatment program with detoxification capabilities or to the emergency room of a licensed general hospital.

III. No person shall be lodged in a local jail or county correctional facility under paragraph II unless the person in charge of the facility, immediately upon lodging said person in protective custody, contacts a designated drug counselor, a clinical staff person of an approved drug treatment program with detoxification capabilities or a professional medical staff person at a licensed general hospital emergency room to determine whether said person is indeed incapacitated. If, and only if none of the foregoing is available, such a medical or clinical determination shall be made by a registered nurse or registered emergency medical technician on the staff of the detention facility.

IV. No local jail or county correctional facility shall refuse to admit an intoxicated or incapacitated person in protective custody whose admission is requested by a peace officer, in compliance with the conditions of this section.

V. Notwithstanding any other provisions of law, whenever a person under 18 years of age who is judged by a peace officer to be intoxicated or incapacitated and who has not been charged with a crime is taken into protective custody, the person's parent or guardian shall be immediately notified and such person may be held at a police station or a local jail or a county correctional facility in a room or ward separate from any adult or any person charged with juvenile delinquency until the arrival of his or her parent or guardian. If such person has no parent or guardian in the area, arrangements shall be made to house him or her according to the provisions of RSA 169-D:17.

VI. If an incapacitated person in protective custody is lodged in a local jail or county correctional facility his or her family or next of kin shall be notified as promptly as possible. If the person requests that there be no notification, the person's request shall be respected.

VII. A taking into protective custody under this section is not an arrest, however nothing in this section shall be construed so as to prevent an officer or jailer from obtaining proper identification from a person taken into protective custody or from conducting a search of such person to reduce the likelihood of injury to the officer or jailer, the person taken into protective custody, or others. No unnecessary or unreasonable force or means of restraint may be used in detaining any person taken into protective custody.

VIII. Peace officers or persons responsible for supervision in a local jail or designated drug counselors who act under the authority of this section are acting in the course of their official duty and are not criminally or civilly liable therefor, unless for gross negligence or willful or wanton injury.

4 Study Committee Established.

I. The general court finds that there is a need to swiftly and promptly remove drug impaired operators from the roadway and that the Administrative License Suspension Act has proven to be a successful and effective tool in saving lives. The general court further finds that speedy adjudication of impaired driving cases in the district court likewise saves lives. The general court is encouraged with the Drug Recognition Enforcement program, derived from standards adopted by the National Highway Safety Administration and the International Chiefs of Police, as well as with the fact that this state has a number of DRE officers that are highly trained to identify symptoms of drug impairment. Currently, however, the administrative license suspension law is inapplicable in cases where a test result reveals the presence of a controlled drug, which is the cause of the operator impairment. Although the individual arrested will still face the consequences of a criminal trial, there is a need to include the administrative consequences as well, which have proven to save lives. The general court, however, recognizes that there are current limitations in the testing of drug impaired drivers and that these limitations need to be explored in greater detail, in order to provide a mechanism for the scope of these hearings under RSA 265:91.

II. There is established a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

III.(a) The members of the committee shall be as follows:

(1) Three members of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV.(a) The committee shall study the issue of including within the administrative license suspension laws cases where a chemical test was requested under the implied consent law and the operator was found to be impaired by controlled drugs. The committee shall also study ways to address the speed with which such cases are adjudicated in the district court and the current methods available to test operators for controlled drug impairment.

(b) The committee shall seek testimony from:

(1) The commissioner of safety, or designee.

(2) The director of police standards and training.

(3) A representative from the New Hampshire bar that practices criminal defense.

(4) A representative from the New Hampshire Association of Chiefs of Police.

(5) The coordinator of highway safety.

(6) The commissioner of health and human services, or designee.

V. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

VI. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2003.

5 Effective Date.

I. Sections 1-3 of this act shall take effect January 1, 2004.

II. The remainder of this act shall take effect upon its passage.

2003-0564s

AMENDED ANALYSIS

This bill:

I. Permits a peace officer to take a person who is impaired by drugs into protective custody.

II. Establishes a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 40, relative to filing of complaints for violation-level offenses. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary

March 6, 2003

2003-0587s

04/10

Amendment to SB 40

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

AN ACT relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

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

1 Jurisdiction and Procedure; Complaints; Filings for Violation-Level Offenses. Amend RSA 592-A:7 to read as follows:

592-A:7 Complaints. Criminal proceedings before a district [~~or municipal~~] court shall be begun by complaint, signed and under oath, addressed to such court, briefly setting forth, by name or description, the party accused and the offense [~~with which he is~~] charged, ***provided that a complaint filed by a police officer, as defined in RSA 188-F:23, I, for a violation-level offense shall not require a signature or an oath, and provided that any statements made in such complaint shall be made under penalty of perjury.***

2 Unsworn Falsification; Electronic Filings Added. Amend RSA 641:3 to read as follows:

641:3 Unsworn Falsification. A person is guilty of a misdemeanor if:

I. He ***or she*** makes a written ***or electronic*** false statement which he ***or she*** does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his ***or her*** official function, he ***or she***:

(a) Makes any written ***or electronic*** false statement which he ***or she*** does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he ***or she*** knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he *or she* knows to be false.

