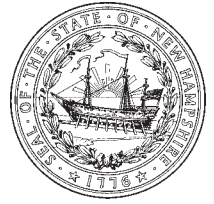


STATE OF NEW HAMPSHIRE

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

SENATE JOURNAL 6 *(Cont.)*



February 19, 2004

Out of Recess.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 516-L, relative to the standard of review for requests for excavating and dredging permits, relative to an appropriation for the expansion of the Port of Portsmouth, and relative to additional powers and duties of the Pease development authority.

SB 431, prohibiting the waiver of workers' compensation subrogation rights and prohibiting certain indemnification provisions in construction-related contracts.

SB 458, relative to private driving instruction and exhibition facilities.

Senator D'Allesandro moved adoption.

Adopted.

INTRODUCTION OF SENATE BILL

Senator Clegg offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bill numbered **534** shall be by this resolution read a first and second time by the therein listed title, laid on the table for printing and referred to the therein designated committee.

Adopted.

First and Second Reading and Referral

SB 534-FN-A, relative to the reorganization of certain functions and duties of state agencies. (Clegg, Dist 14; Morse, Dist 22; D'Allesandro, Dist 20; Barnes, Dist 17: Executive Departments and Administration)

LATE SESSION

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

Adopted.

Adjournment.

SENATE JOURNAL 7

March 4, 2004

The Senate met at 10:00 a.m.

A quorum was present.

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

Lord of all that is, inscribe upon us and within us, Your lines that will identify us and that will mark our lives - and then give us eyes to see those amazing and holy boundary markers with a wonder that causes us to hold our breath. Amen

Senator Flanders led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

MOTION TO VACATE

Senator Boyce moved to have **HB 85**, relative to the budget adoption procedure in political subdivisions which have adopted official ballot voting, vacated from the Committee on Internal Affairs to the Committee on Public Affairs.

Adopted.

HB 85 has been vacated to Public Affairs.

COMMITTEE REPORTS

SB 446-FN, relative to a park and ride multi-modal facility in the city of Nashua. Capital Budget Committee. Interim Study, Vote 4-1. Senator Morse for the committee.

Committee report of interim study is adopted.

SB 426, allowing municipalities to adopt a property tax exemption for certain public utility property. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 3-0. Senator Odell for the committee.

Committee report of inexpedient to legislate is adopted.

Senator Foster rule #42 on SB 426.

SB 433-FN, requiring the public utilities commission to conduct a comprehensive study of utility rates every 5 years. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Odell for the committee.

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

March 4, 2004

2004-0682s

06/10

Floor Amendment to SB 433-FN

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

AN ACT requiring the public utilities commission to conduct and report reviews and studies of utility rates at regular intervals.

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

1 New Subdivision. Public Utilities Commission; Utility Rate Reviews and Studies. Amend RSA 378 by inserting after section 48 the following new subdivision:

Utility Rate Reviews and Studies

378:49 Required Utility Rate Reviews and Studies.

I. The commission shall conduct a desk analysis or earnings review of each public utility over which the commission exercises rate regulation at least once every year. The desk analysis shall include review of the utility's annual report or reports and calculation of the achieved rate of return for each year of the audit period. The final report of the desk analysis shall be made available to the public.

II. The commission shall conduct a field audit of the books and records of each public utility over which the commission exercises rate regulation and which have annual jurisdictional revenues of \$5,000,000 or more at least once every 4 years. For those public utilities over which the commission exercises rate regulation and which have annual jurisdictional revenues of less than \$5,000,000, the commission shall conduct a field audit at least once every 5 years. The field audit includes review of the utility's books and records at the utility's place of operation as well as discovery on the details of those records. The final report of a field audit shall be made available to the public and provided automatically to the office of the consumer advocate.

III. In the event the commission desk analysis or field audit indicates that the public utility is earning more than its authorized return and that rates should be reduced, and the utility has not had a rate case within the past 5 years, the commission shall promptly institute a rate case pursuant to RSA 378:7. If the public utility has had a rate case within 5 years and a commission desk analysis or field audit indicates over earnings, the commission shall in its discretion institute a rate case. If the commission exercises its discretion, which only exists for companies which have had rate cases within the past 5 years, and does not institute a rate case, then the commission shall by secretarial letter explain why it has not instituted a rate case.

IV. If any public utility seeks adjustment of any of its rates without undergoing a rate case under RSA 378:7 and it has not undergone a rate case pursuant to RSA 378:7 within the past 5 years, the commission shall require a rate case before making any adjustment to rates. An exception to this requirement shall be for periodic fuel adjustment proceedings.

V. In the event any public utility has not undergone a rate case within the past 5 years and any party representing a significant number of utility customers requests a rate case pursuant to RSA 378:7, the commission shall commence a rate case.

VI. In the event any public utility refuses to allow verification of its allocations between regulated and unregulated activities by review of actual total revenues and expenses of regulated and unregulated activities, the commission shall be authorized to make assumptions about those allocations, total revenues and expenses, for purposes of setting rates which cannot be rebutted by the public utility absent a full disclosure of total revenue and expenses whether related to regulated or unregulated activities.

VII. The commission shall include a summary of its activities regarding desk analyses, field audits and any rate cases that are docketed as part of an annual report to be submitted to the legislature on or before June 30 of each year.

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

2004-0682s

AMENDED ANALYSIS

This bill requires the public utilities commission to conduct regular reviews and studies of all commission-determined rates charged by public utilities offering services in this state. The public utilities commission shall prepare an annual report to the legislature on its activities regarding desk analyses, field audits, and rate cases.

Senator Green withdrew his floor amendment.

Senator Odell moved to recommit.

Adopted.

SB 433 is recommitted.

SB 505-FN-A-L, authorizing CROP zone tax credits within the town of Whitefield. Energy and Economic Development Committee. Ought to Pass, Vote 2-1. Senator Gallus for the committee.

Senator Gallus offered a floor amendment.

Sen. Gallus, Dist. 1

March 4, 2004

2004-0688s

08/10

Floor Amendment to SB 505-FN-LOCAL

Amend RSA 162-N:4, III as inserted by section 1 of the bill by replacing it with the following:

III. The commissioner of resources and economic development may enter into agreements with taxpayers located in the town of Whitefield which will result in CROP zone tax credits under RSA 162-N:7 in the estimated amount of \$10,000,000, provided that any agreement has the prior authorization by:

- (a) The legislative body of the town of Whitefield; or
- (b) The governing body of the town of Whitefield after conducting a public hearing.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 397, requiring the department of environmental services to adopt certain rules and to opt out of the re-formulated gasoline program. Environment Committee. Ought to Pass, Vote 3-0. Senator Prescott for the committee.

Adopted.

Ordered to third reading.

SB 467, establishing an exemption from the public sewer connection requirements for 2 projects in the town of Derry. Environment Committee. Inexpedient to Legislate, Vote 3-0. Senator Barnes for the committee.

Motion failed.

Senator Barnes moved ought to pass.

Senator Sapareto offered a floor amendment.

Sen. Sapareto, Dist 19

February 19, 2004

2004-0562s

06/04

Floor Amendment to SB 467

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

1 Exemption From Public Sewer Requirement.

I. Notwithstanding RSA 147:8, the town of Derry may grant waivers to the requirement of connection to the public sewer for properties with adequate alternative sewage disposal systems which comply with applicable state and local regulations and which lie within 125 feet of the following:

(a) The new sewer running from Route 102 to the site of the Barkland Acres school.

(b) The new sewer running from Sunnyside Lane, Map 117 – Lot 0539 to the South Range school and along Bradford Street to Silver Street.

II. When an alternative sewage disposal system ceases to comply with state or local regulations as determined by local municipal health officials or the department of environmental services, the waiver shall terminate and the property shall connect to the public sewer.

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

2004-0562s

AMENDED ANALYSIS

This bill exempts properties within 125 feet of 2 new sewer lines in the town of Derry from the public sewer requirements as long as they comply with state and local regulations.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 506, relative to site plan review by planning boards in mining and reclamation projects. Environment Committee. Inexpedient to Legislate, Vote 3-0. Senator Johnson for the committee.

Committee report of inexpedient to legislate is adopted.

