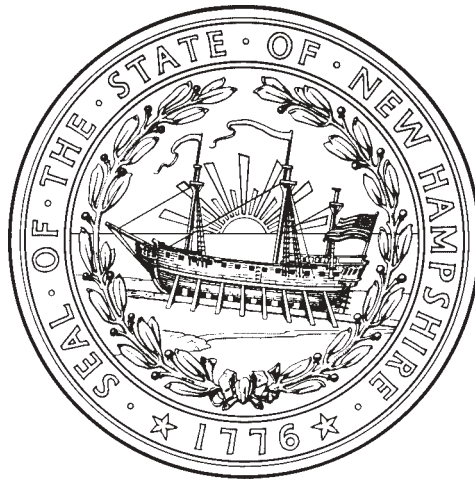


March 24, 2005
Nos. 9 - 10

STATE OF NEW HAMPSHIRE

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Legislative

SENATE JOURNAL

ADJOURNMENT – MARCH 17, 2005 SESSION
COMMENCEMENT – MARCH 24, 2005 SESSION

SENATE JOURNAL 9 (*Cont.*)

March 17, 2005

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 33, relative to the study of state retainage practices.

HB 40, relative to inspection dates for certain vehicles.

HB 42, establishing a statutory joint committee to review and propose changes to state unclassified officers' salaries.

HB 47, regulating the use of computer spyware.

HB 58, relative to the effective date for the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

HB 71-FN-A-L, relative to funding of the school building aid program for the 2005 fiscal year and making an appropriation therefor.

HB 74, relative to the sale of permissible fireworks.

HB 82, relative to political committees of political parties.

HB 84, relative to compensation of county convention members for county business.

HB 87, relative to the authority of the Carroll county public water system.

HB 95, relative to delegates to state party conventions.

HB 97, relative to replacing school budget committee members.

HB 99, changing the name of the college for lifelong learning to Granite state college.

HB 102-FN-A, increasing the personal needs allowance of nursing home residents and certain other residents and making an appropriation therefor.

HB 107, relative to the use of artificial light to view moose in Coos County.

HB 112, relative to psychiatric evaluations in competency hearings.

HB 124, naming a certain portion of New Hampshire Route 125 the Officer Mel Keddy Memorial highway.

HB 128-FN, relative to negligent operation of a carnival or amusement ride.

HB 144-L, relative to special elections for municipal charter amendments.

HB 150, defining truancy.

HB 154, relative to changes of party registration on primary day.

HB 171, relative to nicknames on ballots.

HB 173, relative to food service and distribution.

HB 174, relative to renewable energy transition service, extending a portion of the system benefits charge, and repealing laws relating to information provided to electric service consumers.

HB 181, establishing a committee to study the special account in the New Hampshire retirement system.

HB 185, establishing a committee to study maximizing the incentives for the voluntary use of renewable energy in New Hampshire as defined in RSA 374-F:3.

HB 199, relative to fish and game department expenditures for marine fisheries.

HB 206, relative to alcohol education and abuse prevention and treatment programs.

HB 229, extending the committee to study the establishment of a farm viability program.

HB 236, relative to the time for filing a motion to rehear a zoning decision.

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics.

HB 263, relative to the use of design build and construction management methods for state capital projects.

HB 277, relative to special elections for executive councilor, state senator, and state representative.

HB 286, prohibiting the operation of pocket bikes and motorized scooters upon ways.

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire.

HB 303-FN, relative to the fire standards and training commission.

HB 308, relative to the special education payment distribution schedule and relative to alternative dispute resolution proceedings in special education.

HB 339, relative to electioneering at polling places.

HB 340, renaming Jones Brook Wildlife Management Area in Strafford County for former chairman of the fish and game commission, Ellis Hatch, Jr., and naming a building at the Sandy Point Discovery Center in Stratham for former governor Hugh Gregg.

HB 353, relative to consent to haul lobster and crab gear of license holders.

HB 414, relative to regulation of municipal waste combustors.

HB 434-FN, requiring state agencies using automated answering systems to provide a method of access to a human being.

HB 448-FN, relative to the collection of certain fees by the postsecondary education commission.

HB 462, prohibiting road toll refunds for idling time.

HB 483, relative to instructions to be placed on the general election ballot.

HB 488, establishing a task force on mental health costs.

HB 512, establishing a commission to study property tax relief and reverse mortgages.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 33 - 512, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 33, relative to the study of state retainage practices. Transportation and Interstate Cooperation

HB 40, relative to inspection dates for certain vehicles. Transportation and Interstate Cooperation

HB 42, establishing a statutory joint committee to review and propose changes to state unclassified officers' salaries. Banks and Insurance

HB 47, regulating the use of computer spyware. Internal Affairs

HB 58, relative to the effective date for the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program. Environment and Wildlife

HB 71-FN-A-L, relative to funding of the school building aid program for the 2005 fiscal year and making an appropriation therefor. Finance

HB 74, relative to the sale of permissible fireworks. Public and Municipal Affairs

HB 82, relative to political committees of political parties. Internal Affairs

HB 84, relative to compensation of county convention members for county business. Public and Municipal Affairs.

HB 87, relative to the authority of the Carroll county public water system. Public and Municipal Affairs

HB 95, relative to delegates to state party conventions. Internal Affairs

HB 97, relative to replacing school budget committee members. Education

HB 99, changing the name of the college for lifelong learning to Granite state college. Capital Budget

HB 102-FN-A, increasing the personal needs allowance of nursing home residents and certain other residents and making an appropriation therefor. Finance

HB 107, relative to the use of artificial light to view moose in Coos County. Environment and Wildlife

HB 112, relative to psychiatric evaluations in competency hearings. Judiciary

HB 124, naming a certain portion of New Hampshire Route 125 the Officer Mel Keddy Memorial highway. Transportation and Interstate Cooperation

HB 128-FN, relative to negligent operation of a carnival or amusement ride. Transportation and Interstate Cooperation

HB 144-L, relative to special elections for municipal charter amendments. Internal Affairs

HB 150, defining truancy. Education

HB 154, relative to changes of party registration on primary day. Internal Affairs

HB 171, relative to nicknames on ballots. Internal Affairs

HB 173, relative to food service and distribution. Health and Human Service

HB 174, relative to renewable energy transition service, extending a portion of the system benefits charge, and repealing laws relating to information provided to electric service consumers. Energy and Economic Development

HB 181, establishing a committee to study the special account in the New Hampshire retirement system. Banks and Insurance

HB 185, establishing a committee to study maximizing the incentives for the voluntary use of renewable energy in New Hampshire as defined in RSA 374-F:3. Energy and Economic Development

HB 199, relative to fish and game department expenditures for marine fisheries. Environment and Wildlife

HB 206, relative to alcohol education and abuse prevention and treatment programs. Health and Human Services

HB 229, extending the committee to study the establishment of a farm viability program. Environment and Wildlife

HB 236, relative to the time for filing a motion to rehear a zoning decision. Public and Municipal Affairs

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics. Public and Municipal Affairs

HB 263, relative to the use of design build and construction management methods for state capital projects. Transportation and Interstate Cooperation

HB 277, relative to special elections for executive councilor, state senator, and state representative. Internal Affairs

HB 286, prohibiting the operation of pocket bikes and motorized scooters upon ways. Transportation and Interstate Cooperation

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire. Energy and Economic Development

HB 303-FN, relative to the fire standards and training commission. Executive Departments and Administration

HB 308, relative to the special education payment distribution schedule and relative to alternative dispute resolution proceedings in special education. Education

HB 339, relative to electioneering at polling places. Internal Affairs

HB 340, renaming Jones Brook Wildlife Management Area in Strafford County for former chairman of the fish and game commission, Ellis Hatch, Jr., and naming a building at the Sandy Point Discovery Center in Stratham for former governor Hugh Gregg. Environment and Wildlife

HB 353, relative to consent to haul lobster and crab gear of license holders. Environment and Wildlife

HB 414, relative to regulation of municipal waste combustors. Energy and Economic Development

HB 434-FN, requiring state agencies using automated answering systems to provide a method of access to a human being. Executive Departments and Administration

HB 448-FN, relative to the collection of certain fees by the postsecondary education commission. Education

HB 462, prohibiting road toll refunds for idling time. Ways and Means

HB 483, relative to instructions to be placed on the general election ballot. Internal Affairs

HB 488, establishing a task force on mental health costs. Health and Human Services

HB 512, establishing a commission to study property tax relief and reverse mortgages. Banks and Insurance

Out of Recess.

LATE SESSION

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

Adopted.

Adjournment.

SENATE JOURNAL 10

March 24, 2005

The Senate met at 10:00 a.m.

A quorum was present.

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

Great and patient photographer of our destiny, draw us in, line us up, make us smile – and then, when You are ready, craft from the amazing tableau of who we are, a picture that is complete and worth framing and hanging on our wall.

Amen

Senator Bragdon led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Senator Barnes (Rule #44).

Senator Gallus (Rule #44).

Senator Burling (Rule #44).

COMMITTEE REPORTS

SB 6-FN, relative to small group insurers. Banks and Insurance Committee. Inexpedient to Legislate, Vote 4-2. Senator Barnes for the committee.

Committee report of inexpedient to legislate is adopted.

SB 64, establishing a committee to study small group health insurance plans. Banks and Insurance Committee. Ought to Pass, Vote 4-2. Senator Roberge for the committee.

Adopted.

Ordered to third reading.

SB 67, eliminating health status as a rating factor for small group health insurance. Banks and Insurance Committee. Inexpedient to Legislate, Vote 4-2. Senator Foster for the committee.

MOTION TO TABLE

Senator D'Allesandro moved to have SB 69 laid on the table.

Motion failed.

The question is on the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 69-L, relative to certain insurance liens. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Barnes for the committee.

Banks and Insurance

March 15, 2005

2005-0640s

01/05

Amendment to SB 69-LOCAL

Amend RSA 155-B:2-a as inserted by section 1 of the bill by replacing it with the following:

155-B:2-a Municipal Lien on Owner's Interest in Property Insurance Proceeds. A municipality may assert a lien on a real property owner's interest in any property insurance proceeds that are payable as a result of the damage or destruction of that property owner's real property located in the municipality. The municipal lien shall be subordinate to any lienholder of record, and to any right, title, or interest in such property insurance proceeds in favor of any lender holding a mortgage on such real property and who was named as an additional insured or loss payee, by means of loss payable endorsement or otherwise, on any policy of insurance insuring such real property. The insurer's obligations under this section shall commence upon its receipt of actual written notice from the municipality, a copy of which shall be sent by the municipality to the insured, and shall apply only to insurance proceeds held by the insurer as of that date and due to be paid to the owner. The lien shall be for the purpose of reimbursing the municipality for all costs permitted to be recovered by it under this chapter if the municipality elects to demolish and cleanup the property. The property owner shall, within 72 hours of the receipt of a written request by the municipality, provide the municipality with the names, addresses, agents, and policy numbers of all insurance companies which have provided the property owner with insurance on the property. The lien shall automatically expire if the owner rebuilds or demolishes the real property in the manner required by this chapter.

2005-0640s

AMENDED ANALYSIS

This bill allows municipalities to place a lien on any insurance proceeds received by a mortgagee if the mortgagee's building is damaged and the mortgagee does not rebuild or demolish the building.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 112-FN, relative to viatical settlements. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-2. Senator Barnes for the committee.

Banks and Insurance
March 15, 2005
2005-0641s
01/05

Amendment to SB 112-FN

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

AN ACT establishing a committee to study viatical settlements.

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

1 Committee Established. There is established a committee to study viatical settlements between a life insurance provider and a policy owner.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study viatical settlements between a life insurance provider and a policy owner.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2005.

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

2005-0641s

AMENDED ANALYSIS

This bill establishes a committee to study viatical settlements between a life insurance provider and a policy owner.

Amendment adopted.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7
March 23, 2005
2005-0904s
01/10

Floor Amendment to SB 112-FN

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study viatical and life settlements.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study viatical and life settlements.