III. No person shall be guilty under this section if he *or she* retracts the falsification before it becomes manifest that the falsification was or would be exposed.

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

2003-0587s

AMENDED ANALYSIS

This bill allows for the filing of complaints for violation-level offenses without a police officer's signature or oath and provides that electronic submission of a false statement shall be charged as unsworn falsification.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 59-FN, relative to administrative license suspension hearings. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

Senate Judiciary

March 6, 2003

2003-0506s

03/01

Amendment to SB 59-FN

Amend the bill by replacing section 1 with the following:

1 Administrative Review and Hearings; Conduct of Hearings. RSA 265:91-b, I(c) is repealed and reenacted to read as follows:

(c) If the request is for a hearing, the law enforcement officer's physical presence shall not be required unless the request also indicates that the person desires to have the law enforcement officer present and explains the reasons therefor. If the person requests the law enforcement officer's presence, the hearing examiner shall order the presence of the officer if the examiner determines that reasons asserted indicate that the presence of the law enforcement officer would be helpful to the examiner. The hearing shall be held within 20 days after the filing of the request unless the person requests a continuance. A request for a continuance by the person shall not stay the order of suspension or revocation. The hearing shall be recorded, and be conducted by the department's designated agent. Except as otherwise provided in this subparagraph, the hearing shall be conducted telephonically. If the person and the law enforcement officer so agree, the hearing may be conducted upon a review of the law enforcement officer's report. If the person requesting the hearing fails to appear without good cause shown, the right to a hearing shall be waived and the order sustained. If the hearing examiner orders the presence of the law enforcement officer, and the officer fails to appear without good cause shown, the case shall be dismissed and the order rescinded. The director may adopt rules relative to telephonic hearings conducted pursuant to this subparagraph.

2003-0506s

AMENDED ANALYSIS

This bill requires that administrative license suspension hearing be conducted telephonically unless the hearing examiner orders the presence of the law enforcement officer or the parties agree to a hearing conducted upon a review of the law enforcement officer's report.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 219, relative to superior court notice to health care regulatory boards of felony convictions of health care providers. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

Senate Judiciary
March 6, 2003
2003-0572s
05/09

Amendment to SB 219

Amend RSA 499:10-a as inserted by section 1 of the bill by replacing it with the following:

499:10-a Notice to Health Care Regulatory Boards. Every clerk of the superior court shall, upon the felony conviction of any person licensed or registered as a health care provider in the state of New Hampshire, notify the appropriate health care regulatory board of such conviction. ***The clerk's duty under this section shall be limited to those instances where the clerk reasonably believes or knows that the person is a licensed health care provider.***

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 220, repealing the professional malpractice claims panel. Judiciary Committee. Re-refer to committee, Vote 5-0. Senator Peterson for the committee.

Committee report of re-refer is adopted.

SB 98-FN, prohibiting telemarketers from contacting customers on a federal do-not-call registry. Public Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Green for the committee.

Public Affairs
March 5, 2003
2003-0535s
05/10

Amendment to SB 98-FN

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

1 Use of Automatic Telephone Dialing Systems; Chapter Heading Amended. Amend the chapter heading of RSA 359-E to read as follows:

CHAPTER 359-E

~~[USE OF AUTOMATIC TELEPHONE DIALING SYSTEMS AND CALLER IDENTIFICATION SERVICES]~~
TELEMARKETING

2 New Subdivision Heading; Use of Automatic Telephone Dialing Systems and Caller Identification Services. Amend RSA 359-E by inserting, preceding RSA 359-E:1, the following subdivision heading:

Use of Automatic Telephone Dialing Systems and Caller Identification Services

3 New Subdivision; Telemarketing Sales Calls. Amend RSA 359-E by inserting after section 6 the following new subdivision:

Telemarketing Sales Calls

359-E:7 Definitions. In this subdivision:

I. "Bureau" means the consumer protection bureau of the office of the attorney general.

II. "Customer" means any natural person who is a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through telemarketing.

III. "Do-not-call list" means a list of residential telephone subscribers who have notified the list administrator of their desire not to receive telemarketing sales calls.

IV. "Doing business in this state" means conducting telephonic sales calls from a location:

(a) In this state; or

(b) Outside of this state to consumers residing in this state.