SB 447, relative to corporate names. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 2-1. Senator Peterson for the committee.

Committee report of inexpedient to legislate is adopted.

HB 65, relative to educational assistance for national guard members. Executive Department and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

Senate Executive Departments and Administration
 February 19, 2004
 2004-0546s
 09/04

Amendment to HB 65

Amend the bill by replacing section 2 with the following:

2 Repeal of Prospective Repeal Date of National Guard Education Assistance Act. 1996, 237:7:1 as amended by 1998, 65:2 and 1999, 211:1, relative to the repeal date of RSA 110-B:63-a-100-B:63-f, is repealed.

3 Effective Date. This act shall take effect June 30, 2004.

2004-0546s

AMENDED ANALYSIS

This bill eliminates the consideration of Montgomery GI Bill benefits in the formula for the tuition waiver for national guard members.

The bill also continues the New Hampshire National Guard Educational Assistance Act, which is currently scheduled for repeal on July 1, 2004.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 465, relative to the rulemaking authority of the department of health and human services and relative to licensing rules for health facilities. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Estabrook for the committee.

Adopted.

Ordered to third reading.

SB 529, making a technical correction to the eminent domain procedure act. Finance Committee. Ought to pass with amendment, Vote 5-0. Senator Gatsas for the committee.

Senate Finance
 February 18, 2004
 2004-0508s
 09/01

Amendment to SB 529

Amend the bill by replacing section 2 with the following:

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

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 326-FN, relative to contributions by political subdivision employers for certain employee service, and repealing certain retirement system provisions permitting additional contributions by members. Insurance Committee. Ought to pass with amendment, Vote 3-1. Senator Flanders for the committee.

SPECIAL ORDER

Senator D'Allesandro moved to make **SB 326-FN** made a special order at the end of the calendar.

Adopted.

SB 326 is made a Special Order.

SB 367, relative to the New Hampshire Insurance Guaranty Association Act. Insurance Committee. Ought to pass with amendment, Vote 2-0. Senator Flanders for the committee.

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.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 419, relative to the use of standardized health statements. Insurance Committee. Ought to Pass, Vote 3-0. Senator Flanders for the committee.

MOTION TO TABLE

Senator Gatsas moved to have **SB 419** laid on the table.

Adopted.

LAI D ON THE TABLE

SB 419, relative to the use of standardized health statements.

SB 420-FN, relative to the payment of medical benefits costs for certain group II permanent firemen members injured in the performance of duty. Insurance Committee. Inexpedient to Legislate, Vote 4-0. Senator Flanders for the committee.

Committee report of inexpedient to legislate is adopted.

SB 425-FN, relative to payment of medical benefits costs for certain group I retirement system members. Insurance Committee. Inexpedient to Legislate, Vote 3-1. Senator Flanders for the committee.

Committee report of inexpedient to legislate is adopted.

SB 430-FN, relative to mandated insurance benefits. Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

Insurance
February 19, 2004
2004-0551s
01/10

Amendment to SB 430-FN

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

AN ACT relative to mandated insurance benefits and establishing a committee to study the feasibility of mandating that health insurers provide medical loss information to small group employers.

Amend the bill by replacing all after section 3 with the following:

4 Committee Established. There is established a committee to study the feasibility of mandating that health insurers provide medical loss information to small group employers.

5 Membership and Compensation.

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

- (a) Three members of the house of representatives, appointed by the speaker of the house.
- (b) One member of the senate, appointed by the president of the senate.

II. The committee shall solicit information from the insurance commissioner, small group health insurance companies, small group employers, and any other source the committee deems relevant.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

6 Duties. The committee shall study the feasibility of mandating that health insurers provide medical loss information to small group employers. The committee shall include in its study the appropriate use of this information, privacy issues, and determining the cost to insurers of requiring that this information be provided to small group employers.

7 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 60 days of the effective date of this section. Four members of the committee shall constitute a quorum.

8 Report. The committee shall report 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, 2004.

9 Effective Date.

- I. Sections 1–3 of this act shall take effect 60 days after its passage.
- II. The remainder of this act shall take effect upon its passage.

2004-0551s

AMENDED ANALYSIS

This bill requires that any legislative proposal which mandates insurance benefits, including workers' compensation benefits, be evaluated by the insurance department before being enacted into law. Under this bill, the insurance department shall make a report within 90 days to the appropriate standing committee.

This bill also establishes a committee to study the feasibility of mandating that health insurers provide medical loss information to small group employers.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 460, relative to insurance compliance self-audits. Insurance Committee. Inexpedient to Legislate, Vote 4-0. Senator Flanders for the committee.

Committee report of inexpedient to legislate is adopted.

SB 482-FN, relative to captive insurance companies and reciprocal insurers. Insurance Committee. Ought to pass with amendment, Vote 3-0. Senator Prescott for the committee.

Insurance
February 19, 2004
2004-0555s
01/10

Amendment to SB 482-FN

Amend RSA 405-B:2, II(b), (c), and the introductory paragraph of subparagraph (d) as inserted by section 1 of the bill by replacing them with the following:

(b) Its board of directors, or in the case of a reciprocal insurer its subscribers' advisory committee, holds at least one meeting each year in this state; and

(c) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state. In case of a captive insurance company:

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 515-FN, relative to benefit options for surviving spouses and designated beneficiaries of deceased members of the retirement system. Insurance Committee. Inexpedient to Legislate, Vote 3-0. Senator Prescott for the committee.

Question is on the committee report of inexpedient to legislate.

A division vote was requested.

Yeas: 14 - Nays: 9

Committee report of inexpedient to legislate is adopted.

SB 365-FN, requiring courts to use gender neutral terms in documents used in divorce and custody proceedings. Judiciary Committee. Interim Study, Vote 4-0. Senator Sapareto for the committee.

Committee report of interim study is adopted.

SB 388-FN, relative to proof of successful completion of an impaired driver intervention program. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary
February 18, 2004
2004-0527s
03/10

Amendment to SB 388-FN

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

1 Attendance at Impaired Driver Intervention Program Required; Proof Of Successful Completion. Amend RSA 263:65-a, V to read as follows:

V.(a) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at the I.D.I.P., the M.O.P., or an equivalent program, **and that he or she has paid all assessed program fees.** The presumption may be overcome by a hearing requested by the department, **or the I.D.I.P., the M.O.P., or an equivalent program,** with notice to and an opportunity to be heard by the person, where the department **and or the I.D.I.P., the M.O.P., or an equivalent program,** shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

(b) The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing of any further treatment it deems necessary in order to be considered a completed program before a license suspension should be restored. The department of safety shall notify the licensee of their ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing within 5 days after the end of the program attended by the licensee.

2 Penalties for Intoxication or Under Influence of Drugs Offenses; Proof of Successful Completion of Program. Amend RSA 265:82-b, IV(d) to read as follows:

(d) A person shall be presumed to have furnished proof of successful completion of an impaired driver intervention program if the person furnishes a report indicating that he or she has completed attendance at

the I.D.I.P., the M.O.P., or an equivalent program, **and that he or she has paid all assessed program fees.** The presumption may be overcome by a hearing requested by the department, **or the I.D.I.P., the M.O.P., or an equivalent program,** with notice to and an opportunity to be heard by the person, where the department **and or the I.D.I.P., the M.O.P., or an equivalent program** shall have the burden of proving that the person has not successfully completed an impaired driver intervention program.

(e) The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing of any further treatment it deems necessary in order to be considered a completed program before a license suspension should be restored. The department of safety shall notify the licensee of their ability to request a hearing to dispute the findings and the licensee shall inform the department of safety if the licensee requests a hearing within 20 days of receipt of such notice. At such hearing the I.D.I.P., the M.O.P., or an equivalent program shall have the burden of proving the person has not successfully completed an impaired driver intervention program. The I.D.I.P., the M.O.P., or an equivalent program shall inform the department of safety in writing within 5 days after the end of the program attended by the licensee.