2005-0904s

AMENDED ANALYSIS

This bill establishes a committee to study viatical and life settlements.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 118-FN, repealing certain provisions of law regarding small group health insurance. Banks and Insurance Committee. Inexpedient to Legislature, Vote 6-0. Senator Gottesman for the committee.

Committee report of inexpedient to legislate is adopted.

SB 125-FN, relative to small group health insurance and relative to reinsurance. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-2. Senator Gottesman for the committee.

Banks and Insurance

March 22, 2005

2005-0840s

01/09

Amendment to SB 125-FN

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

AN ACT repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism.

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

1 Small Group Health Insurance; Definitions Added. RSA 420-G:2, I is repealed and reenacted to read as follows:

I. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer health carrier is in compliance with the provisions of and the rules adopted by the commissioner, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer health carrier in establishing premium rates for applicable health benefit plans.

I-a. "Base rate" means a single rate reflecting the carrier's average cost of actual or anticipated claims for all health coverages or health benefit plans which the carrier writes and maintains in the nongroup individual health insurance market.

I-b. "Case characteristics" means the following characteristics of a small employer: age, size of group, and industry classification, as determined by a small employer health carrier, that are considered by the small employer health carrier in the determination of premium rates for the small employer. Claim experience, health status, geographic location, and duration of coverage since issue shall not be case characteristics.

2 Definition Added. Amend RSA 420-G:2 by inserting after paragraph XVI the following new paragraph:

XVI-a. "Standard health care plan" means the plan of reinsurance that may be modified as necessary by the board, established in RSA 420-G:6, III, with the approval of the commissioner.

3 Definition; "Health Coverage Plan Rate." Amend RSA 420-G:2, IX-a to read as follows:

IX-a. "Health coverage plan rate" means a rate that is uniquely determined for each of the coverages or health benefit plans a health carrier writes and that is derived from the base rate through the application of factors that reflect actuarially demonstrated differences in expected utilization or cost attributable to differences in the coverage design and/or the provider contracts that support the coverage. ***Any health coverage plan rate change shall be based on a small employer health carrier's annual cost and utilization trends or changes in the equivalent value of benefits and such change shall not be more frequent than every 12 months.***

4 Small Group Health Insurance; Premium Rates. Amend RSA 420-G:4; I(b) to read as follows:

(b) Base rate shall be established by each health carrier for all of its health coverages offered to individuals and ~~[separately]~~ for all of its health coverages offered to small employers.

5 Small Group Health Insurance; Premium Rates. Amend RSA 420-G:4, I(e) and (f) to read as follows:

(e) In establishing the premium charged, health carriers ~~[providing]~~ ***issuing*** coverage to small employers ***on or after July 1, 2005*** shall calculate a rate that is derived from the health coverage plan rate ~~[through the application of rating factors that the carrier chooses to utilize for age, group size, industry classification, geographic location, and health status]~~ ***by making adjustments to reflect one or more case characteristics. Claim experience, health status, geographic location, and duration of coverage since issue are not case characteristics.*** Such ~~[factors]~~ ***adjustments from the health coverage plan rate*** may be ~~[utilized]~~ ***made*** only in accordance with the following limitations:

(1) Carriers may use the attained age of covered persons as a ~~[rating factor]~~ **case characteristic**. However, the maximum premium differential for age as determined by ratio shall be ~~[4]~~ **3** to 1 beginning with age 19.

(2) Carriers modifying such average premium for age may do so only by using the following age brackets:

- 0 - 18
- 19 - 24
- 25 - 29
- 30 - 34
- 35 - 39
- 40 - 44
- 45 - 49
- 50 - 54
- 55 - 59
- 60 - 64
- 65 +

(3) Carriers may use group size as a ~~[rating factor]~~ **case characteristic**. However, the highest factor based on group size shall not exceed the lowest factor based on group size by ~~[more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor]~~ **a ratio of greater than 1.25 to 1.0**.

(4) Carriers may use the small employer group's industry classification as a rating factor. However, the highest factor based on industry classification shall not exceed the lowest factor based on industry classification by more than ~~[20]~~ **15 percent; provided, that none of the factors associated with any industry shall be increased by more than 5 percent per year**.

~~[(5) Carriers may use the small employer group's geographic location as a rating factor. However, the highest factor based on geographic location shall not exceed the lowest factor based on geographic location by more than 15 percent.]~~

~~(6) Carriers may use the health status of the small employer group as a rating factor. However, the application of a health status factor shall be subject to the following limitations:~~

~~(A) The health status factor may reflect health status of covered persons, the small employer's claim experience, or the duration of coverage since health statements were last provided.~~

~~(B) Variations from the arithmetic average of the highest rate charged to the lowest rate charged shall not exceed 25 percent.~~

~~(C) Upon the renewal of a small employer policy, any increase in the premium rate that is solely attributable to changes in the health status factor from the prior year shall be no more than 15 percent.~~

~~(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons.]~~

(5) Case characteristics shall be applied by addition rather than multiplication. The premium adjustment resulting from the application of each case characteristic may be added to the base premium rate to determine the premium rate charged.

(6) The small employer health carrier shall set premium rates to small employers after consideration of case characteristics of the small employer group. No small employer health carrier shall inquire regarding health status or claims experience of the small employer or its employees or dependents until after the premium rate has been agreed upon by the carriers and the employer.

(7) Any adjustment in premium rates for a small employer plan or arrangement to reflect changes in case characteristics that occurred prior to the end of a rating period shall not be charged until the commencement of the next rating period.

(8) Differences in health coverage plan rates charged for health benefit plans by a small employer health carrier shall be reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans.

(f) Each rating factor that a carrier chooses to utilize ***in the individual market*** shall be reflective of claim cost variations that correlate with that factor independently of claim cost variations that correlate with any of the other allowable factors.

6 Medical Underwriting. Amend RSA 420-G:5, I to read as follows:

I. Health carriers providing health coverage for individuals [~~or small employer groups~~] may perform medical underwriting, including the use of health statements or screenings or the use of prior claims history, to the extent necessary to establish or modify [~~premium~~] ***base*** rates as provided in RSA 420-G:4. The commissioner may allow ***small*** group carriers to use standardized health statements ***after premium prices have been agreed upon by the carrier and the small employer and only to use them for their reinsurance ceding decisions for the New Hampshire small employer reinsurance pool, established in RSA 420-G:6, III(a).***

7 New Paragraph; Medical Underwriting. Amend RSA 420-G:5 by inserting after paragraph VII the following new paragraph:

VIII. On or before July 1, 2005, the board of directors of the New Hampshire small employer health reinsurance pool shall establish, subject to the approval of the commissioner, a standard reinsurance underwriting form for use by small employer carriers doing business with the New Hampshire small employer health reinsurance pool. Within 50 days after approval by the commissioner of the standard underwriting form the board shall require every carrier, as a condition of transacting small employer health insurance business in this state, to use such form after premium prices have been agreed upon by the carrier and the small employer and only to use it for their reinsurance ceding decisions for the New Hampshire small employer health reinsurance pool. The form may be amended from time to time as the board deems necessary, subject to the approval of the commissioner.

8 New Hampshire Small Employer Health Reinsurance Pool Established. Amend RSA 420-G:6, III to read as follows:

III. Health carriers shall actively market, issue, and renew all of the health coverages they sell in the small employer market to all small employers. ***In order to facilitate active marketing in the small employer market:***

(a) There is established a nonprofit entity to be known as the "New Hampshire small employer health reinsurance pool." All health carriers, writers of health insurance, and any other insurer issuing health insurance in this state, and insurance arrangements providing health plan benefits in this state on and after July 1, 2005, shall be members of the pool.

(b) On or before July 15, 2005, the commissioner shall give notice to all members of the pool of the time and place for the initial organizational meeting, which shall take place by September 1, 2005. The members shall select the initial board, subject to approval by the commissioner. The board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than 2 board members representing any one member company. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The vote shall be weighed based upon net health insurance premium derived from this state in the previous calendar year. To the extent possible, at least 2/3 of the members of the board shall be small employer health carriers. At least 2 members of the board shall represent health care centers and at least one member shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state. The commissioner shall be an ex-officio member of the board. In approving selection of the board, the commissioner shall assure that all members are fairly represented. The membership of all boards subsequent to the initial board shall, to the extent possible, reflect the same distribution of representation as is described in this subparagraph.

(c) If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

(d) Within 90 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of subparagraph (e) of this section. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 180 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments, as appropriate. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner. The board shall select a reinsurance pool administrator through a competitive bidding process to administer the pool. The board shall evaluate bids submitted based on criteria established by the board. Such administrator shall not be paid less than \$30,000 per year nor more than \$10 per insured life ceded to the reinsurance pool per month.

(e) The plan of operation shall establish procedures for:

(1) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.

(2) Filling vacancies on the board, subject to the approval of the commissioner.

(3) Selecting an administrator and setting forth the powers and duties of the administrator.

(4) Reinsuring risks in accordance with the provisions of this paragraph.

(5) Collecting assessments from all members to provide for claims reinsured by the pool and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.

(6) Any additional matters at the discretion of the board.

(f) The pool shall have the general powers and authority granted under the laws of New Hampshire to insurance companies licensed to transact health insurance and, in addition thereto, the specific authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this paragraph, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

(3) Take such legal action as necessary to avoid the payment of improper claims against the pool.

(4) Define the array of health coverage products for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this paragraph.

(5) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the pool.

(6) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the pool.

(7) Assess members in accordance with the provisions of this paragraph, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.

(8) Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool.

(9) Borrow money to effectuate the purposes of the pool. Any notes or other evidence of indebtedness of the pool not in default shall be legal investments for insurers and may be carried as admitted assets.

(g) Any member may reinsure with the pool coverage of an eligible employee of a small employer; or any dependent of such an employee. Any reinsurance placed with the pool from the date of the establishment of the pool regarding the coverage of an eligible employee of a small employer; or any dependent of such an employee shall be provided as follows:

(1) With respect to a standard health care plan, the pool shall reinsure the level of coverage provided;

(2) With respect to other plans, the pool shall reinsure the level of coverage provided up to, but not exceeding, the level of coverage provided in a standard health care plan or the actuarial equivalent thereof as defined and authorized by the board; and

(3) In either case, no reinsurance shall be provided in any calendar year for a reinsured employee or dependent until \$5,000 in benefit payments have been made for services provided during that calendar year for that reinsured employee or dependent, which payments would have been reimbursed through said reinsurance in the absence of the annual \$5,000 deductible. The amount of the deductible shall be periodically reviewed by the board and may be adjusted for appropriate factors as determined by the board.

(h) With respect to eligible employees, and their dependents, coverage may be reinsured:

(1) Within 60 days after the commencement of their coverage under the plan as may be authorized by the board; or

(2) Commencing January 1, 2006, on the first plan anniversary after the employer's coverage has been in effect with the small employer carrier for a period of 3 years, and every third plan anniversary thereafter; provided, that reinsurance pursuant to this subparagraph shall only be permitted with respect to eligible employees and their dependents of a small employer which has no more than 5 eligible employees as of the applicable anniversary.

(i) Reinsurance coverage may be terminated for each reinsured employee or dependent on any plan anniversary.

(j) Reinsurance of newborn dependents shall be allowed only if the mother of any such dependent is reinsured as of the date of birth of such child, and all newborn dependents of reinsured persons shall be automatically reinsured as of their date of birth.

(k) Notwithstanding the provisions of subparagraph (h)(1);

(1) Coverage for eligible employees and their dependents provided under a group policy covering 2 or more small employers shall not be eligible for reinsurance when such coverage is discontinued and replaced by a group policy of another carrier covering 2 or more small employers, unless coverage for such eligible employees or dependents was reinsured by the prior carrier; and

(2) At the time coverage is assumed for such group by a succeeding carrier, such carrier shall notify the pool of its intention to provide coverage for such group and shall identify the employees and dependents whose coverage will continue to be reinsured. The time limitations for providing such notice shall be established by the pool.