V. "Established business relationship" means an established business relationship as defined by the Federal Trade Commission Telemarketing Sales Rule, 68 Fed. Reg. 19,4669 (2003) (to be codified at 16 C.F.R. part 310, section 310.2(n)), as amended.

VI. "Goods and services" means any goods and services, and shall include any real property or any tangible personal property as well as time share estates and licenses or services of any kind.

VII. "List administrator" means the Federal Trade Commission or other federal agency, or, if necessary, the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization, designated by contract entered into by the department of justice that accepts individual names, addresses, and telephone numbers of customers who do not wish to receive telemarketing sales calls.

VIII. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries or other business entity.

IX. "Telemarketer" means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer or causes to be made a telemarketing call on such seller's own behalf or through a salesperson. For the purposes of this subdivision, "commercial purposes" shall mean the sale or offer for sale of goods or services.

X. "Telemarketing" means any plan, program, or campaign which is conducted to induce payment or the exchange of any other consideration for any goods or services by use of one or more telephones and which involves more than one telephone call by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing shall not include the solicitation of sales through media other than by telephone calls.

XI. "Telemarketing sales call" means a telephone call made by a telemarketer to a customer for the purpose of inducing payment or the exchange of any other consideration for any goods or services or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes. A telemarketing sales call shall not include a call made:

(a) In response to an express written or verbal request of the customer called.

(b) In connection with an existing business relationship.

(c) In which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller.

(d) On behalf of a nonprofit charity.

(e) On behalf of a newspaper to build its own circulation, provided that the telemarketer making such call has used and observed with respect to such call the do-not-call list maintained by the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization.

(f) On behalf of a political campaign, except that a call made by or on behalf of a political campaign using automatic dialing equipment shall be deemed a telemarketing sales call under this chapter.

359-E:8 Prohibited Telemarketing Sales Calls. Telemarketers are prohibited from conducting telemarketing sales calls to any customer who has registered his or her name or telephone number with the do-not-call registry maintained by the list administrator or Federal Trade Commission. In the case of telemarketers regulated by the Federal Communications Commission, this chapter shall apply in a manner consistent with rules concerning a national do-not-call list developed by that agency.

359-E:9 Telemarketers' Obligation to Obtain Do-Not-Call List. Telemarketers making telemarketing sales calls to customers in the state of New Hampshire shall obtain from the list administrator quarterly listings of customers in the state who have registered with the list administrator for inclusion in its do-not-call list.

359-E:10 State Do-Not-Call List. If the Federal Trade Commission or other federal agency has not established a national do-not-call registry prior to January 1, 2004, the department of justice shall contract with the Telephone Preference Service of the Direct Marketing Association, Inc., Farmingdale, New York, or its successor organization to establish and maintain, as the list administrator, a state do-not-call list for New Hampshire. The department's obligation to contract with the Direct Marketing Association or its successor to establish and maintain a do-not-call list shall remain in effect until such time as a national registry is established.

359-E:11 Duties of List Administrator. The list administrator:

- I. Shall provide the bureau with a copy of each quarterly do-not-call list.
- II. Shall provide the bureau with the names and addresses of each telemarketer who purchases the do-not-call list.
- III. Except as directed by the bureau, shall be prohibited from disclosing or using in any way customer names, addresses, or telephone numbers obtained in the course of registering customers' telephone numbers on the do-not-call list.

359-E:12 Violations; Penalties.

I. The department of justice shall investigate any complaints received concerning violations of this subdivision. If, after investigating the complaint, the department finds that a person has violated any provision of this subdivision, the department shall impose a civil penalty of \$2,000 for each violation.

II. Notwithstanding paragraph I, a telemarketer shall not be held liable for violating this subdivision if the telemarketer can demonstrate by clear and convincing evidence that, as part of the telemarketer's routine business practice:

- (a) The telemarketer established and implemented written procedures to comply with this subdivision.
- (b) The telemarketer trained his or her personnel in the requirements of this subdivision.
- (c) The telemarketer uses a process to prevent telemarketing to any telephone number on any do-not-call list or registry referenced in this subdivision; maintains the current, quarterly version of the list or registry; and maintains records documenting this process.
- (d) The telemarketer monitors and enforces compliance with the procedures established under subparagraph (a).
- (e) Any subsequent call otherwise violating this subdivision is not part of a pattern of calls made in violation of this subdivision and is the result of a good faith error.

4 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

5 Effective Date. This act shall take effect 60 days after its passage.

2003-0535s

AMENDED ANALYSIS

This bill prohibits telemarketers from calling customers who have placed their names on a federal do-not-call registry or, until a federal registry is available, a state do-not-call list maintained by the Direct Marketing Association. The bill includes certain exemptions from the do-not-call requirements and establishes civil penalties for telemarketers' non-compliance.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Clegg.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Below, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Clegg, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.