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

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 444, relative to the age at which a person remains under the juvenile court's jurisdiction under RSA 169-B, the juvenile delinquency statute. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

Senate Judiciary
February 18, 2004
2004-0524s
05/10

Amendment to SB 444

Amend RSA 169-B:4-a, III(c) as inserted by section 2 of the bill by replacing it with the following:

(c) For the purpose of assessing whether a minor meets the criteria of subparagraph (a), by order of the court, the department may provide representatives of the department of corrections with access to the minor's case records.

Amend RSA 169-B:4-a, IV(b) as inserted by section 2 of the bill by replacing it with the following:

(b) Violation of court orders issued pursuant to paragraph III that provide for supervision and services in the criminal justice system shall be addressed in the criminal justice system by a finding of criminal contempt. With authorization by the court, the state may utilize any relevant portion of a juvenile's records in a criminal contempt proceeding.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

Senator Boyce is in opposition to SB 444.

SB 471-FN-L, relative to the administration and operation of Manchester Airport. Judiciary Committee. Interim Study, Vote 4-0. Senator Foster for the committee.

Committee report of interim study is adopted.

SB 478-FN, relative to penalties for DWI offenses and relative to prohibited alcohol sales to intoxicated individuals. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Peterson for the committee.

Senate Judiciary
February 18, 2004
2004-0526s
03/04

Amendment to SB 478-FN

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

AN ACT relative to penalties for DWI offenses.

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

1 Penalties for Intoxication or Under Influence of Drug Offenses. Amend RSA 265:82-b, I to read as follows:

I. Except as otherwise provided in this section:

(a) Any person who is convicted of any offense under RSA 215-A:11, I or RSA 265:82 shall be:

(1) Guilty of a ~~[violation]~~ **class B misdemeanor**;

(2) Fined not less than ~~[\$350]~~ **\$500**;

(3) Required to furnish proof of successful completion of an impaired driver intervention program prior to the restoration of the person's driver's license or privilege to drive, provided that, if the person has previously completed, or been required by a court or motor vehicle bureau to complete, an impaired driver intervention program or any similar program in any jurisdiction, the person shall be required to furnish proof of successful completion of the multiple DWI offender intervention detention center program or an equivalent 7-day residential intervention program approved by the commissioner of health and human services; ~~and]~~

(4) The person's driver's license or privilege to drive shall be revoked for not less than 9 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. The court may suspend up to 6 months of this sentence, provided that the person has entered into the relevant driver intervention program required by subparagraph (3) within 45 days after conviction, or as soon thereafter as any extenuating circumstances approved by the department of health and human services allow;

(5) The sentencing court may, consistent with RSA 651:2, III, sentence the person to additional alcohol and/or drug treatment and counseling to be monitored by the department of corrections, or to a treatment program approved by the commissioner of the department of health and human services, or both. In addition, the court may require the person to submit to random urinalysis by the department of corrections if deemed necessary and appropriate; and

(6) The court in which the person was convicted may reduce the conviction to a violation upon a motion filed by either party at least one year after the date of the conviction. In deciding whether to reduce the conviction to a violation, the court may consider the person's subsequent driving record, any evidence of drug or alcohol treatment, the hardship that having a criminal record may cause for the person, and any other factors that the court deems relevant.

(b) Any person who is convicted of any aggravated DWI offense under RSA 215-A:11, II, or RSA 265:82-a, except as provided in subparagraph (c), shall be:

(1) Guilty of a **class A** misdemeanor;

(2) Fined not less than \$500;

(3) ~~[Required to furnish proof of successful completion of an impaired driver intervention program prior to the restoration of the person's driver's license or privilege to drive, provided that, if the person has previously completed, or been required by a court or motor vehicle bureau to complete, an impaired driver intervention program or any similar program in any jurisdiction, the person shall be required to furnish proof of successful completion of the multiple DWI offender intervention detention center program or an equivalent 7-day residential intervention program approved by the commissioner of health and human services; and]~~ **Sentenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive 24-hour periods shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 172-B:2-b within 21 days after conviction, except that in circumstances where the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned the first available space. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the**

multiple DWI offender intervention detention center program within 60 days after the person has completed serving the required 7 consecutive 24-hour periods at the center or such other time as the court may order;

(4) The person's driver's license or privilege to drive shall be revoked for not less than 18 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. Except for good cause found by the court and noted in writing, the court may suspend up to 6 months of this sentence, provided that the person has entered into the relevant driver intervention program required by subparagraph (3) within 45 days after conviction, or as soon thereafter as any circumstances approved by the department of health of human services allow; ***and***

(5) The sentencing court may, consistent with RSA 651:2, III, sentence the person to additional alcohol and/or drug treatment and counseling to be monitored by the department of corrections, or to a treatment program approved by the commissioner of the department of health and human services, or both. In addition, the court may require the person to submit to random urinalysis by the department of corrections if deemed necessary and appropriate.

(c) Any person who is convicted of aggravated DWI under RSA 215-A:11, II(a)(1) or II(b)(1), or RSA 265:82-a, I(b) or II(b), shall be:

- (1) Guilty of a class B felony;
- (2) Fined not less than \$1,000;

(3) ~~[Required to furnish proof of successful completion of an impaired driver intervention program prior to the restoration of the person's driver's license or privilege to drive, provided that, if the person has previously completed, or been required by a court or motor vehicle bureau to complete, an impaired driver intervention program or any similar program in any jurisdiction, the person shall be required to furnish proof of successful completion of the multiple DWI offender intervention detention center program]~~ ***Sentenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive 24-hour periods shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 172-B:2-b within 21 days after conviction, except that in circumstances where the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned the first available space. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center program within 60 days after the person has completed serving the required 7 consecutive 24-hour periods at the center or such other time as the court may order; and***

(4) The person's driver's license or privilege to drive shall be revoked for not less than 18 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. Except for good cause found by the court and noted in writing, the court may suspend up to 6 months of this sentence, provided that the person has entered into the relevant driver intervention program required by subparagraph (3) within 45 days after conviction, or as soon thereafter as any extenuating circumstances approved by the department of health and human services allow.

2 Penalties for Intoxication or Under Influence of Drug Offenses. Amend RSA 265:82-b, II(a)-(b) to read as follows:

(a) For a second offense:

- (1) The person shall be guilty of a ***class A*** misdemeanor.
- (2) The person shall be fined not less than \$500.

(3) (A) If the complaint alleges that the prior conviction occurred within 2 years preceding the date of the second offense, the person shall be sentenced to a mandatory sentence of not less than [10] 30 consecutive days [of which 3 consecutive 24-hour periods shall] to be served in the county correctional facility [and] followed by 7 consecutive 24-hour periods [shall] to be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 172-B:2-b within 21 days after conviction, except that in circumstances where the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned the first available space. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center program within 60 days after the person has completed serving the required [7] 30 consecutive 24-hour periods at the center or such other time as the court may order.

(B) If the complaint alleges that the prior conviction occurred more than 2 but less than 7 years preceding the date of the second offense, the person shall be sentenced to a mandatory sentence of not less than 10 consecutive days of which 3 consecutive 24-hour periods shall be served in the county correctional facility and 7 consecutive 24-hour periods shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 172-B:2-b within 21 days after conviction, except that in circumstances where the state-operated 7-day multiple DWI offender intervention detention center has no available space the person shall be assigned the first available space. The person shall begin following any treatment recommendations arising out of the final evaluation given to the person at the multiple DWI offender intervention detention center program within 60 days after the person has completed serving the required 7 consecutive 24-hour periods at the center or such other time as the court may order.

(4) The person's driver's license or privilege to drive shall be revoked for not less than 3 years.

(5) The person shall pay a fee to the commissioner, as established under RSA 126-A:43, for the costs of the state-operated, 7-day multiple DWI offender intervention detention center program prior to license restoration.

(6) A person who leaves the program before completion and fails to return and complete it as soon thereafter as extenuating circumstances approved by the department of health and human services allow, or who fails to begin following treatment recommendations within the time required by subparagraph II(a)(3) shall be in contempt of court and shall serve a minimum of 30 days in the county correctional facility.

(7) The sentencing court may, consistent with RSA 651:2, III, sentence the person to additional alcohol and/or drug treatment and counseling to be monitored by the department of corrections, or to a treatment program approved by the commissioner of the department of health and human services, or both. In addition, the court may require the person to submit to random urinalysis by the department of corrections if deemed necessary and appropriate.