(l) Except as provided in this paragraph, premium rates charged for reinsurance by the pool as approved by the commissioner shall be established at the following percentages of the rate established by the pool for that classification or group with similar characteristics and coverage:

(1) 150 percent, with respect to all of the eligible employees, and their dependents, of a small employer, all of whose coverage is reinsured in accordance with this paragraph; and

(2) 500 percent, with respect to an eligible employee of a small employer or a dependent of such employee who is individually reinsured and is not reinsured with all eligible employees of an employer and their dependents.

(m) Following the close of each fiscal year, the administrator shall determine the net premiums, the pool expenses of administration and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(1) The assessment for the reinsurance pool shall be based on the number of covered lives times a specified assessment rate. The board of directors shall specify the basis used to set the assessment rate. The board of directors shall establish a regular assessment rate which shall be:

(A) Calculated on a calendar year basis based on the net losses from the audited financial statements of the prior fiscal year;

(B) Established no later than November 1 in the current fiscal year; and

(C) Anticipated to be sufficient to meet the pool's funding needs.

(2) In addition to the regular assessment rate, the board may establish a special assessment rate for organizational expenses. Notwithstanding RSA 420-G:4, a writer of health insurance may increase the premiums charged by the amount of the special assessment. Any assessment may appear as a separate line item on a policyholder's bill.

(A) The board shall only establish an interim assessment if the board determines that its funds are or will become insufficient to pay the reinsurance pool's expense in a timely manner.

(B) The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if he or she finds that the amount is required to fulfill the purpose of the reinsurance pool. For the purpose of making this determination, the commissioner may, at the expense of the pool, seek independent actuarial certification of the need for the proposed rate.

(3) The board shall impose and collect assessments on members of the pool.

(4) If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.

(n) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports of covered lives deemed necessary by the board and filed by the member with it.

(o) Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.

(p) The board may defer, in whole or in part, the assessment of a health care center if, in the opinion of the board, payment of the assessment would endanger the ability of the health care center to fulfill its contractual obligation. In the event an assessment against a health care center is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this subparagraph. The health care center receiving such deferral shall remain liable to the pool for the amount deferred. The board may attach appropriate conditions to any such deferral.

(q) Neither the participation in the pool as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this paragraph shall be the basis of any legal action against the pool or any of its members.

(r) Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the program against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and

expenses of the indemnification shall be prorated and paid for by all members. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this paragraph and such expenses shall be paid by the pool established in this paragraph.

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

2005-0840s

AMENDED ANALYSIS

This bill makes certain changes in the small employer health insurance law, including:

I. Repealing health status as rating factor for small group health insurance.

II. Repealing geographic location as a rating factor for small group health insurance.

III. Adding a definition of case characteristic.

IV. Clarifying the small group health insurance law regarding premium rates for small employer groups with similar case characteristics.

V. Establishing the New Hampshire small employer health reinsurance pool to offer pool coverage to eligible employees of small employers.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Roberge, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Boyce, Flanders, Odell, Eaton, Bragdon, Clegg, Letourneau.

Yeas: 17 - Nays: 7

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

Senator Boyce is in opposition to the passage of SB 125-FN.

SB 209-FN, relative to licensing of money transmitters and check cashers. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Gottesman for the committee.

Banks and Insurance

March 15, 2005

2005-0637s

06/09

Amendment to SB 209-FN

Amend RSA 399-G:1, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) A business location within this state of a person required to be licensed under this chapter that is identified by any means to the public as a location at which a money transmitter or check casher conducts business and an entity designated by the money transmitter licensee to engage in the business of money transmission on behalf of the money transmitter licensee.

Amend RSA 399-G:1, III as inserted by section 1 of the bill by replacing it with the following:

III. "Check cashing" means receiving compensation for accepting payment instruments, other than traveler's checks, in exchange for money or monetary value delivered to the presenter of the instrument at the time and place of presentation without any agreement specifying when the payment instrument will be submitted for collection.

Amend RSA 399-G:2, V as inserted by section 1 of the bill by replacing it with the following:

V. Any license or registration fee required by this chapter shall be paid before a license or registration may become effective.

Amend RSA 399-G:5, II as inserted by section 1 of the bill by replacing it with the following:

II.(a) The license issued for the licensee's principal place of business shall be referred to as a "principal office license." Each additional authorization to conduct business issued for money transmission or check cashing activity occurring in a location in this state that is separate from the licensee's principal place of business shall be referred to as a "branch office registration." If the applicant desires to transmit money or cash checks in more than one location, the commissioner, upon favorable action on the applicant's principal office license, shall issue a branch office registration for each location where the business of money transmission or check cashing is to be conducted.

(b) Each license application shall be accompanied by a nonrefundable application fee of \$500 for each principal office and \$25 for each branch office registration, up to a maximum annual fee of \$4,000. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

(c) Each applicant shall submit detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a money transmitter or a check casher with financial integrity. The application shall include a statement of net worth in all cases and an applicant shall demonstrate and maintain a positive net worth computed in accordance with generally accepted accounting principles. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 399-G:13. Each money transmitter applicant shall post a continuous surety bond in the amount of \$100,000. Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the principal within 6 years after the act upon which the recovery or suit is based. The obligations of the surety shall survive the bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation, any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee under any applicable state or federal law, including the United States Bankruptcy Code.

Amend the section heading of RSA 399-G:6 as inserted by section 1 of the bill by replacing it with the following:

399-G:6 License and Registration Grant.

Amend RSA 399-G:6, I and II as inserted by section 1 of the bill by replacing it with the following:

I. If the commissioner determines that the applicant meets the requirements of this chapter, then the commissioner shall issue a license or licenses permitting the applicant to engage in the business of money transmission or check cashing in accordance with the laws of this state. Licensees shall be responsible for the supervision of their employees and agent. Principal office licensees shall be responsible for supervision of their branch offices.

II. Each license issued under the provisions of this chapter shall state the name and address of the principal office of the licensee. Each registration issued under the provisions of this chapter shall state the name and address of the branch office location for which that registration is issued.

Amend RSA 399-G:6, V as inserted by section 1 of the bill by replacing it with the following:

V. A license or registration issued under this chapter shall not be transferable or assignable between persons without obtaining the approval of the commissioner before the assignment or transfer.

Amend RSA 399-G:8 as inserted by section 1 of the bill by replacing it with the following:

399-G:8 License or Registration Term; Renewal.

I. Each license or registration shall remain in force until it has been surrendered, revoked, or suspended, or expires in accordance with the provisions of this chapter. Each license or registration shall expire on December 31 of each calendar year.

II. If a person holds a valid license or registration under this section and is in compliance with this chapter and the rules thereunder, such licensee may renew the license or registration by paying the required fee to the banking department on or before December 1 for the ensuing year that begins on January 1. Failure to renew the license or registration shall result in the license or registration terminating on December 31.

III. A renewal fee of \$500 for the principal office license and \$25 for each branch office registration, up to a maximum annual fee of \$4,000, shall be submitted with the application for license renewal.

IV. No application for renewal shall be denied without reasonable cause and the right of appeal pursuant to RSA 541-A and RSA 541.

Amend RSA 399-G:9 as inserted by section 1 of the bill by replacing it with the following:

399-G:9 License Posting. It shall be unlawful to engage in the business of money transmission or check cashing without a conspicuously posted license in the licensee's principal place of business within this state or a conspicuously posted registration in each of the licensee's branch offices within this state.

Amend RSA 399-G:10, I as inserted by section 1 of the bill by replacing it with the following:

I. No licensee shall conduct the business of a money transmitter or a check casher under a trade or other name that is different from the name stated in its principal office license without immediately notifying the commissioner, who shall then amend the license and any registrations accordingly.

Amend RSA 399-G:10, III as inserted by section 1 of the bill by replacing it with the following:

III. Licensees shall provide written notice to the department of any proposed change in location or proposed closing of any office no later than 10 business days prior to the effective date of such change of location or closing. In the case of an emergency, as determined by the commissioner, a licensee may close a registered branch office and provide notice of the closure to the department within 2 business days. Failure to comply with the provisions of this paragraph shall be sufficient cause for license revocation or denial of license renewal applications.

Amend RSA 399-G:11, I as inserted by section 1 of the bill by replacing it with the following:

I.(a) A licensee who ceases to engage in the business of a money transmitter or check casher at any time during a license year for any cause, including but not limited to bankruptcy, license revocation, or voluntary dissolution, shall surrender such license and office registrations, if any, in person or by registered or certified mail to the commissioner within 15 calendar days of such cessation of business, and shall cause to be published in a newspaper of general circulation in the licensee's market area a notice to such effect. The commissioner shall adopt rules, in accordance with RSA 541-A, relative to such notice.

(b) Withdrawal of the surrendered license and office registrations, if any, shall become effective 30 days after receipt by the commissioner or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the license is surrendered or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the license is surrendered. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. The commissioner may nevertheless institute a revocation or suspension proceeding under RSA 399-G:19 within one year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which the license was effective.

Amend RSA 399-G:17 as inserted by section 1 of the bill by replacing it with the following:

399-G:17 Advertising. No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for check cashing or money transmission under the provisions of this chapter which is false, misleading, or deceptive.

Amend RSA 399-G:19, I(g) as inserted by section 1 of the bill by replacing it with the following:

(g) Is the subject of an order entered within the past 5 years by this state, any other state, or a federal regulator denying, suspending, or revoking a money transmission or check cashing license or registration.

Amend RSA 399-G:21, II(c) as inserted by section 1 of the bill by replacing it with the following:

(c) The application form for licenses and registrations required under RSA 399-G:5.

Amend RSA 399-G:21, II(f) as inserted by section 1 of the bill by replacing it with the following:

(f) The form of license and registration issued under RSA 399-G:6.

Amend RSA 399-G as inserted by section 1 of the bill by inserting after section 23 the following new section:

399-G:24 Applicability. Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before January 1, 2006, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within 3 years after January 1, 2006.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 220-FN-L, relative to the payment of medical benefits costs for certain group II permanent firemen members injured in the performance of duty, and for disabled group II members of the retirement system. Banks and Insurance Committee. Inexpedient to Legislate, Vote 4-2. Senator Odell for the committee.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Green.

Seconded by Senator Fuller Clark.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Committee report of inexpedient to legislate is adopted.

SB 223-FN, relative to licensing nondepository mortgage bankers and brokers. Banks and Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

Banks and Insurance

March 15, 2005

2005-0636s

06/09

Amendment to SB 223-FN

Amend RSA 397-A:1, III as inserted by section 1 of the bill by replacing it with the following:

III. "Borrower" means a homeowner or purchaser of a home who obtains funds from another by the signing of a note and mortgage deed on a dwelling. The term shall include any legal successor to the borrower's rights or obligations.

Amend RSA 397-A:1 as inserted by section 1 of the bill by inserting after paragraph XIII the following new paragraph and renumbering paragraphs XIV – XXIII to read as XV - XXIV:

XIV. "Mortgage loan" means a first or second mortgage loan which is secured in whole or in part by a mortgage upon any interest in real property used as a dwelling with accommodations for not more than 4 families.

Amend RSA 397-A:2, I as inserted by section 2 of the bill by replacing it with the following:

I. This chapter shall provide for the [banking] department's regulation of persons that engage in the business of making or brokering [first] mortgage loans secured by real property located in the state of New Hampshire, which is or shall be occupied in whole or in part as a [primary domicile or] place of residence by the borrower and which consists of not more than 4 living units.

Amend RSA 397-A:3 as inserted by section 3 of the bill by replacing it with the following:

397-A:3 License Required. Any person not exempt under RSA 397-A:4 that, in its own name or on behalf of other persons, engages in the business of making or brokering [first] mortgage loans secured by real property located in this state shall be required to obtain a license from the [banking] department. ***Persons licensed as mortgage bankers may engage in the mortgage broker business without obtaining a separate license.***

Amend the bill by replacing section 6 with the following:

6 License Application; Requirements; Investigation. RSA 397-A:5, I-IV is repealed and reenacted to read as follows:

I. To be considered for licensing, each person shall complete and file with the [banking] department one verified application prescribed by the commissioner. At a minimum, the application shall state the primary business address of the applicant, the address of its principal office and all branch offices located or to be located within the state, and a list of the principals of the applicant. Each principal shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and the applicant's financial condition and history. The applicant shall disclose whether the applicant or any of its principals has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or has ever been convicted of any felony.