The following Senators voted No:

Yeas: 22 - Nays: 0

Senator Foster (Rule #42).

Amendment adopted.

Senator Green offered a floor amendment.

Sen. Green, Dist. 6
March 12, 2003
2003-0651s
05/10

Floor Amendment to SB 98-FN

Amend RSA 359-E:7, XI(b) as inserted by section 3 of the bill by replacing it with the following:

(b) In connection with an established business relationship.

Amend RSA 359-E:12, II as inserted by section 3 of the bill by replacing it with the following:

II. Notwithstanding paragraph I, a telemarketer shall not be held liable for violating this subdivision if the telemarketer can demonstrate by clear and convincing evidence that, as part of the telemarketer's routine business practice:

(a) The telemarketer established and implemented written procedures to comply with this subdivision.

(b) The telemarketer trained his or her personnel in the requirements of this subdivision.

(c) The telemarketer uses a process to prevent telemarketing to any telephone number on any do-not-call list or registry referenced in this subdivision; maintains the current, quarterly version of the list or registry; and maintains records documenting this process.

(d) The telemarketer monitors and enforces compliance with the procedures established under subparagraph (a).

(e) The telemarketer uses a version of the do-not-call list obtained no more than 3 months prior to the date that any call is made.

(f) Any subsequent call otherwise violating this subdivision is not part of a pattern of calls made in violation of this subdivision and is the result of a good faith error.

Floor amendment adopted.

Question in on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 112-FN-L, relative to state use of domestic steel. Public Affairs Committee. Inexpedient to Legislate, Vote 3-2. Senator Morse for the committee.

Committee report of inexpedient to legislate failed.

Senator Morse moved re-refer.

Adopted.

SB 112-FN-L is re-referred to committee.

SB 126-FN-A, exempting certain transfers of title from the real estate transfer tax. Public Affairs Committee. Inexpedient to Legislate, Vote 4-1. Senator Barnes for the committee.

Committee report of inexpedient to legislate failed.

Senator Barnes moved re-refer.

Motion adopted.

SB 126-FN-A is re-referred to committee.

SB 139, relative to exhibition fees charged by the boxing and wrestling commission. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

Adopted.

Ordered to third reading.

SB 143, establishing a commission to study and review the regulation of the building trades. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

Public Affairs
March 6, 2003
2003-0589s
08/01

Amendment to SB 143

Amend the bill by replacing section 2 with the following:

2 Membership. The commission shall be composed of the state fire marshal and a representative appointed by each of the following organizations:

- I. New Hampshire Fire Chiefs Association.
- II. New Hampshire Municipal Association.
- III. Homebuilders and Remodeling Association of New Hampshire.
- IV. New Hampshire Association of Building and Remodeling Contractors.
- V. Associated General Contractors of New Hampshire.
- VI. New Hampshire Oil Heat Council.
- VII. New Hampshire Architects Association.
- VIII. New Hampshire Society of Professional Engineers.
- IX. New Hampshire Plumbing and Mechanical Contractors Association.
- X. Electrical Contractors Business Association.
- XI. New Hampshire Plumbing Board.
- XII. New Hampshire Building Officials Association.
- XIII. New Hampshire Building and Construction Trades Council.
- XIV. Association of Builders and Contractors.
- XV. New Hampshire Consumer Protection and Antitrust Bureau.

Amendment adopted.

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23
March 13, 2003
2003-0671s
03/04

Floor Amendment to SB 143

Amend section 2 of the bill by inserting after paragraph XV the following new paragraph:

- XVI. New Hampshire Manufactured Housing Association.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 154, relative to landlord access to rental properties. Public Affairs Committee. Ought to pass, Vote 4-1. Senator Roberge for the committee.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15
March 10, 2003
2003-0622s
08/09

Floor Amendment to SB 154

Amend the bill by replacing section 1 with the following:

1 Landlord and Tenants; Prohibited Practices. Amend RSA 540-A:3, V to read as follows:

V. No tenant shall willfully refuse the landlord access to the premises ~~[to make necessary repairs]~~ **for the purposes of health and safety inspections, code compliance review, insurance appraisal, and real estate rental and sales requirements** at a reasonable time after notice which is adequate under the circumstances.

2003-0622s

AMENDED ANALYSIS

This bill grants a landlord access to rental property for certain reasons.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Larsen.

Senator Larsen withdrew her request for a roll call.

MOTION TO TABLE

Senator Larsen moved to have **SB 154** laid on the table.

A division was requested.

Yeas: 14 - Nays: 9

Adopted.

LAIID ON THE TABLE

SB 154, relative to landlord access to rental properties.

SB 156, relative to law enforcement officer's collective bargaining. Public Affairs Committee. Inexpedient to Legislate, Vote 3-0. Senator Roberge for the committee.