(b) For a third offense, any person convicted under this paragraph shall be subject to all the penalties of subparagraph (a) except that:

(1) The person's driver's license or privilege to drive shall be revoked indefinitely and shall not be restored for at least 5 years. At the end of the 5-year minimum revocation period the person may petition the court for eligibility to reapply for a driver's license and the court, for good cause shown, may grant such eligibility subject to such terms and conditions as the court may prescribe. Any untimely petition under this subparagraph shall be dismissed without a hearing. If such petition is granted and the person is otherwise eligible for license restoration, the person may then apply to the director for restoration of driver's license, but the license shall not be restored until the provisions of RSA 263:65-a and all other requirements under law are met.

(2) ~~[If the person has completed the state-operated 7-day multiple DWI offender intervention detention center program as required under subparagraph (a)(3) upon conviction for a prior offense,] The person shall be sentenced to **a mandatory sentence of** not less than [30] **180** consecutive days [of which 23 consecutive 24-hour periods shall be served] in the county correctional facility [and 7 consecutive 24-hour periods shall be served at the state-operated 7-day multiple DWI offender intervention detention center established under RSA 172-B:2-b, and] **following which** the person shall complete at the person's own expense a residential treatment program of at least 28 days duration or an intensive course of substance abuse treatment based upon a formal evaluation by a licensed alcohol and other drug counselor and approved by the department of health and human services before the driver's license may be restored.~~

(3) ~~[A person who leaves the multiple DWI offender program before completion and fails to return and complete it as soon thereafter as extenuating circumstances approved by the department of health and human services allow, shall be in contempt of court and shall serve a minimum of 30 days in the county correctional facility] **The sentencing court may, consistent with RSA 651:2, III, sentence the person to additional alcohol and/or drug treatment and counseling to be monitored by the department of corrections, or to a treatment program approved by the commissioner of the department of health and human services, or both. In addition, the court may require the person to submit to random urinalysis by the department of corrections if deemed necessary and appropriate.**~~

3 Penalties for Intoxication or Under Influence of Drug Offenses. Amend the introductory subparagraph of RSA 265:82-b, II to read as follows:

II. Upon conviction of any offense under RSA 215-A:11, RSA 265:82, or RSA 265:82-a, based on a complaint which alleged that the person has had one or more prior convictions under RSA 215-A:11, RSA 265:82, or RSA 265:82-a, or RSA 630:3, II, or under reasonably equivalent offenses in an out-of-state jurisdiction, within [10] 7 years preceding the date of the second or subsequent offense, the person shall be subject to the following penalties in addition to those provided in paragraph I:

4 Penalties for Intoxication or Under Influence of Drug Offenses. Amend RSA 265:82-b, III to read as follows:

III. If any person is convicted of a violation of RSA 215-A:11, RSA 265:82, or RSA 265:82-a, and the conviction is not based upon a complaint which alleges prior convictions as provided in RSA 265:82-b, II, but the person is found to have had one or more such prior convictions in this state or in an out-of-state jurisdiction within [10] 7 years preceding the date of the offense, the person's driver's license or privilege to drive shall be revoked for not less than one year nor more than 3 years. Except for good cause found by the court and noted in writing, the court may suspend up to 6 months of this sentence, provided that within 45 days after conviction the person has entered the 7-day program at the state-operated multiple DWI offender intervention detention center program or an equivalent 7-day residential intervention program approved by the, commissioner of health and human services, as provided in RSA 172-B:2-b and RSA 263:65-a. The person's license shall not be restored until the person has successfully completed the program. The court may further order attendance at a residential treatment center, for a period not to exceed 30 days, at the person's own expense.

5 Effective Date. This act shall take effect January 1, 2005.

2004-0526s

AMENDED ANALYSIS

This bill modifies the penalties for certain DWI offenses.

Amendment adopted.

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

March 4, 2004

2004-0704s

03/10

Floor Amendment to SB 478-FN

Amend RSA 265:82-b, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Any person who is convicted of any offense under RSA 215-A:11, I or RSA 265:82 shall be:

(1) Guilty of a violation;

(2) Fined not less than [~~\$350~~] **\$500**;

(3) Required to furnish proof of successful completion of an impaired driver intervention program prior to the restoration of the person's driver's license or privilege to drive, provided that, if the person has previously completed, or been required by a court or motor vehicle bureau to complete, an impaired driver intervention program or any similar program in any jurisdiction, the person shall be required to furnish proof of successful completion of the multiple DWI offender intervention detention center program or an equivalent 7-day residential intervention program approved by the commissioner of health and human services; [~~and~~]

(4) The person's driver's license or privilege to drive shall be revoked for not less than 9 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. The court may suspend up to 6 months of this sentence, provided that the person has entered into the relevant driver intervention program required by subparagraph (3) within 45 days after conviction, or as soon thereafter as any extenuating circumstances approved by the department of health and human services allow; **and**

(5) The sentencing court may, consistent with RSA 651:2, III, sentence the person to additional alcohol and/or drug treatment and counseling to be monitored by the department of corrections, or to a treatment program approved by the commissioner of the department of health and human services, or both. In addition, the court may require the person to submit to random urinalysis by the department of corrections if deemed necessary and appropriate.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Sapareto.

Seconded by Senator Barnes.

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

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

Yeas: 6 - Nays: 17

Floor amendment failed.

Question is on the adoption of the bill as amended.

A roll call was requested by Senator Barnes.

Seconded by Senator Prescott.

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

The following Senators voted No: Sapareto.

Yeas: 22 - Nays: 1

Adopted.

Ordered to third reading.

SB 509-FN, relative to civil recoveries for false claims paid or approved by the department of health and human services. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Sapareto for the committee.

Senate Judiciary
February 17, 2004
2004-0486s
09/01

Amendment to SB 509-FN

Amend RSA 167:61-b, I as inserted by section 2 of the bill by deleting subparagraph (f) and renumbering subparagraphs (g)-(h) to read as (f) and (g), respectively.

Amend RSA 167:61-c, II as inserted by section 2 of the bill by replacing it with the following:

II.(a) An individual, hereafter referred to as "relator," may bring a civil action for a violation of RSA 167:61-b, I on behalf of the relator and for the state. The action shall be brought in the name of the state.

(b) When a relator brings an action under this section, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c) A copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the state in accordance with the New Hampshire rules of civil procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(d) The state may, for good cause shown, move the court for one or more extensions of the 60-day time period during which the complaint shall remain under seal. Any such motion may be supported by affidavits or other submissions filed under seal.

(e) Before the expiration of the 60-day period or any extension obtained, the state shall:

(1) Proceed with the action, in which case the action shall be conducted by the state; or

(2) Notify the court that it declines to take over the action, in which case the action shall be dismissed.

Amend RSA 167:61-d and RSA 161:61-e as inserted by section 2 of the bill by replacing them with the following:

167:61-d Rights of Parties to Actions.

I. If the state proceeds with an action under RSA 167:61-c, the state shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the relator bringing the action. The relator shall have the right to continue as a party to the action, subject to the following limitations:

(a) The state may dismiss the action notwithstanding the objections of the relator initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed.

(b) The state may settle the action with the defendant notwithstanding the objections of the relator initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

II. Notwithstanding RSA 167:61-c, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the relator initiating the action shall have the same rights in the proceeding as the relator would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section.

III. Whether or not the state elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

167:61-e Award to Relator.

I. If the state proceeds with an action brought by a relator under RSA 167:61-c, the relator shall, except as otherwise provided in this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the relator bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information furnished by the relator and the role of the relator bringing the action in advancing the case to litigation. Any payment to a relator under this paragraph shall be made from the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

II. If the court finds that the action was brought by a relator who planned and initiated the violation of RSA 167:61-b upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the relator would otherwise receive under paragraph I, taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator bringing the action is convicted of criminal conduct arising from the relator's role in the violation of RSA 167:61-b, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the state to continue the action represented by the attorney general.

III. No court shall have jurisdiction over an action brought under RSA 167:61-c:

(a) Against any department official or any division, board, bureau, commission or agency within the department;

(b) When the relator is a present or former employee of the state and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the state failed to act on the information provided within a reasonable period of time; or

(c) That is based upon allegations or transactions that are the subject of a civil or criminal investigation, civil suit, or an administrative civil money penalty proceeding, in which the state is already a party.