II.(a) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(b) The persons described in subparagraph II(a) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(c) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(d) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

III.(a) The license issued for the licensee's principal place of business shall be referred to as a "principal office license." Each additional license issued for mortgage lending or brokering activity occurring in a location in this state that is separate from the licensee's principal place of business shall be referred to as a "branch office license." If the applicant or licensee desires to make or broker mortgage loans in more than one location, the commissioner, upon favorable action on the applicant's principal office license, shall issue a branch office license for each location where the business of making or brokering mortgage loans is to be conducted.

(b) Each license application shall be accompanied by a nonrefundable application fee of \$500 for each separate office location to be licensed. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

(c) Each applicant shall be required to submit to the department detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a mortgage banker or a mortgage broker with financial integrity. The application shall include a statement of net worth. An applicant or licensee shall demonstrate and maintain a positive net worth. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 397-A:12. Each mortgage banker applicant shall demonstrate a net worth at all times of at least \$100,000 or increase their posted continuous surety bond to a total amount of \$100,000. Each mortgage broker shall post a continuous surety bond in the amount of \$20,000 to the commissioner. Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the licensee within 6 years after the act upon which the recovery or suit is based.

(d) Each applicant shall provide a list of all individuals, and the address of the work location of each such individual, who will act as originators for the licensee.

(e) No person shall be issued or continue to hold a mortgage license unless at least one person employed full-time in a supervisory capacity at the company's principal office shall have been actively engaged in the mortgage business in a similar supervisory capacity for a minimum of 3 of the preceding 5 years.

IV. Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful process. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(a) The plaintiff, who may be the attorney general in a suit, action, or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner; and

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

V.(a) Upon the applicant's filing of the complete application and payment of the required fee, the commissioner shall have, in accordance with RSA 541-A:29, up to 120 days to investigate and determine whether the applicant's financial resources, experience, personnel, and record of past or proposed conduct warrant the public's confidence and the issuance of a license.

(b) The commissioner shall determine whether the applicant's proposed interest rates and fees are in accordance with the interest rates and fees charged by other first or second mortgage lenders, and whether said rates and fees will promote a free and competitive market.

Amend RSA 397-A:13, IV as inserted by section 14 of the bill by replacing it with the following:

IV. Any ~~[first] mortgage banker[, first]~~ **or** mortgage broker~~[, or first mortgage banker and broker]~~ failing to file either the annual report or the financial statement required by this section within the time prescribed may be required to pay to the ~~[banking]~~ department a penalty of \$25 for each calendar day the annual report or financial statement is overdue **up to a maximum penalty of \$2,500 per report or statement.** ~~[The penalties for failure to file an annual report that are prescribed by this paragraph shall not apply to mortgage brokers licensed under this chapter who earned no money from purchasing, placing, or selling first mortgage loans during the preceding year and who indicate such in writing to the banking department on or before February 1 to a maximum penalty of \$2,500 per report or statement and shall be subject to suspension or revocation of its license.]~~

Amend the bill by inserting after section 14 the following and renumbering the original sections 15-47 to read as 16-48, respectively:

15 New Paragraph; Annual Report; Reply Required. Amend RSA 397-A:13 by inserting after paragraph V the following new paragraph:

VI. Any officer, owner, manager, or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

Amend RSA 397-A:14-b as inserted by section 17 of the bill by replacing it with the following:

397-A:14-b Compliance With Requirements for Funding of Loans at Real Estate Closings. A licensee shall comply with the provisions of RSA 477:52 relative to requirements for the funding of loans at real estate closings. ***At a minimum, a closing requires the delivery of a deed if the transaction is a conveyance, the signing of a note, and the disbursement of the mortgage loan funds.***

Amend the bill by replacing section 18 with the following:

18 Borrower's Rights; "First" and "Home" Deleted. Amend RSA 397-A:15, V to read as follows:

V. Persons subject to or licensed under this chapter that service [first] mortgage [home] loans on real property located in the state of New Hampshire shall, within 5 days of receipt of a written request, provide a net payoff amount as of a specific date with a daily interest rate charge.

Amend the bill by replacing section 20 with the following:

20 Lender's Rights and Broker's Rights. Amend RSA 397-A:16, I-IV to read as follows:

I. [Lenders] ***Mortgage bankers and mortgage brokers*** may charge fees and points for services rendered in conjunction with the origination, closing, and servicing of loans; provided, however, that the [lender] ***mortgage banker or mortgage broker*** issues a written disclosure to the borrower stating the estimated amount and purpose of all fees and expenses within 3 business days of the receipt of a loan application. If any fee is collected in advance of the closing of the loan, the [lender] ***mortgage banker or mortgage broker*** shall provide the borrower with a written explanation of the purpose and disposition of the fee. A [lender] ***mortgage banker or mortgage broker*** may charge an application fee which may include the direct costs incurred by the [lender] ***mortgage banker or mortgage broker*** for processing an application, and for a real estate appraisal, a credit bureau report, or [for] income verification or other third party services. Notwithstanding RSA 479:30, a borrower who pays a [lender] ***mortgage banker or mortgage broker*** a fee for a real estate appraisal report, or who pays an application fee to a [lender] ***mortgage banker or mortgage broker*** which includes costs for a real estate appraisal, whether designated as a separate fee therefor or not, shall, upon written request, be entitled to obtain from the [lender] ***mortgage banker or mortgage broker who authorized and ordered the appraisal and whose name appears on the appraisal report*** a copy of the real estate appraisal report. The [lender] ***mortgage banker or mortgage broker*** shall certify on such copy that it is a true copy of the original report. Such certified copy shall be provided to the borrower within 10 business days of the date the [lender] ***mortgage banker or mortgage broker*** receives a borrower's request, receives the report from the appraiser, or receives such application or appraisal fee from the borrower, whichever is last to occur.

II. [Licensees] ***Persons*** subject to the provisions of this chapter shall comply with the provisions of RSA 384:16-c, relative to escrow accounts.

III. [Licensees] ***Persons*** subject to provisions of this chapter shall comply with the provisions of RSA 479, relative to foreclosure.

IV. Pursuant to RSA 397-A:3, only mortgage brokers ***and mortgage bankers*** licensed under the provisions of this chapter shall be entitled to retain commissions for services rendered.

Amend RSA 399-A:3, I as inserted by section 27 of the bill by replacing it with the following:

I.(a) Every applicant for licensing under this chapter shall file with the commissioner a written verified application, on a form prescribed by the commissioner. The application shall contain the name of the applicant; the address where the business is or is to be conducted and similar information for any branch

office of the applicant; the trade name, if any, under which the applicant proposes to conduct such business; the articles of incorporation or organization or partnership agreement; the name and address of the New Hampshire resident agent if the applicant is a foreign entity; and such other pertinent information as the commissioner may require. The application shall include the names of the applicant's principal owners, officers, directors, members, partners, trustees, and beneficiaries, and the name of any person occupying a similar status or performing similar functions. Each such principal shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and the applicant's financial condition and history. The applicant shall disclose if any injunction or administrative order has been issued against the applicant or any of its principals and whether the applicant or any of its principals have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or of any felony. Each applicant and licensee who conducts payday or title loan lending shall maintain an office in this state that is accessible to consumers. Persons subject to this chapter shall be responsible for the supervision of their employees, agents, and branch offices. Each initial and renewal license application shall be accompanied by a nonrefundable application fee of \$450 for the principal place of business of the licensee and the sum of \$450 for each branch of such licensee maintained in this state.

(b) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(c) The persons described in subparagraph I(b) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(d) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(e) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

Amend the bill by replacing section 38 with the following:

38 Licensing of Sales Finance Companies and Retail Sellers Required; Additional Information Required. RSA 361-A:2, II(a) is repealed and reenacted to read as follows:

II.(a) The application for such license shall be in writing and verified on a form prescribed by the commissioner. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the trade name, if any, under which the applicant proposes to conduct such business; and such other pertinent information as the commissioner may require. The application shall include a list of the names and resident addresses of principal owners, officers, members, partners, trustees, and directors of the applicant and the name of any person occupying a similar status or performing similar functions. Each listed person shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including but not limited to the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and those persons listed in the application, and in the case of sales finance companies, the applicant's financial condition and history. The applicant shall disclose if any injunction or administrative order has been issued against the applicant or any of those persons listed in the application and whether the applicant or any of those persons listed in the application have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or convicted of any felony.

(1) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(2) The persons described in subparagraph II(a) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(3) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(4) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

Amend the bill by replacing all after section 46 with the following:

47 New Section; Lender's and Borrower's Rights; Second Mortgage Debt. Amend RSA 397-A by inserting after section 16 the following new section:

397-A:16-a Lender's and Borrower's Rights; Second Mortgage Debt.

I. The allowable rate of interest computed on the unpaid balance that any person may directly or indirectly charge, take, or receive for a second mortgage loan secured by property which is occupied in whole or in part at the time said loan is made as a home by any obligor on the mortgage debt or by any person granting or releasing any interest under said mortgage shall be the rate agreed upon in the note between borrower and lender, and following the sixth month of any period in which a loan has been in continuous default, not more than 1-1/2 percent per month on any unpaid balances.

II. Notwithstanding any other provisions of this chapter, the charges which may be collected on any second mortgage loan made under this chapter for the period beginning 6 months after the originally scheduled final installment date of a loan other than an open-end loan, or for the period beginning 6 months after the final due date of an open-end loan as established by the term applicable to the loan from time to time in accordance with the open-end note or loan agreement and ending with date of payment of the loan in full shall not exceed 18 percent per annum simple interest on the balances outstanding from time to time during said period. If the loan is an open-end loan the borrower's privilege for further loans shall not be reinstated by the licensee where the rate has been reduced under the preceding sentence unless the borrower executes a new open-end loan agreement.

III. The borrower shall have the right to anticipate his or her second mortgage debt in whole or in part upon payment of any prepayment penalty agreed upon between borrower and licensee, provided, however, that any penalty shall be clearly set forth in the loan documents; except that there shall be no penalty charged for prepayment of a second mortgage home loan after the loan has been in existence for 5 years. When an open-end loan agreement providing for advances from time to time by the licensee exists between the borrower and the licensee, monthly loan payments shall be selected by the borrower as stated in the note or open-end agreement.

IV. Unless otherwise provided in the note, second mortgage loan payments shall be applied on the scheduled payment dates. Except where the borrower agrees in writing to a different application of his payments, in cases where partial payments are made, the interest shall be calculated to the time of payments, and such payment shall first be applied to interest, and the balance thereafter remaining, if any, shall be applied to principal. In addition to the interest permitted under this section, the lender may contract for and receive any additional other charge, as defined by RSA 358-K:1, XIII, as may be agreed upon by the lender and the borrower.

V. A licensee may retain any security interest in real property on an open-end loan until the open-end account is terminated, provided that if there is no outstanding balance in the account and there is no commitment by the licensee to make advances, the licensee shall within 10 days following written demand by the borrower deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust on the real property taken as security.

VI. The repayment provisions of any second mortgage loan shall be clearly set forth in the loan documentation and finance charges shall be clearly disclosed in accordance with RSA 399-B. Nothing in this chapter shall be deemed to limit any type of mortgage or repayment plan.

VII. For second mortgage loans where the payment is applied on the date received, the licensee shall provide to the borrower, at the time of application for the loan, a separate written disclosure which explains how the payments will be applied.

VIII. Upon payment in full of the outstanding principal, interest, and other charges due on a second mortgage loan, the holder shall plainly mark the note or a copy thereof with the words 'PAID IN FULL' or 'CANCELLED' and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the holder. If the original is retained by the lender, the original shall be returned within a reasonable period of time upon the written request of the borrower.

IX. If any note secured by a second mortgage, in the case of loans other than open-end loans, does not among its provisions clearly indicate the principal sums, the rate of interest, the period of the loan and the periodic due dates, if any, of principal and interest or, in the case of open-end loans, if the note does not among its provisions clearly indicate the maximum amount of credit available, the rate of interest, the selected payment, or its manner of determination, and the related period or periods of repayment and the monthly or periodic due dates, then the lender shall have no right to collect interest.