Committee report of inexpedient to legislate is adopted.

SB 176, relative to standards for plats recorded in the registry of deeds. Public Affairs Committee. Ought to pass, Vote 4-0. Senator Larsen for the committee.

Adopted.

Ordered to third reading.

SB 86-FN, relative to disclosure of certain information about child fatalities and near fatalities resulting from abuse and neglect, and relative to accreditation of the department of health and human services by the Council on Accreditation for Children and Family Services. Public Institutions, Health and Human Services Committee. Ought to pass, Vote 3-0. Senator Martel for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 96-FN, establishing a pharmacy assistance program for seniors and disabled persons. Public Institutions, Health and Human Services Committee. Re-refer to committee, Vote 4-0. Senator O'Hearn for the committee.

Senator O'Hearn moved to recommit.

Adopted.

SB 96-FN is recommitted to committee.

SB 47-FN, relative to refunds for tolls paid on account of shrinkage or loss by evaporation of motor fuel. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

Senate Transportation

March 6, 2003

2003-0573s

03/09

Amendment to SB 47-FN

Amend the bill by replacing section 1 with the following:

1 Road Tolls; Retail Dealers. Amend RSA 260:48 to read as follows:

260:48 Retail Dealers. In addition to the provisions of RSA 260:47, ~~[any retail dealer shall be entitled to a refund for tolls paid on account of]~~ ***upon submission of supporting documents that show the actual shrinkage or loss by evaporation of motor fuel, a retail dealer may be entitled to a refund on tolls paid.*** The procedure for such refund shall be as follows:

I. The amount of refund shall be ~~[computed at the rate of]~~ ***limited to actual losses from shrinkage and evaporation up to 3/4 of*** one percent of the toll paid on gross purchases.

II. All applications for refunds shall be made subject to prosecution for unsworn falsification and shall be made semi-annually within 90 days after June 30 and December 31, respectively.

III. The application shall be in such form as the commissioner shall prescribe and shall be accompanied by ***supporting documentation that shows actual losses due to shrinkage and evaporation of motor fuel, including:***

(a) Opening and closing inventory readings;

(b) Pump meter readings;

(c) Purchases of product during the stated period; and

(d) A statement from the distributor of the gross purchases of motor fuel made by the dealer during the 6-month period.

IV. The above conditions having been fully complied with, the commissioner shall calculate the amount of the refund due on the application and shall certify that amount and the name of the person entitled to the refund to the state treasurer.

V. Any retail dealer who has been denied a full or partial refund by the commissioner after a hearing at the department may, within 30 days of the date of the denial, appeal to the superior court of Merrimack county.

Amendment adopted.

Question is on the adoption of the bill as amended.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Kenney, Boyce, Below, Flanders, Odell, Peterson, O'Hearn, Foster, Clegg, Larsen, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Prescott, Cohen.

The following Senators voted No: Gallus, Johnson, Green, Roberge, Gatsas, Barnes.

Yeas: 17 - Nays: 6

Adopted.

Ordered to third reading.

SB 74-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

Senate Transportation

February 19, 2003

2003-0360s

08/01

Amendment to SB 74-FN-A-LOCAL

Amend the bill by replacing section 1 with the following:

1 Motor Vehicles; Preparation of Documents. Amend RSA 261:152 to read as follows:

261:152 Preparation of Documents. Permits shall be in the form prescribed by the director and shall be issued with such duplicates as ~~[he]~~ ***the director*** shall determine. The town clerk shall prepare forms for permits and applications for registration of vehicles as required by RSA 261:52. Said forms shall be prepared

[by typewriter] ***in an electronic format.*** Distribution of such documents shall be made as determined by the director. For preparation of the forms hereunder the town clerk shall receive a fee of [~~\$1~~] **\$2** for each application. ***Fifty cents of this amount shall be used to support records management and records preservation programs in local government, and \$.50 shall be deposited in the local government records management improvement fund established under RSA 5:48.*** The fee shall be paid by the applicant for registration and shall be in addition to any other fees required hereunder. The term "town clerk" as used in this section shall include the person in a city who has been designated by the city government to issue such documents.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 173, relative to certain historical and recreational facilities. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

Senate Transportation

March 6, 2003

2003-0592s

05/09

Amendment to SB 173

Amend RSA 236:70, XX as inserted by section 2 of the bill by replacing it with the following:

XX. The words "recreational and cultural interest area sign" shall mean a sign that meets the physical standards set by the federal government in the "Manual on Uniform Traffic Control Devices" (MUTCD), which shall be used as directional, informational, or supplemental guide signs. Recreational and cultural interest area signs shall be available to alpine and nordic ski areas that are recognized by the state in state-sponsored publications and shall be used on the primary or secondary highways and roads of and within the state. Recreational and cultural interest area signs shall be designed to direct the traveling public to the recreational facility. The ski area listed on the sign shall pay for all costs associated with signs approved under this section.