(d) That is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the relator bringing the action is an original source of the information.

IV. The state shall not be liable for expenses or fees, including attorneys' fees, that a relator incurs in bringing an action under RSA 167:61-c and shall not elect to pay those expenses or fees.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 510-FN, relative to unprivileged physical contact without the intent to harm. Judiciary Committee. Ought to pass with amendment, Vote 3-2. Senator Sapareto for the committee.

Senate Judiciary
February 17, 2004
2004-0500s
04/05

Amendment to SB 510-FN

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

AN ACT relative to simple assault.

Amend the bill by replacing section 1 with the following:

1 Simple Assault. Amend RSA 631:2-a, I (a) to read as follows:

(a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another ***with the intent to harm***; or

2004-0500s

AMENDED ANALYSIS

This bill amends the simple assault statute by requiring an act to be committed with the intent to harm another.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Foster.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.

The following Senators voted No: Below, Green, Odell, Peterson, O'Hearn, Foster, Larsen, D'Allesandro, Estabrook, Cohen.

Yeas: 13 - Nays: 10

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 516-FN, relative to special needs trusts. Judiciary Committee. Interim Study, Vote 4-0. Senator Clegg for the committee.

MOTION TO TABLE

Senator Peterson moved to have **HB 516-FN**, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 516-FN, relative to special needs trusts.

SB 348, relative to prohibited practices of owners or operators of manufactured housing parks. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public Affairs
February 18, 2004
2004-0514s
05/04

Amendment to SB 348

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

AN ACT relative to the sale of manufactured housing and the management of manufactured housing parks.

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

1 New Subparagraphs; Manufactured Housing Parks, Prohibited Practices by Park Owners Relative to Sale of Manufactured Housing. Amend RSA 205-A:2, II by inserting after subparagraph (d) the following new subparagraphs:

(e) Impose a non-refundable fee for processing an application for tenancy that exceeds \$125 unless the park owner provides the applicant with an itemized breakdown of the application fee. Any application fee in excess of \$125 shall be reasonable.

(f) If the park rules require a pre-sale inspection of the home, fail to provide written notice to the park tenant, within 14 calendar days of receiving written notification from the tenant that he or she is going to attempt to sell his or her home in place, of all repairs and improvements that the park owner requires in order to approve the sale. If the park rules do not require a pre-sale inspection of the home and the tenant makes a written request for a specification of the repairs and improvements that the park owner requires for approval of an on-site sale, the park owner shall have 14 days to provide a written list of the required repairs and improvements. The park owner's response to the tenant is valid for 90 days after which time if a sale has not been completed, the park owner may require additional improvements or repairs of any defective conditions which have arisen since the park owner's initial response. The park owner may not require:

(1) The repair or removal of anything inside the home that does not adversely affect the infrastructure of the park.

(2) Compliance with an aesthetic standard if the standard relates to physical characteristics, such as size, original construction materials or color; provided however that nothing in this subparagraph shall prevent a park owner from requiring compliance with aesthetic standards related to maintenance or repairs of deteriorating or defective features of the home, or the removal of a structure or fixture which was added to the home by the seller without the permission of the park owner.

(g) Fail to provide written notice to the prospective buyer, within 14 calendar days of receipt of the prospective buyer's completed application for tenancy, setting forth the reason for the park owner's refusal to approve or indicating the park owner's approval of the prospective buyer as a park tenant. If the prospective buyer is denied the park owner shall, upon request of the seller, send a notice of the denial to the seller that does not disclose the reason therefor.

2 Manufactured Housing Parks; Aesthetic Standard. RSA 205-A:2, III is repealed and reenacted to read as follows:

III. Require manufactured housing at the time of sale or otherwise, which is safe, sanitary and in conformance with aesthetic standards, if any, of general applicability contained in the rules, to be removed from the park. For the purposes hereof, manufactured housing shall be presumed to be safe if it is established that the manufactured housing was constructed to any nationally recognized building or construction code or standard. Failure to meet any such standard or code, in and of itself, shall raise no presumption that the manufactured housing is unsafe; nor may such failure be used as a reason for withholding approval of an on-site sale. The park owner or operator shall have the burden of showing that manufactured housing is unsafe, unsanitary or fails to meet the aesthetic standards of the park. No aesthetic standard shall be applied against manufactured housing if such standard relates to physical characteristics, such as size, original construction materials or color.

3 New Paragraphs; Board of Manufactured Housing; Decisions Pertaining to the Reasonableness of Park Rules. Amend RSA 205-A:27 by inserting after paragraph I the following new paragraphs:

I-a. The board shall have the power to issue a decision as to whether a rule of a manufactured housing park is reasonable as applied to the facts of a specific case. If the board determines that the rule is unreasonable, such ruling shall be binding on the parties in any subsequent court proceeding between the parties, unless the board's decision is reversed on appeal under RSA 205-A:28.

I-b. If a park owner promulgates a park rule which the board finds unreasonable as applied to the facts of a specific case, but such rule does not violate any provision of RSA 205-A:2, I-X, no damages, civil penalty, or attorneys fees shall be awarded to the tenant notwithstanding the provisions of RSA 205-A:12, 205-A:12-a, 205-A:13-a, or 358-A.

4 Effective Date. This act shall take effect January 1, 2005.

2004-0514s

AMENDED ANALYSIS

This bill regulates certain practices by manufactured housing park owners, including tenant application fees, repairs and improvements required prior to sale or inside the home, compliance with an aesthetic standard, and written notice if an application for tenancy is denied. The bill also provides the circumstances in which a prior decision of the board of manufactured housing relative to the reasonableness of park rules shall be binding on the parties in a future proceeding.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 407-FN-L, relative to default budgets. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Roberge for the committee.

Public Affairs
February 18, 2004
2004-0521s
08/10

Amendment to SB 407-FN-LOCAL

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

AN ACT relative to default budgets in the budget adoption procedure in political subdivisions which have adopted official ballot voting.

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

1 Use of Official Ballot; Operating Budget. Amend RSA 40:13, IX-XI to read as follows:

IX. **(a)** "Operating budget" as used in this subdivision means "budget," as defined in RSA 32:3, III, exclusive of "special warrant articles," as defined in RSA 32:3, VI, and exclusive of other appropriations voted separately.

(b) "Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating budget authorized for the previous year; reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget. For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body or the budget committee, if there is one, of the local political subdivision.

X. If no operating budget article is adopted, the local political subdivision either shall be deemed to have approved ~~[the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, or reduced by one-time expenditures contained in the operating budget,]~~ **the default budget** or the governing body may hold a special meeting pursuant to paragraph XVI to take up the issue of a revised operating budget only; provided that RSA 31:5 and RSA 197:3 shall not apply to such a special meeting. If no operating budget article is adopted the estimated revenues shall nevertheless be deemed to have been approved. ~~[For the purposes of this paragraph, one-time expenditures shall be appropriations not likely to recur in the succeeding budget, as determined by the governing body of the local political subdivision].~~

XI. The ~~[amount of the previous year's operating budget, as adjusted pursuant to paragraph X,]~~ **default budget** shall be disclosed ~~[to the voters at the first session]~~ **at the first budget hearing held pursuant to RSA 32:5 or RSA 197:6. The governing body or the budget committee, if there is one, shall demonstrate how the default budget amount was determined by showing the appropriations contained in the operating budget authorized for the previous year and the reductions and increases made pursuant to paragraph IX(b) on a default budget form created by the department of revenue administration.** This amount shall not be amended by the legislative body. However, this amount may be adjusted by the governing body **or the budget committee, if there is one**, acting on relevant new informa-

tion at any time before the ballots are printed, ***provided the governing body or the budget committee, if there is one, completes an amended default budget form.*** The wording of the second session ballot question concerning the operating budget shall be as follows:

"Shall the (local political subdivision) raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling \$_____? Should this article be defeated, the [~~operating~~] ***default*** budget shall be \$_____, which is the same as last year, with certain adjustments required by previous action of the (local political subdivision) or by law; or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only."