X. If any note secured by a second mortgage, in the case of loans other than open-end loans, does not among its provisions clearly indicate the principal sums, the rate of interest, the period of the loan, and the periodic due dates, if any, of principal and interest or, in the case of open-end loans, if the note does not among its provisions clearly indicate the maximum amount of credit available, the rate of interest, the selected payment, or its manner of determination, and the related period or periods of repayment and the monthly or periodic due dates, then the lender shall have no right to collect interest.

XI. If the borrower on a second mortgage loan or his or her authorized representative requests, by registered mail, the lender to furnish him or her with a copy of the note, the lender shall, within 15 days after receipt of said request, send by registered mail a true copy of said note to the person requesting the same at the address specified in such request. At least 15 days prior to the commencement of any foreclosure proceedings the lender shall send to the borrower by registered mail a statement of his or her intention to foreclose which shall specify the amount of principal, interest and other indebtedness, if any, owing and accruing under the note and mortgage. Failure of the lender to comply with the provisions of this section shall suspend his or her rights until such time as he or she complies with the provisions of this section.

XII. Upon payment of any money by the borrower on a second mortgage loan, the lender shall at the request of the borrower give him or her a receipt stating the date of payment, the amount paid, the amount applicable to interest on the loan and the amount applicable to the principal. Such receipt shall be signed by the lender or the lender's duly authorized representative. If a lender refuses, on written demand sent by registered mail, to give such receipt, the lender shall forfeit all interest on the principal sum.

XIII. Any second mortgage loan made in violation of paragraphs I-VIII by any person shall be discharged upon payment or tender by the debtor or any person succeeding to his or her interest in such real estate of the principal sum actually borrowed. Any agreement whereby the borrower waives the benefits of paragraphs I-VIII or releases any rights he or she may have acquired by virtue thereof shall be deemed against public policy and void. The superior court shall have jurisdiction of all suits arising under paragraphs I-VIII and, if a finding is made that such loan secured by any such mortgage violates paragraphs I-VIII, the borrower shall be entitled as a part of his or her costs to a reasonable fee for the services of an attorney in such suit.

48 License Revocation; Suspension; Unsworn Falsification Added. Amend RSA 397-A:17, I(l)-(m) to read as follows:

(l) Has violated applicable federal laws or rules thereunder; [or]

(m) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(n) For other good cause shown.

49 New Paragraph; Investigation of Application; License Requirements. Amend RSA 399-A:4 by inserting after paragraph XI the following new paragraph:

XII. Any officer, owner, manager or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

50 Denial, Suspension, or Revocation of Licenses; Unsworn Falsification Added. Amend RSA 399-A:7, I(i)-(j) to read as follows:

(i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; [or]

(j) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(k) Should not be licensed for other good cause shown.

51 Debt Adjustment Services; License Denial, Revocation, or Suspension. Amend RSA 399-D:13, I(n)-(o) to read as follows:

(n) Is insolvent, or has filed in bankruptcy or receivership, or made assignments for the benefit of creditors; [or]

(o) ***Has violated this chapter or any rule or order thereunder;***

(p) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(q) For other good cause shown.

52 Debt Adjustment Services; Reporting and Recordkeeping Requirements. Amend RSA 399-D:28, I(c) to read as follows:

(c) Each licensee shall also file, under oath, its financial statement with the commissioner within [60] **90** days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement, and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

53 New Paragraph; Debt Adjustment Services; Duty to Reply. Amend RSA 399-D:28 by inserting after paragraph VI the following new paragraph:

VII. Any officer, owner, manager or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

54 New Paragraph; Retail Installment Sales of Motor Vehicles; Duty to Reply. Amend RSA 361-A:2-b by inserting after paragraph V the following new paragraph:

VI. Any officer, owner, manager or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

55 Retail Installment Sales of Motor Vehicles; Suspension or Revocation of License; Unsworn Falsification Added. Amend RSA 361-A:3, I-a(i)-(j) to read as follows:

(i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; [or]

(j) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(k) For other good cause shown.

56 Administration by Commissioner; Rulemaking; Unsworn Falsification Added. Amend RSA 397-B:3, IX(g)-(h) to read as follows:

(g) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; [or]

(h) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(i) For other good cause shown.

57 Mortgage Bankers and Brokers; Registration. RSA 397-B:4, I is repealed and reenacted to read as follows:

I. (a) Any mortgage servicing company which services first mortgage loans secured by real property located in the state of New Hampshire shall be required to register with the banking department by filing a registration statement on a form prescribed by the commissioner and paying an original registration fee of \$100. Each such registration shall expire on December 31 of each calendar year. A registration may be renewed by filing a renewal statement on a form prescribed by the commissioner and paying a renewal registration fee of \$50, on or before, December 1 for registration for the ensuing year. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation of the commissioner, consumer credit administration division.

(b) The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization and the applicant's proposed method of doing business. The applicant shall disclose whether the applicant or any of its principals has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or has ever been convicted of any felony. Each principal shall authorize the commissioner to conduct a background check.

(c) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(d) The persons described in subparagraph I(c) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(e) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(f) The department may require the applicant or licensee to pay the actual costs of the background investigation and a criminal history records check.

58 New Section; Mortgage Bankers and Mortgage Brokers; Duty to Reply. Amend RSA 397-B by inserting after section 4-a the following new section:

397-B:4-b Duty to Reply. Any officer, owner, manager or agent of any registrant and any person controlling or having a contract under which he or she has a right to control such a registrant, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a registrant's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

59 Repeal. The following are repealed:

I. RSA 398-A, relative to second mortgage home loans.

II. RSA 397-A:15, V-a, relative to a requirement that a mortgage payoff amount be provided within 5 days of receipt of a written request.

60 Effective Date. This act shall take effect July 1, 2005.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 38-FN, relative to school building aid for certain receiving districts. Education Committee. Ought to pass with amendment, Vote 6-0. Senator Bragdon for the committee.

Senate Education

March 15, 2005

2005-0626s

04/05

Amendment to SB 38-FN

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

1 School Building Aid; Amount of Annual Grant. Amend RSA 198:15-b, I to read as follows:

I. The amount of the annual grant to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, ~~or~~ any receiving district operating an area school as defined in RSA 195-A:1, ***or any receiving district providing an education to pupils from one or more sending districts under a contract entered pursuant to RSA 194:21-a or RSA 194:22***, shall be a sum equal to 30 percent of the amount of the annual payment of principal on all outstanding borrowings of the school district, city, cooperative school district, joint maintenance agreement, or receiving district, heretofore or hereafter incurred, for the cost of construction or purchase of school buildings and school administrative unit facilities, to the extent approved by the department of education, provided that any school district may receive an annual grant in the amount of 40 percent for the construction of an educational administration building for school administrative unit, and provided that the amount of the annual grant in the case of a cooperative school district, joint maintenance agreement, ~~or~~ a receiving district operating an area school, ***or any receiving district providing an education to pupils from one or more sending districts under a contract entered pursuant to RSA 194:21-a or RSA 194:22***, shall be 40 percent plus 5 percent for each pre-existing district in excess of 2 and each sending district~~;~~ in excess of one, and provided further that no cooperative school district, joint maintenance agreement, or receiving district operating an area school, shall receive an annual grant in excess of 55 percent.

2 New Paragraph; School Building Aid; Long-Term and Tuition Contracts. Amend RSA 198:15-b by inserting after paragraph I the following new paragraph:

I-a.(a) A receiving district situated in this state which is providing education to students from another school district situated in this state under a contract entered into pursuant to RSA 194:21-a or RSA 194:22, shall be eligible to receive the higher annual grant amount provided in RSA 198:15-b, I or RSA 198:15-v under the following conditions:

(1) The contract requires the receiving district to educate at least 70 percent of the public school students at particular grade levels from a sending district as provided in the contract.

(2) The contract contains a provision for the payment of capital costs for specific capital projects.

(3) The contract provides the manner in which school building aid is to be credited to school districts.

(4) The contract or sending district's obligation to pay capital costs is for a period of 10 years or longer.

(b) The provisions of this paragraph shall only apply for those years in which the contract is in effect. In all other years, the receiving district shall receive aid in the amount for which it would otherwise be eligible under RSA 198:15-b, I or RSA 198:15-v.

(c) No receiving district shall receive a school building aid grant which is less than what a single school district would receive under RSA 198:15-b, I or RSA 198:15-v.

3 Applicability. The provisions of this act shall apply to eligible school construction projects commenced on or after January 1, 2003. However, payment of grants shall be based on principal payments made for fiscal year 2006 and thereafter.

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

2005-0626s

AMENDED ANALYSIS

This bill provides that a receiving district situated in this state providing an education to pupils from one or more sending districts situated in this state under a contract entered pursuant to RSA 194:21-a or RSA 194:22, shall be eligible under certain conditions, to receive annual school building aid grants.

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 79, relative to the governance of the regional community-technical colleges. Education Committee. Ought to pass with amendment, Vote 6-0. Senator Green for the committee.

Senate Education

March 16, 2005

2005-0668s

04/10

Amendment to SB 79

Amend RSA 188-F:3-a, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) ~~Nine~~ **As** non-voting, ex officio members: the governor of the state, the commissioner and deputy commissioner of the regional community-technical colleges, the presidents of the ~~[4]~~ **7** regional community-technical colleges, the commissioner of the department of resources and economic development, and the commissioner of the department of education.

Amend the bill by replacing sections 3-6 with the following:

3 Regional Community-Technical Colleges; Duties. Amend RSA 188-F:4-a, II to read as follows:

II. Oversee the administration of the department and its institutions, ***including determining the organizational and administrative structure of the regional community-technical college system, excluding the planetarium as defined in RSA 12-L:1, III, the police standards and training council as established in RSA 188-F:24, and any other agency administratively attached to the regional community-technical college system.***

4 New Paragraph; Regional Community-Technical Colleges; Duties. Amend RSA 188-F:4-a by inserting after paragraph VI the following new paragraph:

VII.(a) Establish the salary of the commissioner of the regional community-technical colleges, who shall be appointed by the governor and council, and who shall serve as the chief executive officer of the regional community-technical colleges, as its primary liaison with the general court and other elements of state government, and as chief spokesperson for the regional community-technical colleges. The commissioner shall lead and coordinate the efforts of the chief officers of the component institutions of the regional community-technical colleges, and shall have such other duties as the board of trustees may determine.

(b) The board of trustees may submit recommendations for commissioner to the governor and council.

5 Regional Community-Technical Colleges; Rulemaking. Amend RSA 188-F:5, II and the introductory paragraph to RSA 188-F:5, II-a to read as follows:

II. The commissioner shall nominate a deputy commissioner, with the approval ***and confirmation*** of the board of trustees~~[who shall be confirmed by the governor and council]~~. The deputy commissioner shall serve at the pleasure of the board of trustees ***and shall be qualified by education and experience. The board of trustees shall establish the salary of the deputy commissioner.***

II-a. The commissioner shall nominate for appointment by the board of trustees, an unclassified director of financial management. The director shall serve at the pleasure of the board of trustees. The director shall be qualified to hold that position by reason of education and experience. ***The board of trustees shall establish the salary of the director of financial management.*** The director shall be responsible for the following functions:

6 Regional Community-Technical Colleges; Presidents. Amend RSA 188-F:8 to read as follows:

188-F:8 Presidents of the Regional Community-Technical Institute and Colleges. The commissioner shall nominate, subject to ~~[approval]~~ ***confirmation*** by the board of trustees, a president of each regional institution who shall ~~[be confirmed by the governor and council]~~ ***report to the commissioner.*** Presidents shall be qualified by education and experience and shall serve at the pleasure of the board of trustees. ~~[The salary of the presidents shall be established by RSA 94:1-a.]~~ ***The board of trustees shall establish the salary for each president.***

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 131-FN, establishing a school choice certificate program. Education Committee. Ought to pass with amendment, Vote 4-2. Senator Johnson for the committee.