Amendment adopted.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

March 11, 2003

2003-0640s

05/09

Floor Amendment to SB 173

Amend RSA 236:70, XX as inserted by section 2 of the bill by replacing it with the following:

XX. The words "recreational and cultural interest area sign" shall mean a sign that meets the physical standards set by the federal government in the "Manual on Uniform Traffic Control Devices" (MUTCD), which shall be used as destination, directional, informational, or supplemental guide signs. Recreational and cultural interest area signs shall be available to alpine and nordic ski areas that are recognized by the state in state-sponsored publications and shall be used on the primary or secondary highways and roads of and within the state. Recreational and cultural interest area signs shall be designed to direct the traveling public to the recreational facility. The ski area listed on the sign shall pay for all costs associated with signs approved under this section.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 198, relative to a certain highway sign in Concord. Transportation Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

Adopted.

Ordered to third reading.

SB 222-FN-A, relative to motor vehicle fees. Transportation Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

Motion failed.

Senator Kenney moved to re-refer.

Adopted.

SB 222-FN-A is re-referred to committee.

HB 517-L, relative to Keene Road and Main Street in the town of Hillsborough. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

Senate Transportation

March 7, 2003

2003-0594s

05/01

Amendment to HB 517-LOCAL

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

AN ACT relative to the classification of certain roads in the town of Hillsborough and transferring ownership of any residual interest in a certain parcel of property from the state to the city of Keene.

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

1 West Main Street in the Town of Hillsborough; Classification Changed to Class V. West Main Street in the town of Hillsborough, formerly a portion of New Hampshire Route 9, beginning at the intersection with Route 9 and running easterly a distance of 1.35 miles to the intersection with United States Route 202, shall be reclassified as a class V highway.

2 Henniker Street in the Town of Hillsborough; Classification Changed to Class V. Henniker Street in the town of Hillsborough, formerly a portion of New Hampshire Route 9, beginning at Central Square, being the intersection with New Hampshire Route 149 and running easterly a distance of 2.10 miles to Old Henniker Road, shall be reclassified as a class V highway.

3 Transfer of Ownership of any Residual Interest in a Certain Parcel of Property from the State to the City of Keene.

I. Notwithstanding the provisions of RSA 4:40 or any other provision of law, the state forthwith shall, for consideration of \$1, transfer to the city of Keene, its successors or assigns, or both, any remaining interest it may have in a certain section of former Route 12, lying between station 463+00 to and Park Avenue in Keene, as shown on a plan entitled "Plans of Proposed Federal Aid Primary and Federal Aid Urban Project No. FU 013-1(7) N.H. Project No. P-3436 Route 12," which plan is subtitled "Reclassify Old Route 12 From Class 1 to Class 5 From Station 463+00 to Compact at Park Avenue. A Distance-1.30 Mi." including but not limited to title to the property.

II. Notwithstanding any provisions of RSA 78:B to the contrary, this transfer shall not be subject to the real estate transfer tax.

III. The transfer of this parcel of land shall be finalized as soon as practicable following the effective date of this section.

4 Effective Date.

I. Sections 1 and 2 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

2003-0594s

AMENDED ANALYSIS

This bill reclassifies portions West Main Street and Henniker Street in the town of Hillsborough.

This bill also transfers a certain parcel of property from the state to the city of Keene.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 19-FN, relative to notification of groundwater contamination and repealing certain MTBE notification requirements for public water systems. Environment Committee. Ought to pass with amendment, Vote 3-2. Senator Prescott for the committee.

Environment

February 6, 2003

2003-0206s

03/01

Amendment to SB 19-FN

Amend RSA 485-C:14-b, II as inserted by section 1 of the bill by replacing it with the following:

II. Notification shall be made in writing within 30 days following confirmation of the contamination. Each property owner or public water supplier shall be notified at least once upon the discovery of contamination in an area. The commissioner shall provide the notification and may provide additional notification as the extent of contamination at a site is further determined and remediation occurs. This section shall apply only to groundwater contamination confirmed by sampling conducted by the department or at its direction.

Amendment adopted.

Senator Prescott offered a floor amendment.

Sen. Prescott, Dist. 23

Sen. Below, Dist. 5

March 13, 2003

2003-0688s

06/01

Floor Amendment to SB 19-FN

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

AN ACT relative to notification of groundwater contamination and requiring a certain report from the department of environmental services.