2 Municipal Budget Law; Budget Preparation. Amend RSA 32:5, VII to read as follows:

VII. ***(a)*** The governing body shall post certified copies of the budget with the warrant for the meeting. In the case of towns, the budget shall also be printed in the town report made available to the legislative body at least one week before the date of the annual meeting. A school district or village district may vote, under an article inserted in the warrant, to require the district to print its budget in an annual report made available to the district's voters at least one week before the date of the annual meeting. Such district report may be separate or may be combined with the annual report of the town or towns within which the district is located.

(b) The governing body in official ballot referenda jurisdictions operating under RSA 40:13 shall post certified copies of the default budget form or any amended default budget form with the proposed operating budget and the warrant.

3 Budget Committee; Duties. Amend RSA 32:16, I to read as follows:

I. To prepare the budget as provided in RSA 32:5 ***or a default budget under RSA 40:13, IX(b)*** for submission to each annual or special meeting of the voters of the municipality, and, if the municipality is a town, the budgets of any school district or village district wholly within the town, unless the warrant for such meeting does not propose any appropriation.

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

2004-0521s

AMENDED ANALYSIS

This bill provides for certain changes to the budget adoption procedure in political subdivisions which have adopted official ballot voting.

MOTION TO TABLE

Senator Roberge moved to have **SB 407-FN-L**, laid on the table.

Adopted

LAIID ON THE TABLE

SB 407-FN-L, relative to default budgets.

SB 414-FN, clarifying the laws relative to municipal impact fees, off-site exactions, vesting of development rights, and waiver of subdivision regulations. Public Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

Public Affairs

February 18, 2004

2004-0515s

06/09

Amendment to SB 414-FN

Amend the introductory paragraph of RSA 674:39, I as inserted by section 1 of the bill by replacing it with the following:

I. Every plat approved by the planning board and properly recorded in the registry of deeds and every site plan approved by the planning board and properly recorded in the registry of deeds, if recording of site plans is required by the planning board or by local regulation, shall be exempt from all subsequent changes in subdivision regulations, site plan review regulations, and zoning ordinances adopted by any city, town, or

county in which there are located unincorporated towns or unorganized places, except those regulations and ordinances which expressly protect public health standards, such as water quality and sewage treatment requirements, for a period of 4 years after the date of approval; provided, however, that once substantial completion of the improvements as shown on the plat has occurred in compliance with the approved plat, or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent changes in subdivision regulations or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements; and further provided that:

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 383-FN, relative to pharmacy benefit management. Public Institutions, Health and Human Services Committee. Inexpedient to Legislate, Vote 3-2. Senator O'Hearn for the committee.

Motion failed.

Senator O'Hearn moved ought to pass.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3
Sen. Clegg, Dist. 14
Sen. Larsen, Dist. 15
Sen. D'Allesandro, Dist. 20
Sen. Barnes, Dist. 17
Sen. Eaton, Dist. 10
Sen. Flanders, Dist. 7
Sen. Foster, Dist. 13
Sen. Gallus, Dist. 1
Sen. Gatsas, Dist. 16
Sen. Green, Dist. 6
Sen. Johnson, Dist. 2
Sen. Martel, Dist. 18
Sen. Morse, Dist. 22
Sen. Odell, Dist. 8
Sen. O'Hearn, Dist. 12
Sen. Peterson, Dist. 11
Sen. Prescott, Dist. 23
Sen. Roberge, Dist. 9
Sen. Sapareto, Dist. 19
March 4, 2004
2004-0705s
01/09

Floor Amendment to SB 383-FN

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

1 Department of Health and Human Services; Medicaid Pharmacy Benefits Management Program. 2002; 281:9 as amended by 2003, 319:176 is repealed and reenacted to read as follows:

281:9 Department of Health and Human Services; Medicaid Pharmacy Benefits Management Program.

I. The commissioner, in order to manage plan benefits under Medicaid, shall adopt rules under RSA 541-A, relative to a pharmacy benefits management program which may include provisions for:

(a) A medical pharmacy lock-in program to prevent recipients from obtaining excessive quantities of, or from inappropriately using, prescription drugs through multiple pharmacies; and

(b) A prior authorization process in which a prescriber seeks approval by the department, through its designated agent, to make payment for drugs which are considered to have a high potential for misuse or abuse, are high cost, or should be monitored for correct adherence to clinical protocols.

II. Upon the advice and consent of the pharmacy and therapeutics advisory committee, the commissioner may place a drug on a preferred drug list. Nothing in this section shall be construed as preventing a patient from receiving a brand name drug product which the prescribing practitioner specifies is medically necessary for such patient.

III. The commissioner shall establish an expert mental health advisory committee to perform a clinical and evidence-based review of mental health drug classes, including an evaluation of cost effectiveness considerations, to advise the pharmacy and therapeutic advisory committee on the inclusion of mental health drug classes and drugs on a preferred drug list and on the guidelines for the appropriate use of these drugs, including appropriate grandfathering provisions. The members of the advisory committee shall include:

(a) The medical directors of the office of health planning and medicaid and the division of behavioral health, department of health and human services.

(b) Two medical directors from community mental health centers and one psychiatrist from New Hampshire Hospital, appointed by the commissioner.

(c) Two persons, who are currently practicing, nominated by the New Hampshire Psychiatric Society, one each as an expert in:

(1) Adult psychopharmacology.

(2) Pediatric psychopharmacology.

(d) Three physicians, who are currently practicing, nominated by the New Hampshire Medical Society, who shall be from the following specialties:

(1) Internal Medicine or Family Practice.

(2) Pediatrics.

(3) Neurology.

(e) One pharmacist, nominated by the New Hampshire Pharmacists Association.

(f) Two consumer advocates to include one representative nominated by New Hampshire Alliance for the Mentally Ill and one representative nominated by the Consumer Council.

(g) The state medical director.

IV. A pharmacy and therapeutics advisory committee shall be established to advise the commissioner and the department on the operation of the Medicaid pharmacy benefits management program, including the drugs on the preferred drug list subject to prior authorization, the criteria for approving prior authorization including a process for medical necessity, and the criteria for a pharmacy lock-in program designed to prevent recipients from obtaining excessive quantities of, or from inappropriately using, prescription drugs through multiple pharmacies.

(a) The committee shall include:

(1) The medical director of the department.

(2) Five persons appointed by the commissioner.

(3) Four physicians nominated by the New Hampshire Medical Society and appointed by the commissioner, who shall be from the following specialties:

(A) Internal medicine.

(B) Pediatrics.

(C) Family practice.

(D) Psychiatry.

(4) Two pharmacists, one of whom shall be a Pharm. D, nominated by the New Hampshire Pharmacists Association and appointed by the commissioner.

(b) Prior to the implementation of the preferred drug list and prior authorization program, the commissioner shall hold a public hearing to receive input. The committee shall give public notice of any hearing at least 30 days in advance of the hearing. Public notice shall include a public notice advertisement in a publication of daily statewide circulation.

V.(a) The commissioner, or designee, may negotiate with pharmaceutical companies for the payment to the department of supplemental rebates or price discounts for Medicaid in addition to those required by Title XIX of the Social Security Act.

(b) The commissioner, or designee, may negotiate supplemental rebates, price discounts, and other mechanisms to reduce net prescription drug costs by means of any negotiation strategy which the commissioner determines will result in the maximum economic benefit to the program while maintaining access to high quality prescription drug therapies. The provisions of this subparagraph shall not authorize agreements with pharmaceutical manufacturers whereby financial support for medical and disease management services is accepted in lieu of cash supplemental rebate payments as consideration for placement of one or more drugs on the preferred drug list.

(c) The commissioner and the department shall prohibit the public disclosure of information revealing company-identifiable trade secrets, including rebate and supplemental rebate amounts and manufacturer's pricing, obtained by the department in the course of negotiations conducted pursuant to this paragraph.

VI.(a) The commissioner of health and human services shall report quarterly to the legislative oversight committee established in subparagraph (c) with respect to the Medicaid prescription drug benefits management program, including:

(1) The cost savings to the state realized from the operation of a pharmacy benefits management program. To the extent possible, the savings shall be allocated to each pharmacy benefits management initiative.