Senate Education

March 15, 2005

2005-0650s

04/10

Amendment to SB 131-FN

Amend RSA 193-I as inserted by section 2 of the bill by inserting after RSA 193-I:12 the following new RSA section:

193-I:13 Source of Funds. Except for general funds specifically appropriated for the purpose of this chapter, the commissioner of the department of education shall not expend any general funds or federal funds appropriated to the department of education on the school choice certificate program. Each fiscal year, the commissioner of the department of education shall identify a source of funds sufficient to fund the school choice certificates requested in such fiscal year and shall inform the house and senate education committees of the source of the funding.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Appropriation. The sum of \$1 for the biennium ending June 30, 2007 is hereby appropriated to the department of education for the purposes set forth in RSA 193-I. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

2005-0650s

AMENDED ANALYSIS

This bill establishes a school choice certificate program. The bill makes an appropriation of \$1 for the biennium ending June 30, 2007 to the department of education for the school choice certificate program.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Estabrook.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.

The following Senators voted No: Burling, Odell, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 215-FN, banning the incineration of construction and demolition debris. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-0. Senator Odell for the committee.

Energy and Economic Development

March 15, 2005

2005-0647s

08/01

Amendment to SB 215-FN

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

AN ACT creating a committee to study banning the incineration of construction and demolition debris.

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

1 Committee Established. There is established a committee to study banning the incineration of construction and demolition debris.

2 Membership and Compensation.

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

(a) Two members of the senate, appointed by the president of the senate.

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

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

3 Duties. The committee shall study banning the incineration of construction and demolition debris.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

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

2005-0647s

AMENDED ANALYSIS

This bill creates a committee to study banning the incineration of construction and demolition debris.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 103-FN-A-L, relative to a shorefront maintenance fee. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Johnson for the committee.

Environment and Wildlife

March 17, 2005

2005-0716s

06/01

Amendment to SB 103-FN-A-LOCAL

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

AN ACT relative to the dam maintenance fund.

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

1 Energy Efficiency Program; Dam Maintenance Fund. Amend 2001, 29:14 as amended by 2002, 268:6 to read as follows:

29:14 Energy Efficiency Program; Efficient Renewable Energy Programs; ***Dam Maintenance Fund.***

I. The public utilities commission shall phase-in, as quickly as can be effectively administered by Public Service Company of New Hampshire, an energy efficiency program for Public Service Company of New Hampshire that is funded at a rate of \$0.0018 per kilowatt-hour to be allocated from the system benefits charge. The public utilities commission shall not decrease the amount of the system benefits charge allocated to low-income customers due to passage of this act. ***The amount of \$500,000 shall be allocated annually to the dam maintenance fund, established in RSA 482:55, from the portion of system benefits charge used for energy efficiency program. Said sum is hereby appropriated to the department of environmental services for the purpose of dam maintenance. This appropriation shall be nonlapsing.***

II. Any restructured utility under RSA 374-F may, at its discretion, propose efficient renewable energy programs that would yield results similar to cost-effective energy efficiency measures and promote the benefits recognized in RSA 374-F:3, IX, and the public utilities commission should give due consideration to such programs. Such programs could be funded from a portion of the system benefits charge currently dedicated to energy efficiency programs.

2 Effective Date. This act shall take effect July 1, 2005.

2005-0716s

AMENDED ANALYSIS

This bill allocates \$500,000 from the energy efficiency program for the dam maintenance fund.

Amendment failed.

The question is on the motion of ought to pass.

Motion failed.

Senator Johnson moved to re-refer.

Adopted.

SB 103-FN-A-LOCAL is re-referred to the Environment and Wildlife Committee.

SB 128-FN, relative to the establishment of emissions reduction standards as required by the Clean Power Act. Environment and Wildlife Committee. Ought to pass with amendment, Vote 3-1. Senator Gatsas for the committee.

Environment and Wildlife

March 17, 2005

2005-0723s

08/03

Amendment to SB 128-FN

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

1 Integrated Power Plant Strategy. Amend RSA 125-O:3, I and II to read as follows:

I. The department shall implement ~~[an]~~ ***one or more*** integrated, multi-pollutant ~~[strategy]~~ ***strategies*** to reduce air emissions from affected sources.

II. The integrated, multi-pollutant strategy shall be implemented in a market-based fashion that allows trading and banking of emission reductions to comply with the overall statewide annual emission caps established under RSA 125-O:3, III(a), (b), and (d). Allowances, up to the amount of these caps, shall be allocated to each affected source based on the output of each affected source. The department shall make publicly available all allocations prior to the effective date of such allocations. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

2 Emissions Reduction. RSA 125-O:3, III(c)-(d) are repealed and reenacted to read as follows:

(c) Total mercury emissions from all affected sources burning coal as a fuel, of 50 pounds per year beginning July 1, 2008, and a reduction to 24 pounds per year beginning July 1, 2010; and

(d) 5,425,866 tons annually applicable to total carbon dioxide (CO₂) emissions from the affected sources until December 31, 2010. Beginning January 1, 2011, the commissioner shall establish by rule the annual cap for total CO₂ emissions based upon allowances submitted to, and received from, a regional interstate trading and banking program that shall be adopted prior to January 1, 2011.

3 Emissions Reduction. Amend the introductory paragraph of RSA 125-O:4, IV to read as follows:

IV. Compliance with the emission caps established under RSA 125-O:3, III may be demonstrated by making emission reductions at the affected sources, using compliance market-based approaches, or other methods acceptable to the department. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

4 New Paragraph; Emissions Reduction; Alternative Compliance Methods. Amend RSA 125-O:4 by inserting after paragraph V the following new paragraph:

VI. If affected sources are unable to comply with the emission cap for mercury established under RSA 125-O:3, III(c), the department shall recommend to the general court alternative compliance methods.

5 Emissions Reduction; Powers and Duties of the Commissioner. Amend RSA 125-O:6, I to read as follows:

I. Develop a trading and banking program to provide appropriate compliance flexibility in meeting the emission caps established under RSA 125-O:3, III(a), (b), and (d), and to encourage earlier and greater emissions reductions and the development of new emission control technologies in order to maximize the cost-effectiveness with which the environmental benefits of this chapter are achieved. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

6 Rulemaking. Amend the introductory paragraph of RSA 125-O:8 to read as follows:

125-O:8 Rulemaking Authority. The commissioner shall adopt rules under RSA 541-A[~~commencing no later than 180 days after the effective date of this section;~~] relative to:

7 New Paragraph; Emission Reduction; Rulemaking. Amend RSA 125-O:8 by inserting after paragraph III the following new paragraph:

IV. The annual cap for total carbon dioxide emissions beginning January 1, 2011, as required by RSA 125-O:3, III(d).

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

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Green.

Seconded by Senator Barnes.

The following Senators voted Yes: Johnson, Kenney, Burling, Green, Roberge, Foster, Larsen, Gatsas, Barnes, Martel, Letourneau, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Boyce, Flanders, Odell, Eaton, Bragdon, Gottesman, Clegg, D'Allesandro, Morse.

Yeas: 14 - Nays: 10

Amendment adopted.

Senator Johnson offered a floor amendment.

**Sen. Johnson, Dist. 2
March 24, 2005
2005-0910s
08/01**

Floor Amendment to SB 128-FN

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

1 Integrated Power Plant Strategy. Amend RSA 125-O:3, I and II to read as follows:

I. The department shall implement ~~[an]~~ ***one or more*** integrated, multi-pollutant ~~[strategy]~~ ***strategies*** to reduce air emissions from affected sources.

II. The integrated, multi-pollutant strategy shall be implemented in a market-based fashion that allows trading and banking of emission reductions to comply with the overall statewide annual emission caps established under RSA 125-O:3, III(a), (b), and (d). Allowances, up to the amount of these caps, shall be allocated to each affected source based on the output of each affected source. The department shall make publicly available all allocations prior to the effective date of such allocations. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

2 Emissions Reduction. RSA 125-O:3, III(c)–(d) are repealed and reenacted to read as follows:

(c) Total mercury emissions from all affected sources burning coal as a fuel, of 50 pounds per year beginning July 1, 2009, and a reduction to 24 pounds per year beginning July 1, 2013; and

(d) 5,425,866 tons annually applicable to total carbon dioxide (CO₂) emissions from the affected sources until December 31, 2010. Beginning January 1, 2011, the commissioner shall establish by rule the annual cap for total CO₂ emissions based upon allowances submitted to, and received from, a regional interstate trading and banking program that shall be adopted prior to January 1, 2011.

3 Emissions Reduction. Amend the introductory paragraph of RSA 125-O:4, IV to read as follows:

IV. Compliance with the emission caps established under RSA 125-O:3, III may be demonstrated by making emission reductions at the affected sources, using compliance market-based approaches, or other methods acceptable to the department. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

4 New Paragraph; Emissions Reduction; Alternative Compliance Methods. Amend RSA 125-O:4 by inserting after paragraph V the following new paragraph:

VI. If affected sources are unable to comply with the emission cap for mercury established under RSA 125-O:3, III(c), the department shall recommend to the general court alternative compliance methods.

5 Emissions Reduction; Powers and Duties of the Commissioner. Amend RSA 125-O:6, I to read as follows:

I. Develop a trading and banking program to provide appropriate compliance flexibility in meeting the emission caps established under RSA 125-O:3, III(a), (b), and (d), and to encourage earlier and greater emissions reductions and the development of new emission control technologies in order to maximize the cost-effectiveness with which the environmental benefits of this chapter are achieved. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

6 Rulemaking. Amend the introductory paragraph of RSA 125-O:8 to read as follows:

125-O:8 Rulemaking Authority. The commissioner shall adopt rules under RSA 541-A[~~commencing no later than 180 days after the effective date of this section;~~] relative to:

7 New Paragraph; Emission Reduction; Rulemaking. Amend RSA 125-O:8 by inserting after paragraph III the following new paragraph:

IV. The annual cap for total carbon dioxide emissions beginning January 1, 2011, as required by RSA 125-O:3, III(d).

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

MOTION TO TABLE

Senator Barnes moved to have SB 128-FN laid on the table.

Motion failed.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Clegg.

Seconded by Senator Bragdon.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Barnes, Letourneau, D'Allesandro, Morse.

The following Senators voted No: Gallus, Burling, Green, Larsen, Gatsas, Martel, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 9

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 133-FN, relative to mooring permits. Environment and Wildlife Committee. Inexpedient to Legislate, Vote 4-0. Senator Johnson for the committee.

MOTION TO TABLE

Senator Johnson moved to have SB 133-FN laid on the table.

Adopted.

LAIID ON THE TABLE

SB 133-FN, relative to mooring permits.

SB 33-FN, requiring the department of health and human services to seek national accreditation. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 4-2. Senator Kenney for the committee.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Committee report of inexpedient to legislate is adopted.

SB 144-FN, relative to certified forensic counselors. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 6-0. Senator Barnes for the committee.

Committee report of inexpedient to legislate is adopted.

SB 146-FN-A-L, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 4-2. Senator Kenney for the committee.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Kenney.

Seconded by Senator Green.

The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Bragdon, Barnes.

The following Senators voted No: Gallus, Burling, Odell, Eaton, Gottesman, Foster, Clegg, Larsen, Gatsas, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

Yeas: 8 - Nays: 16

Motion failed.

Senator Foster moved ought to pass.

The question is on the motion ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Burling, Odell, Eaton, Gottesman, Foster, Clegg, Larsen, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Bragdon, Gatsas, Barnes, Martel.

Yeas: 14 - Nays: 10

Adopted.

Referred to the Finance Committee (Rule #26).

SB 154-FN, relative to costs of criminal and motor vehicle records checks required for employment. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 5-1. Senator Kenney for the committee.

Committee report of inexpedient to legislate is adopted.

SB 49-FN, including multiple sclerosis in the catastrophic illness program. Finance Committee. Ought to Pass, Vote 5-1. Senator Clegg for the committee.

Adopted.

Ordered to third reading.