Amend the introductory paragraph of RSA 485-C:14-b, I as inserted by section 1 of the bill by replacing it with the following:

I. Upon the discovery of groundwater contamination where one or more regulated chemical or radiological contaminants exceeds ambient groundwater quality standards, the commissioner shall provide notification of the presence of the contamination to the following:

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

2 Department of Environmental Services Report; MTBE. By November 1, 2003, the commissioner of the department of environmental services shall report to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor and the state library relative to the department's plan to opt out of the MTBE additive to gasoline program by January 1, 2004.

3 Applicability. Section 1 of this act shall apply only to groundwater contamination discovered on or after the effective date of this act.

4 Effective Date. This act shall take effect 60 days after its passage.

2003-0688s

AMENDED ANALYSIS

This bill requires notification of certain property owners, public water suppliers, and health officers when groundwater contamination is discovered and requires a report from the commissioner of the department of environmental services relative to the department's plan to opt out of the MTBE gasoline additive program.

Floor amendment adopted.**Question is on the adoption of the bill as amended.****Adopted.****Referred to the Finance Committee (Rule #26).**

SB 103-FN, establishing a credit against the business profits tax for contributions under a rental equity builder program. Ways and Means Committee. Inexpedient to Legislate, Vote 4-1. Senator D'Allesandro for the committee.

Committee report of inexpedient to legislate is adopted.

SB 79-FN-L, relative to animal cruelty. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

Wildlife and Recreation**March 5, 2003****2003-0516s****08/01****Amendment to SB 79-FN-LOCAL**

Amend RSA 644:8, IV(a) as inserted by section 1 of the bill by replacing it with the following:

(a) In addition to being guilty of crimes as provided in paragraphs III and III-a, any person charged with cruelty to animals may have his or her animal seized by an appropriate law enforcement officer. Courts shall give cases in which animals have been confiscated by an arresting officer priority on the court calendar.

Amend RSA 644:8, IV(b) as inserted by section 1 of the bill by replacing it with the following:

(b) The owner or custodian of any animal that has been seized pursuant to this section or 644:8-a, or because of investigation of charges of cruelty to animals or for exhibition of fighting animals will have his or her animal held pursuant to RSA 595-A:6, and as provided as follows:

(1) The seizing officer shall notify the owner of the seized animals of the provisions of this section by posting written notice at the location where the animal was seized or by leaving it with a person of suitable age and maturity residing at that location within 24 hours of the seizure. This notice shall provide the type and number of animals seized, the name of the officer, the time and date taken, the reason it was taken and any other relevant information.

(2) The seizing officer shall appoint as custodian a licensed veterinarian or other animal care center as defined by RSA 437:18 to care for any such animal. The custodian shall retain custody of the animal in accordance with this section.

(3) The custodian shall document by affidavit the animal's condition within 24 hours after posting of the notice of seizure.

(4) The seized animal shall be held by the custodian for a period of 15 days, including weekends and holidays, after such notice of seizure is given, or until a show cause hearing is held. Thereafter, a person who claims an interest in such animal but has not posted bond in accordance with subparagraph (c), then the animal may be disposed of as provided in RSA 595-A:6.

Amend RSA 644:8-a, I as inserted by section 2 of the bill by replacing it with the following:

I. No person shall keep or train any bird, dog, or other animal, with the ~~[intent]~~ **purpose** that it shall be engaged or used in an exhibition of fighting, or shall establish or promote an exhibition of the fighting thereof. Whoever violates the provisions of this paragraph shall be guilty of a class B felony ~~[in the case of dogs, and a misdemeanor in the case of birds or other animals].~~

Amend RSA 644:8-a, III as inserted by section 2 of the bill by replacing it with the following:

III. All animals so kept or trained by a person charged with violating the provisions of paragraph I may be seized by the arresting officer, **pursuant to RSA 595-A:6 and RSA 644:8** upon said person's conviction, said animals may, at the discretion of the court, be destroyed in a humane manner by a licensed veterinarian. ~~[The costs, if any, incurred in boarding the animals, pending disposition of the case, and in disposing of the animals, upon a conviction of said person for violating paragraph I, shall be borne by the person so convicted.]~~

Senator Roberge moved to recommit.

Adopted.

SB 79-FN-L is recommitted to the committee.

SB 206-FN, relative to the registration of OHRVs used as grooming equipment for cross country ski trails. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 4-0. Senator Sapareto for the committee.

Wildlife and Recreation

March 4, 2003

2003-0499s

10/04

Amendment to SB 206-FN

Amend the bill by replacing all after section 2 with the following:

3 Bureau Responsibilities; Cross Country Ski Trail Maintenance. Amend RSA 215-A:3, VI to read as follows:

VI. The supervisor of the bureau shall receive all written requests from ~~[persons]~~ **organizations** applying for permission to establish a highway trail crossing or trail connector on any class I, class II or class III highway for any OHRV trail **or cross county ski trail on which an OHRV trail maintenance vehicle may operate**. The requests shall be submitted by the supervisor to the commissioner of the department of transportation or the commissioner's representative for the department's approval or disapproval. If approval is granted, the commissioner of the department of transportation may post the area with appropriate signs designating the location of the trail crossing or trail connector and providing signs for both sides of the highway at an appropriate distance from the crossing or trail connector to warn the motoring public of said crossing or trail connector.