(2) The direct costs of a pharmacy benefits management program including costs associated with any pharmacy benefits management contract. To the extent possible, the costs shall be allocated to each pharmacy benefits management initiative.

(3) An analysis of any cost shifting associated with the implementation of each pharmacy benefits management initiative including, as appropriate, additional prescriptions, hospital admissions, psychiatric hospital admissions, emergency room visits, long-term care admissions, physician visits, laboratory tests, skilled nursing care, and the underlying data to support such analysis.

(4) A report on the volume of claims paid for preferred versus non-preferred drugs, prior authorizations as a percentage of total claims, average call waiting time, and any issues that the state's pharmacy benefits administrator is required to comply with under the terms of the pharmacy benefits management contract.

(5) Recommendations for other opportunities to improve the management of pharmacy services or to expand pharmacy benefits to additional populations.

(b) The commissioner of health and human services shall report annually to the legislative oversight committee established in subparagraph (c) with respect to the Medicaid prescription drug benefits management program as follows:

(1) A report of the effectiveness of the department of health and human services' pharmacy lock-in program.

(2) An analysis of the impact of the pharmacy benefits management program on patient outcomes and quality of care.

(c) For the purpose of legislative oversight of the Medicaid prescription drug benefits management program administered by the department, including a preferred drug list which may be established pursuant to paragraph II, there is established a legislative oversight committee consisting of 3 members of the house of representatives appointed by the speaker and 3 senators appointed by the senate president. The committee shall meet as needed and shall elect a chairperson from among the members. The committee shall review the reports of the commissioner under subparagraphs (a) and (b) and may request additional information as needed. The department shall provide to the oversight committee a report of actions taken by the pharmacy and therapeutics committee since the last meeting of the oversight committee, including a list of any drugs made subject to prior authorization, the criteria for approving such prior authorization, and minutes of the pharmacy and therapeutics committee meetings. The oversight committee may request the assistance of the legislative budget assistant in auditing the program and in reviewing its performance and effectiveness. The committee may make recommendations for proposed legislation, and shall report any findings or recommendations, including the commissioner's reports under subparagraphs (a) and (b), to the speaker of the house, the president of the senate, the governor, and the chairperson of the joint legislative committee on administrative rules by January 1 of each year.

VII. The commissioner of the department of health and human services shall conduct an independent SAS 70 audit not less than once per biennium of the premises, operations, and data from any entity providing pharmacy benefits management services to the state. The results of such audit shall be reported to the legislative fiscal committee, established in RSA 14:30-a, and members of the legislative oversight committee, established in subparagraph VI(c), and shall be made available to the public upon request.

2 Report Required. The commissioner of the department of health and human services shall make a report, together with any recommendations, to the general court on or before November 1, 2006 relative to the mental health advisory committee and relative to the Medicaid pharmacy benefits management program.

3 Prospective Repeal. 2002, 281:9, III and V as amended by 2003, 319:176 and by section 1 of this act, relative to a mental health advisory committee and negotiation with pharmaceutical companies, are hereby repealed.

4 Effective Date.

I. Section 3 of this act shall take effect June 30, 2007.

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

2004-0705s

AMENDED ANALYSIS

This bill clarifies certain provisions of the pharmacy benefits management program. This bill requires the commissioner of the department of health and human services to establish an expert mental health advisory committee to review mental health drugs and to make recommendations for guidelines for the appropriate use of such drugs. This bill also allows the commissioner to negotiate with pharmaceutical companies for supplemental rebates or price discounts for Medicaid.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Boyce is in favor of SB 383-FN.

SB 405-FN, relative to standards for comprehensive physical rehabilitation service areas. Public Institutions, Health and Human Services Committee. Ought to Pass, Vote 3-2. Senator Martel for the committee.

MOTION TO TABLE

Senator Martel moved to have **SB 405-FN**, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 405-FN, relative to standards for comprehensive physical rehabilitation service areas.

SB 495-FN, relative to original and youth operators' licenses. Transportation Committee. Ought to pass with amendment, Vote 4-1. Senator Flanders for the committee.

Senate Transportation

February 19, 2004

2004-0554s

03/10

Amendment to SB 495-FN

Amend the bill by replacing section 4 with the following:

4 Original License; Revocation and Suspension. Amend RSA 263:14, III(a)-(b) to read as follows:

III.(a) The director is authorized to revoke or suspend any original license ~~[issued under title XXI]~~ **held by a person under 20 years of age** after a hearing upon a showing by its records or other sufficient evidence that the driver has committed ~~[an offense during the first year following the issuance of an original license or has committed 2 or more offenses during the first 2 years]~~ **a moving violation** following the issuance of an original license for which the original license holder has been convicted.

(b) The periods of suspension or revocation set forth in subparagraph III(a) of this section shall be as follows:

(1) For a first [~~offense during the first year following the issuance of an original license~~] ***moving violation***, 20 days.

(2) For a second [~~offense during the first 2 years following the issuance of an original license~~] ***moving violation***, 45 days.

(3) For a third or subsequent [~~offense during the first 2 years following the issuance of an original license~~] ***moving violation***, 90 days.

Amend the bill by replacing section 7 with the following:

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

Senator Prescott moved to recommit.

Adopted.

SB 518, establishing a commission to study railroad matching funds. Transportation Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

Senate Transportation

February 19, 2004

2004-0549s

06/10

Amendment to SB 518

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

AN ACT establishing a commission to study railroad matching funds and authorizing an expenditure for a certain feasibility study.

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

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

(a) One member 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) The governor, or designee.

(d) The commissioner of the department of transportation, or designee.

(e) A member of the New Hampshire Railroad Revitalization Association, nominated by the association 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.

Amend the bill by replacing section 5 with the following:

5 Report. The commission shall report 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 December 1, 2004.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 7:

6 New Subparagraph; Feasibility Funding Added. Amend RSA 228:69, I by inserting after subparagraph (b) the following new subparagraph:

(c) To provide funding for the Boston to Montreal High Speed Rail Planning and Feasibility Study for the high speed rail connection between Boston and Montreal in an amount not to exceed \$100,000.

2004-0549s

AMENDED ANALYSIS

This bill establishes a commission to study innovative ways to fund railroad construction including matching fund programs.

This bill also authorizes the commissioner of transportation to spend money in the special railroad fund for the feasibility study for the high speed rail connection between Boston and Montreal.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 532-FN, exempting biodiesel from the road toll. Transportation Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

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.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 378-FN-L, relative to property tax procedures and contingency funds of village districts. Ways and Means Committee. Interim Study, Vote 5-0. Senator Odell for the committee.

Committee report of interim study is adopted.

SB 410-FN-A-L, relative to funding for the statewide education improvement and assessment programs. Ways and Means Committee. Inexpedient to Legislate, Vote 5-0. Senator D'Allesandro for the committee.

Committee report of inexpedient to legislate is adopted.

SB 450-FN, relative to pari-mutuel licenses. Ways and Means Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

Senate Ways and Means
February 19, 2004
2004-0536s
08/10

Amendment to SB 450-FN

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

AN ACT relative to pari-mutuel licenses, and relative to trainer responsibility for the condition of horses and dogs.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 Malicious Interference with Horses or Dogs. Amend RSA 284:38 to read as follows:

284:38 Malicious Interference with Horses or Dogs.

I. Any person who willfully or maliciously attempts to or does interfere with, tamper with, injure, or destroy by the use of narcotics, drugs, stimulants, or appliances of any kind any horse or dog used for the purpose of racing, whether such horse or dog be the property of such person or another, or who willfully or maliciously causes, instigates, counsels, or in any way aids or abets any such interference, tampering, injury, or destruction shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person. The owner of any race horse or race dog engaged in racing within this state that is found to have been stimulated or doped, or any entry of which such horse or dog is a part, shall be denied any part of the purse offered for such race, and the purse shall be distributed as in the case of a disqualification.

II. The trainer of record shall be responsible for and shall be the absolute insurer of the condition of any kind of horses or dogs used for the purposes of racing, which such trainer of record enters to race. For purposes of this section, trainer of record shall mean the person registered and identified as trainer of such horse or dog used for the purpose of racing in the records of the commission.