SB 62-FN, allowing court fees to be paid by credit card. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator D'Allesandro for the committee.

Senate Finance

March 15, 2005

2005-0624s

09/01

Amendment to SB 62-FN

Amend RSA 490:26-a as inserted by section 2 of the bill by replacing it with the following:

490:26-a Court Fees ***and Fines; Credit Card Payments.*** The supreme court shall establish by rule an equitable fee schedule for all courts in the state [~~by January 1, 1982~~]. ***All court fees and all fines paid into any court may be paid by credit card in lieu of cash payment. The courts shall collect a \$5 processing fee in addition to each fee or fine paid by credit card.***

2005-0624s

AMENDED ANALYSIS

This bill allows court fees and fines paid into any court to be paid by credit card. A \$5 processing fee is added to each fee or fine paid by credit card.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 93-FN, transferring the electricians board to the department of safety. Finance Committee. Ought to pass with amendment, Vote 6-1. Senator Morse for the committee.

Senate Finance

March 15, 2005

2005-0619s

08/01

Amendment to SB 93-FN

Amend the bill by replacing section 5 with the following:

5 Electricians; Fees. Amend RSA 319-C:6-b to read as follows:

319-C:6-b Fees. The board, ***with the approval of the commissioner of safety***, shall establish fees for examination of applicants, for licensure, for renewal, and for late renewal of licenses to practice under this

chapter, and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year. ***Fees collected shall be deposited in the fire standards and training and emergency medical services fund, established in RSA 21-P:12-d, and used for the purposes of operating expenses of the electricians' board. Fees collected in excess of actual operating expenses shall be deposited in the general fund as unrestricted revenue.***

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 108-FN, relative to newborn screening tests and fees for newborn screening tests. Finance Committee. Ought to Pass, Vote 6-1. Senator Larsen for the committee.

Adopted.

Ordered to third reading.

SB 113-FN, relative to the use of federal funds for technology improvements within the department of employment security. Finance Committee. Ought to Pass, Vote 7-0. Senator Larsen for the committee.

Adopted.

Ordered to third reading.

MOTION TO TAKE OFF THE TABLE

Senator Flanders moved to have SB 180-FN taken off the table.

Adopted.

SB 180-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. Transportation and Interstate Cooperation Committee. Inexpedient to legislate. Senator Flanders for the committee.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Johnson, Kenney, Boyce, Roberge, Clegg, Barnes, Letourneau, Morse.

The following Senators voted No: Gallus, Burling, Green, Flanders, Odell, Eaton, Bragdon, Gottesman, Foster, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 8 - Nays: 16

Motion failed.

Senator Flanders moved ought to pass.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Boyce, Clegg, Letourneau, Morse.

Yeas: 20 - Nays: 4

Adopted.

Ordered to third reading.

SB 115-FN, relative to the transfer of responsibility for asbestos-related issues from the department of health and human services to the department of environmental services. Finance Committee. Ought to Pass, Vote 7-0. Senator Clegg for the committee.

Adopted.

Ordered to third reading.

SB 181-FN-A, making an appropriation to the postsecondary education commission for the purpose of the New Hampshire incentive program. Finance Committee. Inexpedient to Legislate, Vote 4-3. Senator Morse for the committee.

Committee report of inexpedient to legislate is adopted.

SB 34-FN, relative to reimbursement rates for child care. Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator Martel for the committee.

Health and Human Services

March 16, 2005

2005-0697s

05/09

Amendment to SB 34-FN

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

1 Purpose. The general court hereby finds that an essential component of Temporary Assistance to Needy Families (TANF) is ensuring that parents of young children have access to safe, affordable child care. To enable low and moderate income parents who need child care to work, attend school and job training programs, and otherwise meet public assistance eligibility requirements, the department of health and human services shall establish reimbursement rates for child care services that better reflect the current market rate for licensed child care.

2 New Section; Public Assistance; Reimbursement Rates for Child Care. Amend RSA 167 by inserting after section 3-e the following new section:

167:3-f Reimbursement Rates for Child Care.

I. The commissioner of health and human services shall establish by rule under RSA 541-A reimbursement rates for child care under the state public assistance program. To the extent that federal funds are available through the Temporary Assistance for Needy Families (TANF) or the Child Care and Development Block Grant (CCDBG) programs or from other federal sources, the rates shall reflect the current market rate for such services, based on the following criteria:

(a) Effective July 1, 2005, rates for child care reimbursement shall equal the 50th percentile of the market rate as measured by the survey of weekly costs of licensed child care centers conducted on behalf of the department in 2004. Rates for license-exempt providers may be established separately from this provision.

(b) Effective July 1, 2006, rates for child care reimbursement shall equal the 75th percentile of the market rate as measured by the survey of weekly costs of licensed child care centers conducted on behalf of the department in 2004. Rates for license-exempt providers may be established separately from this provision.

(c) To determine the current market rate in subsequent years, on or before October 1, 2005 and every 2 years thereafter, the department of health and human services shall conduct a survey of the weekly cost of licensed child care centers and licensed child care homes. The survey may be based upon a valid statistical sample of all licensed child care providers in the state.

(d) Effective July 1, 2007, the base reimbursement rate for child care shall equal the 75th percentile of the market rate for licensed child care, as measured by the survey conducted under subparagraph (c). The department shall develop a sliding scale to adjust the base reimbursement rate based on the type of child care provider, family size, income, and such additional eligibility criteria as the department may establish.

II. No more than 20 percent of the total federal TANF funds received annually by the state may be used for the child care reimbursement rate increases required by this section.

III. In order to expand the accessibility and availability of quality child care, the department also may establish, by rule under RSA 541-A, alternative or incentive reimbursement rates for quality enhancements to traditional child care services, innovative or specialized child care, and alternative child care delivery systems. The department shall maintain and expand a system of agreements with child care centers participating in the child care public assistance program. Rates for such agreements shall reflect the additional administrative costs assumed by such providers.

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

2005-0697s

AMENDED ANALYSIS

This bill requires state public assistance programs to include reimbursement for child care based on the current market rate for such services.

MOTION TO TABLE

Senator Morse moved to have SB 34-FN laid on the table.

The question is on the motion to table.

A roll call was requested by Senator Estabrook.

Seconded by Senator Burling.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Letourneau, Morse.

The following Senators voted No: Gallus, Burling, Green, Gottesman, Foster, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 12 - Nays: 12

Motion failed.

The question is on the adoption of the committee amendment.

A roll call was requested.

Senator Clegg withdrew his request for a roll call.

The question is on the adoption of the committee amendment.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 101-FN, relative to residential placements for certain disabled individuals between the ages of 18 and 21. Health and Human Services Committee. Ought to pass with amendment, Vote 5-0. Senator Estabrook for the committee.

Health and Human Services

March 16, 2005

2005-0699s

05/09

Amendment to SB 101-FN

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

AN ACT relative to developmentally disabled services for persons under 21 years of age.

Amend the bill by replacing section 1 with the following:

1 New Section; Services for Persons Under 21 Years of Age. Amend RSA 171-A by inserting after section 12 the following new section:

171-A:12-a Services for Persons Under 21 Years of Age. Any person under 21 years of age, who has a developmental disability, as defined under RSA 171-A:2, V, as determined by the area agency in accordance with RSA 171-A:6, II and III, shall have the same right as a person 21 years of age or older to receive services, in the least restrictive environment, pursuant to an individual service agreement under RSA 171-A:12. Under no circumstances shall the department or area agency be responsible for special education services under RSA 186-C.

2005-0699s

AMENDED ANALYSIS

This bill clarifies that a person under 21 years of age who has a developmental disability shall have the same right to services as a person 21 years of age or older.

The bill also makes a technical correction to existing law by removing a misplaced subdivision heading relative to "restraint and seclusion" and inserting it in the appropriate statutory section.

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 110-FN-A, establishing the New Hampshire Rx plus program for prescription drugs. Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator Martel for the committee.

Health and Human Services

March 16, 2005

2005-0674s

01/10

Amendment to SB 110-FN-A

Amend the bill by replacing sections 1-2 with the following:

1 Statement of Purpose. The general court recognizes that New Hampshire's lower-income uninsured residents pay too much for prescription medication. The general court recognizes that it is difficult or impossible for lower-income residents who do not have insurance to pay for medications and that this results in poorer health, higher medical costs, and increased reliance on medicaid. Therefore, to reduce current and future medicaid expenditures and improve the health of New Hampshire's population, the general court hereby creates the New Hampshire Rx plus program which will allow lower-income uninsured persons the opportunity to buy prescription drugs at discount prices.

2 New Chapter; New Hampshire Rx Plus Program for Prescription Drugs. Amend RSA by inserting after chapter 161-J the following new chapter:

CHAPTER 161-K

NEW HAMPSHIRE RX PLUS PROGRAM

161-K:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of health and human services.

II. "Department" means the department of health and human services.

161-K:2 New Hampshire Rx Plus Program Established. The department shall establish the New Hampshire Rx plus program for prescription drugs. The New Hampshire Rx plus program shall be available to individuals and families with incomes of not more than 350 percent of the federal poverty level that lack insurance coverage for prescription medications or that have reached the limits of their prescription medication insurance coverage. Benefits shall include the right to purchase prescription medications included on the medicaid preferred drug list from participating pharmacies at average wholesale prices less 10 percent. The department shall negotiate net prescription medication prices and pharmacy discounts for Rx plus beneficiaries. Rx plus discount prices shall be established and periodically adjusted by the department for each medication on the medicaid preferred drug list. Discount prices shall be based on negotiated pharmacy discounts, mandatory medicaid level rebates, and supplemental rebates on purchases by Rx plus beneficiaries less dispensing fees and the department's administrative costs relating to Rx plus.

161-K:3 Rx Plus Fund Established. There is hereby established in the office of the state treasurer a fund to be known as the Rx plus fund. All payments of discounts received by the department as a result of purchases by Rx plus beneficiaries, appropriations to the fund, and interest on the fund shall be deposited in the fund. Moneys in this fund shall be nonlapsing and continually appropriated to the department and may be expended on administrative costs, including contracted services, and reimbursement for pharmacist dispensing fees relating to the Rx plus program and to lower the discount prices available to Rx plus beneficiaries. The department may also reserve moneys in the fund to limit fluctuations in discount prices.

161-K:4 Contracts. The department may enter into contracts relating to this chapter, including contracts relating to program outreach, eligibility determinations, including self-declaration of income as a cost-saving measure, administration, and price and discount negotiations, and recovery. No such contracts shall permit a contractor to receive compensation or other benefit from any pharmaceutical industry entity unless the terms of such compensation or benefits and potential conflicts of interest are disclosed to the department. Such contracts shall guarantee patient confidentiality as to any records shared between the department, contractors, drug industry entities, and pharmacies.

161-K:5 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

- I. The application process.
- II. Rx plus discount prices pursuant to RSA 161-K:2.
- III. The administration of the Rx plus fund established in RSA 161-K:3.
- IV. The contracting process, including confidentiality procedures, under RSA 161-K:4.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 147-FN-L, relative to eligibility for local assistance and Temporary Assistance for Needy Families. Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator Gallus for the committee.

Health and Human Services

March 16, 2005

2005-0700s

05/09

Amendment to SB 147-FN-LOCAL

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

AN ACT relative to eligibility for local assistance.

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

1 Aid to Assisted Persons; Residency Required. Amend RSA 165:1, I to read as follows:

I. Whenever a person in any town is poor and unable to support himself *or herself*, [he] **the person** shall be relieved and maintained by the overseers of public welfare of such town, whether or not [he] **the person** has residence there. For the purposes of this chapter the term "residence" shall have the same definition as in RSA 21:6-a.