4 OHRV Registration Fees; Trail Maintenance Vehicles. Amend RSA 215-A:23, XI to read as follows:

XI. Notwithstanding any other provision of this section, \$5 for each set of plates for OHRV trails maintenance vehicles **used to maintain OHRV trails**. No other fees shall be collected under this chapter for the registration of such vehicles. Any such funds collected shall be appropriated to the department of fish and game for the costs of administration of OHRV trails maintenance vehicles.

5 New Paragraph; OHRV Registration Fees; Cross Country Ski Trail Maintenance Vehicles. Amend RSA 215-A:23 by inserting after paragraph XI the following new paragraph:

XII. Notwithstanding any other provision of this section, \$50 for each set of plates for OHRV trails maintenance vehicles used to maintain cross country ski trails. No other fees shall be collected under this chapter for the registration of such vehicles. From each registration fee collected, \$5 shall be appropriated to the department of fish and game for the costs of administration of OHRV trails maintenance vehicles and \$45 shall be appropriated to the bureau of trails for the administration of the bureau.

6 Effective Date. This act shall take effect July 1, 2003.

2003-0499s

AMENDED ANALYSIS

This bill adds cross country ski trail maintenance OHRVs to the term "OHRV trails maintenance vehicles" for purposes of OHRV registration and establishes a registration fee for cross country ski trail maintenance vehicles.

The bill also includes cross country ski trail connectors in the supervision of highway right-of-way crossings.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

MOTION TO TAKE OFF THE TABLE

Senator Below moved to have **SB 212** taken off the table.

Adopted.

TAKEN OFF THE TABLE

SB 212, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers. Executive Departments and Administration Committee. Ought to pass with amendment.

Question is on the adoption of the committee amendment (0554).

Amendment failed.

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

March 13, 2003

2003-0684s

03/05

Floor Amendment to SB 212

Amend the bill by replacing section 3 with the following:

3 Effective Date.

I. Section 2 of this act shall take effect July 1, 2004.

II. The remainder of this act shall take effect 60 days after its passage.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills ordered to third reading be by this resolution read a third time and all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION**Third Reading and Final Passage**

SB 36-FN, relative to protective custody of a person impaired by drugs and establishing a committee to study the issue of the applicability of the administrative license suspension laws to driving while under the influence of controlled drugs and ways to address the speed with which such cases are adjudicated in the district court.

SB 40, relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

SB 47-FN, relative to refunds for tolls paid on account of shrinkage or loss by evaporation of motor fuel.

SB 59-FN, relative to administrative license suspension hearings.

SB 74-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs.

SB 98-FN, prohibiting telemarketers from contacting customers on a federal do-not-call registry.

SB 113, changing the name of Plymouth state college to Plymouth state university.

SB 139, relative to exhibition fees charged by the boxing and wrestling commission.

SB 143, establishing a commission to study and review the regulation of the building trades.

SB 146, relative to eligible costs for training grants in the job training program for economic growth.

SB 152, relative to health insurance coverage for prosthetic devices.

SB 155, establishing a commission to study issues relative to water withdrawals.

SB 157, establishing a committee to study the vesting of development rights.

SB 162, establishing a committee to study water resources.

SB 165, relative to the voluntary dissolution of nondepository trust companies.

HB 171, establishing a commission to assess the operating efficiency of state government.

SB 173, relative to certain historical and recreational facilities.

SB 176, relative to standards for plats recorded in the registry of deeds.

SB 198, relative to a certain highway sign in Concord.

SB 206-FN, relative to the registration of OHRVs used as grooming equipment for cross country ski trails.

SB 210, relative to the administrative procedures of the real estate commission.

SB 212, requiring fiscal impact statements for interim administrative rules and prohibiting agencies from requiring by rule the submission of social security numbers.

SB 219, relative to superior court notice to health care regulatory boards of felony convictions of health care providers.

SB 223-FN-A, relative to fees for copies of motor vehicle records and relative to the fire standards and training and emergency medical services fund.

HB 517-L, relative to Keene Road and Main Street in the town of Hillsborough.

ANNOUNCEMENTS

Senator D'Allesandro (Rule #44).

Senator Sapareto (Rule #44).

Senator Morse (Rule #44).

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving House Messages, and receiving Enrolled Bill Reports and Amendments, and that when we adjourn, we adjourn to the Call of the Chair.

Adopted.

In recess to the Call of the Chair.