2004-0536s

AMENDED ANALYSIS

This bill eliminates the restriction on one pari-mutuel licensee from holding more than one license.

This bill extends the time frame in which licensees may sell pari-mutuel pools.

This bill also makes the trainer of horses and dogs responsible for the condition of horses and dogs under their control when used for racing.

MOTION TO TABLE

Senator Barnes moved to have **SB 450-FN**, laid on the table.

Motion failed.

MOTION TO TABLE

Senator Below moved to have **SB 450-FN**, laid on the table.

A division vote was requested.

Yeas: 13 - Nays: 9

Adopted.

LAIID ON THE TABLE

SB 450-FN, relative to pari-mutuel licenses.

SB 522-FN-L, decreasing the rate of interest charged on overdue land use change taxes assessed on property removed from current use. Ways and Means Committee. Inexpedient to Legislate, Vote 5-0. Senator D'Allesandro for the committee.

Committee report of inexpedient to legislate is adopted.

SB 512-FN, relative to improving public boat access to Lake Sunapee. Wildlife and Recreation Committee. Ought to pass with amendment, Vote 2-1. Senator Gatsas for the committee.

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.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SPECIAL ORDER

SB 326-FN, relative to contributions by political subdivision employers for certain employee service, and repealing certain retirement system provisions permitting additional contributions by members. Insurance Committee. Ought to pass with amendment, Vote 3-1. Senator Flanders for the committee.

Insurance

February 18, 2004

2004-0538s

10/04

Amendment to SB 326-FN

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

AN ACT relative to interest credited to additional contributions in the retirement system and requiring reimbursement of certain state contributions to the retirement system by political subdivisions, and relative to charges for provision of police services.

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

1 Retirement System; Additional Contributions; Interest Rate. Amend RSA 100-A:16, I(c)(1) to read as follows:

(c)(1) In addition to the contributions deducted from the compensation of members as hereinbefore provided, and subject to the approval of the board of trustees [~~and to such rules and regulations as the board may make with respect to the crediting of interest thereon~~], any member may provide an additional retirement allowance by making contributions at an additional rate not in excess of the rate computed to be sufficient to provide an additional retirement allowance which, together with his *or her* regular retirement allowance, will result in a total retirement allowance not in excess of 50 percent of his *or her* average final compensation. *The board of trustees shall adopt rules concerning the crediting of interest on addi-*

tional contributions; provided, that annual interest credited to a member's additional contributions shall not exceed the return in any year realized by the retirement system on such contributions. Such additional contributions shall become part of [his] ***the member's*** accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as a member annuity of equivalent actuarial value.

2 Retirement System; Employer Contributions; Political Subdivisions; Reimbursement. Amend RSA 100-A:16, III(c) to read as follows:

(c) A county, city, town, school district or other political subdivision of the state having any employee members whose compensation for extra or special duty is reimbursed in whole or in part by other than employer or state funds, shall likewise reimburse the state for that part of the employer contribution made by the state to this system.

(d) At the beginning of each year commencing on the first day of July the board of trustees shall certify to each employer other than the state the percentage rates of contribution due the system from each such employer, and shall assess upon each such employer such percentages of the earnable compensation of members in its employ, and it shall be the duty of the treasurer or other disbursing officer of each such employer to pay to the board of trustees such portion of the annual amount so assessed at such times and in such manner as the board of trustees may prescribe. Each such employer is hereby authorized to appropriate the sums necessary for the payment of such assessments.

3 Police Attendance; Charges for Services. Amend RSA 105:9, III-a to read as follows:

III-a. The applicant or sponsor of any public meeting or function may be charged for the services of any police officers that may be detailed or assigned to that meeting or function, unless charges authorized by this section for the services of a police officer are waived by the chief of police when in his judgment such authorization does not conflict with an existing local ordinance or policy. ***Any contract, agreement, or charge for services of police officers shall reflect the actual cost of compensation for such services and may include up to an additional 5 percent for other costs.***

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

2004-0538s

AMENDED ANALYSIS

This bill requires that interest paid on additional contributions made by or on behalf of retirement system members shall not exceed the return received by the system.

This bill requires political subdivision employers under the retirement system to reimburse the state for contributions by the state for extra or special duty pay of employees which was later reimbursed by other non-state employers.

This bill also allows for contracts, agreements, or charges for police services to include the cost of compensation and an additional 5 percent.

Senator Sapareto moved to divide the question.

Senator Sapareto withdrew his request to divide the question.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Larsen.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Boyce, Flanders, Roberge, Peterson, Clegg, Prescott.

The following Senators voted No: Kenney, Below, Green, Odell, O'Hearn, Foster, Larsen, Gatsas, Barnes, Martel, Sapareto, D'Allesandro, Estabrook, Morse, Cohen.

Yeas: 8 - Nays: 15

Amendment failed.

MOTION TO TABLE

Senator Sapareto moved to have **SB 326-FN** laid on the table.

Motion failed.

Question is on the motion of ought to pass.

Motion failed.

Senator Larsen moved inexpedient to legislate.

Adopted.

SB 326-FN is inexpedient to legislate.

TAKEN OFF THE TABLE

Senator Gatsas moved to have **SB 340** taken of the table.

Adopted.

SB 340, repealing the restriction on the fish and game department related to release of information on fish stocking.

Question is on the adoption of the committee amendment (0095).

Amendment adopted.

Senator Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

March 3, 2004

2004-0678s

10/04

Floor Amendment to SB 340

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

AN ACT relative to the release of information on fish stocking by the executive director of fish and game.

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

1 Fish and Game; Stocking of Fish; Release of Information. RSA 206:18, I is repealed and reenacted to read as follows:

I. The executive director of fish and game may, at any time he or she deems advisable, release any information related to the stocking of fish to include but not be limited to: the species, number, size of fish, or the name of the stream, pond, or lake stocked, but in no instance shall any employee of the fish and game department, except for a designee of the executive director, disclose where or when they were or will be stocked. The executive director may penalize any employee who violates the provisions of this section as he or she deems reasonable and just.

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

2004-0678s

AMENDED ANALYSIS

This bill removes the time limits on the release of information on fish stocking by the executive director of fish and game.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 1292, apportioning state representative districts.

INTRODUCTION OF A HOUSE BILL

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered **1292** shall be by this resolution read a first and second time by the therein listed title and referred to the therein designated committee.

Adopted.

First and Second Reading and Referral

HB 1292, apportioning state representative districts. (Internal Affairs)

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 and resolutions ordered to third reading be, by this resolution, read a third time, 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 340, relative to the release of information on fish stocking by the executive director of fish and game.

SB 348, relative to the sale of manufactured housing and the management of manufactured housing parks.

SB 367, relative to the New Hampshire Insurance Guaranty Association Act of 2004.

SB 383-FN, relative to pharmacy benefit management.

SB 388-FN, relative to proof of successful completion of an impaired driver intervention program.

SB 397, requiring the department of environmental services to adopt certain rules and to opt out of the re-formulated gasoline program.

SB 414-FN, clarifying the laws relative to municipal impact fees, off-site exactions, vesting of development rights, and waiver of subdivision regulations.

SB 430-FN, relative to mandated insurance benefits and establishing a committee to study the feasibility of mandating that health insurers provide medical loss information to small group employers.

SB 467, establishing an exemption from the public sewer connection requirements for 2 projects in the town of Derry.

SB 478-FN, relative to penalties for DWI offenses.

SB 482-FN, relative to captive insurance companies and reciprocal insurers.

SB 505-FN-A-L, authorizing CROP zone tax credits within the town of Whitefield.

SB 509-FN, relative to civil recoveries for false claims paid or approved by the department of health and human services.

SB 510-FN, relative to simple assault.

SB 512-FN, establishing a Lake Sunapee public access commission.

SB 518, establishing a commission to study railroad matching funds and authorizing an expenditure for a certain feasibility study.

SB 529, making a technical correction to the eminent domain procedure act.

HB 65, relative to educational assistance for national guard members.

HB 465, relative to the rulemaking authority of the department of health and human services and relative to licensing rules for health facilities.

ANNOUNCEMENTS**RESOLUTION**

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

Adopted.

In recess to the Call of the Chair.