2 Assisted Person Defined; Local Responsibility; Reimbursement from Town of Prior Residence Permitted. Amend RSA 165:1-a to read as follows:

165:1-a Assisted Person Defined; Local Responsibility. Any person in a town or city who is poor and unable to support himself *or herself* shall be known as a town or city assisted person, and shall be relieved and maintained at the expense of the town or city of residence. ***If the person has been a resident of the town or city for less than 90 days, the town or city may seek reimbursement for such assistance from the person's town or city of prior residence.***

3 Aid to Assisted Persons; Nonresidents; Temporary Assistance to Return to Place of Residence. Amend RSA 165:1-c to read as follows:

165:1-c Nonresidents. Any person, poor and unable to support himself *or herself*, who is temporarily in a town or city which is not his *or her* residence, and who does not intend to make it his *or her* residence, shall be provided such temporary assistance as is reasonable and necessary by such town or city [~~Such town or city may, if requested, cause~~] *so that* such person [~~to~~] *may* be returned to his *or her place of* residence.

4 Effective Date. This act shall take effect January 1, 2006.

2005-0700s

AMENDED ANALYSIS

This bill provides that if a person has been a resident of a town for less than 90 days and seeks local assistance, the town may seek reimbursement for such assistance from the person's town of prior residence.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 177-FN, prohibiting the sale of certain food and drinks in the public school cafeterias. Health and Human Services Committee. Inexpedient to Legislate, Vote 4-1. Senator Letourneau for the committee.

Committee report of inexpedient to legislate is adopted.

SB 206-FN, relative to the state code of ethics and establishing an executive ethics commission. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Larsen for the committee.

Internal Affairs

March 16, 2005

2005-0696s

05/09

Amendment to SB 206-FN

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

1 Code of Ethics; Definition of Public Official; Elected Members Added. Amend RSA 21-G:21, V to read as follows:

V. "Public official" means *a member of the executive branch elected by the public or the general court, or* a commissioned, unclassified, or nonclassified executive branch employee [~~but shall not include any commissioned, unclassified, or nonclassified employee elected by the legislature~~].

2 Executive Ethics Commission Established. RSA 21-G:29 is repealed and reenacted to read as follows:

21-G:29 Commission Established; Jurisdiction; Membership.

I. There is hereby established an executive ethics commission to develop standards for executive ethics and resolve, through procedures established under RSA 21-G:32, issues, questions, or complaints involving public employees, other than classified employees, and public officials of the executive branch.

II. The jurisdiction of the commission shall consist of matters arising under the executive branch code of ethics, RSA 21-G:21-28 and rules or guidelines adopted thereunder.

III. The commission shall consist of the following members, none of whom shall be a public official or public employee within the meaning of this chapter and at least one of whom shall be an attorney who is a member of the New Hampshire bar:

(a) Four public members, appointed by the governor, no more than 2 of whom shall be members of the same political party.

(b) Two retired members of the judiciary, appointed by the chief justice of the supreme court.

(c) One public member, appointed by the executive council.

IV. Persons appointed to the commission shall be qualified by excellent personal reputation and by education or experience in public service, in resolving ethical issues facing persons in public service, or in the law.

V. Commission members shall serve terms of 3 years and until their successors are appointed and qualified. However, initially the governor and the chief justice of the supreme court shall each appoint a

member for a one-year term, and the governor and executive council shall each appoint a member for a 2-year term. Vacancies shall be filled for the remainder of the unexpired term. Initial appointments to the commission shall be made no later than 90 days after the effective date of this section.

VI. The governor shall designate one of the governor's appointees to convene the first meeting, which shall take place no later than 30 days after a majority of the membership has been appointed.

VII. Commission members shall receive no compensation, except that commission members shall receive mileage at the state employee rate.

21-G:30 Duties.

I. The commission shall be authorized to:

(a) Issue guidelines to elucidate proper and appropriate conduct for individuals relating to the performance of their duties as public officials and public employees other than classified employees. Such guidelines shall be consistent with statute.

(b) Issue interpretative rulings explaining and clarifying any law, guideline, rule, or regulation within the jurisdiction of the commission.

(c) Render an advisory opinion, in writing within a reasonable time, in response to a written request by a public official or public employee other than a classified employee, concerning the application of any law, guideline, rule, or regulation within the commission's jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion. Any advisory opinion concerning any person subject to the provisions of this subdivision who acted in reliance thereon, shall be binding upon the commission, and it shall be an absolute defense in any complaint brought under this subdivision that the person complained against acted in reliance upon such advisory opinion.

(d) Receive sworn complaints, investigate allegations of violations of this subdivision or guidelines adopted thereunder by public officials or public employees other than classified employees, and make appropriate findings of fact and conclusions with respect to such conduct.

(e) Investigate any unauthorized disclosure of information by any commission member or assistant and report to the appropriate authority any allegation which it finds to be substantiated.

II. All actions of the commission shall require an affirmative vote of 4 or more members of the commission before becoming effective.

21-G:31 Complaints; Procedure.

I. Each complaint shall be submitted in writing and signed under oath by the complainant. The sworn complaint shall be filed confidentially with the commission and shall contain the name and address of the complainant. The public official or public employee complained against shall be furnished with a copy of the complaint and a copy shall be sent to each member of the commission for review. The commission may initiate a complaint on its own motion against any individual the commission has reason to believe has violated this subdivision or guidelines adopted thereunder. The commission shall promptly examine each sworn complaint and:

(a) Upon first examination, if by a two-thirds affirmative vote it determines that a complaint is frivolous, scurrilous, retaliatory in nature, or plainly not within the commission's jurisdiction, the commission may summarily discharge the complaint without further meeting or proceeding. The commission shall notify the respondent and complainant in writing of its action.

(b) For any complaint not summarily discharged, the commission shall conduct an initial review to ascertain whether the commission has jurisdiction to consider the complaint or whether the complaint is without merit or is unfounded. If the commission concludes by a recorded vote that the alleged conduct is not within the commission's jurisdiction, is without merit, or is unfounded, the commission shall dismiss the complaint and shall report such conclusion to the complainant and to the public official or public employee, with an explanation of the basis of such determination.

II. If the commission, by recorded vote, concludes that the complaint is within its jurisdiction and may have merit, the commission may proceed to conduct a preliminary investigation. Upon completion of its preliminary investigation, the commission shall conclude by recorded vote that:

(a) No violation occurred and no further action is appropriate;

(b) The violation is inadvertent, technical, or of a de minimis nature and shall be addressed by informal methods; or

(c) There are reasonable grounds to believe a violation occurred and formal proceedings shall be instituted to inquire further into the complaint. In that event, the commission shall issue a formal statement of charges and proceed to a hearing on the complaint.

III. Upon completion of the hearing, the commission shall conclude by recorded vote that:

(a) No violation occurred and no further action is appropriate;

(b) No action is appropriate because there is not clear and convincing evidence that a violation occurred;

(c) Based upon clear and convincing evidence, a violation occurred, but such violation does not justify formal disciplinary action and shall be resolved by informal methods; or

(d) Based upon clear and convincing evidence, a violation occurred, and the violation was of a serious nature so as to warrant formal disciplinary action. In the case of a public employee other than a classified employee, the commission may recommend disciplinary action by the employee's supervisor, including but not limited to termination of employment. In the case of a finding of violation by a public official, the commission may recommend disciplinary action by the appropriate body, including but not limited to removal from office under RSA 4:1, or, in the case of the governor, executive council member, or other officer of the state, impeachment or other appropriate action pursuant to part II, article 38 of the New Hampshire constitution. In addition to any recommendation for disciplinary action under this subparagraph, the commission may refer the case to the department of justice for criminal prosecution under RSA 21-G:33.

IV. Any person who knowingly or willfully swears falsely to a sworn complaint does so under penalty of perjury, and the commission may refer any such case to the department of justice for prosecution.

V. Except as otherwise provided in this paragraph and notwithstanding any other provision of law, all proceedings, information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the commission in the course of its work, shall be confidential. The commission shall first examine any sworn complaint and shall conduct its initial review and preliminary investigation of complaints in a confidential manner, unless otherwise requested by the public official or public employee complained against. The commission shall conduct formal proceedings, other than its deliberations, in public session. The commission's deliberations on complaints shall be conducted in nonpublic session. Upon completion of the preliminary investigation conducted under paragraph II, and a vote taken under subparagraph II(a) or (b), or at the conclusion of formal proceedings under paragraph III, the commission shall make available for public inspection all records, other than its work product and internal memoranda relating to the complaint.

VI. In proceedings under this subdivision, the commission shall have the power to issue subpoenas and administer oaths.

VII. Any member of the commission who is directly or indirectly involved in any complaint before the commission shall not participate in any proceedings regarding the complaint. In the event that recusals under this paragraph reduce the number of participating members to fewer than 4, the remaining participating members shall designate an alternate or alternates sufficient to increase the commission to 4 members, to serve on the commission for that case only.

21-G:32 Rules; Procedures and Standards. The commission shall adopt, publish, and make available to the public rules governing its procedures, as well as guidelines referred to in RSA 21-G:30, I, consistent with the procedures set forth in RSA 541-A.

21-G:33 Penalty.

I. Any person who knowingly or willfully violates RSA 21-G:21-28 or makes unauthorized disclosure of confidential matters or materials contrary to RSA 21-G:31, or interferes with or obstructs lawful activities of the commission, shall be guilty of a misdemeanor and may be subject to disciplinary action as provided in RSA 21-G:31, III(d) and other applicable law.

II. In the case of any person convicted under this section, the court may order restitution.

21-G:34 Commission Administration and Staff. The commission shall be administratively attached to the department of justice, which shall provide appropriate administrative and investigative staff and legal counsel in support of the commission's activities, at the commission's request. Files and records of the commission shall be protected against access other than by members of the commission and other persons specifically authorized by the commission.

3 Supplemental State Agency Ethical Codes. Amend RSA 21-G:27 to read as follows:

21-G:27 Supplemental State Agency Ethical Codes. In addition to this code, each agency may promulgate a supplemental ethics code to address issues specific to that agency. In the event of a conflict~~[-the provisions of this code shall supersede the agency code]~~ **with the provisions of this code, a stricter provision of an agency code shall govern.** To the extent that this code or an ethics code adopted by an agency shall apply to classified employees, this code, or an agency code, shall be interpreted to be consistent with the provisions of the classified employees' collective bargaining agreement **and the state personnel rules.**

4 Acceptance and Giving of Gifts Prohibited. Amend RSA 21-G:25 to read as follows:

21-G:25 Acceptance and Giving of Gifts. ~~[Any]~~ **No** public employee, public official, and any public employee's or public official's spouse or dependent ~~[who gives, solicits, accepts, or agrees to accept a gift from]~~ **shall give a gift to, or solicit, accept, or agree to accept a gift from,** a person who is subject to or likely to become subject to or interested in any matter or action pending before or contemplated by the public employee or official or by the governmental body with which that employee or official is affiliated ~~[shall disclose the gift in the statement of financial disclosure filed under RSA 21-G:28]~~. Nothing in this section shall be construed to prohibit gifts made to the state of New Hampshire and accepted in accordance with the law.

5 Duration of Restriction on Employment. Amend RSA 21-G:26 to read as follows:

21-G:26 Employment Restrictions. For ~~[6]~~ **12** months after leaving office or employment with the state, no public official shall appear as a lobbyist to promote or oppose directly any specific legislation pending or proposed before the general court on behalf of any matter over which that official had personal and direct responsibility while in state government.

6 Financial Disclosure. Amend RSA 21-G:28 to read as follows:

21-G:28 Financial Disclosure.

I.(a) To ensure that the performance of official duties does not give rise to a conflict of interest, the following ~~[public officials]~~ **persons** shall file with the secretary of state a statement of financial disclosure in such form as the secretary of state may prescribe:

(1) All agency heads; and

(2) Any public official designated, due to the responsibilities of the position, by the agency head.

(3) Any person not employed by the state who is acting on behalf of the governor or an agency while engaged in state business.

(b) ~~[The]~~ **Each** agency head shall file with the secretary of state an organizational chart identifying the names, titles, and position numbers of ~~[officials]~~ **persons** required to file a statement of financial disclosure.

(c) The governor shall file with the secretary of state an organizational chart identifying the names and titles of all persons who are acting on behalf of the governor and who are required to file a statement of financial disclosure.

II. The initial statements of financial disclosure and organizational charts required under this section shall be filed by July 1, 2005. Thereafter, revised statements of financial disclosure and organizational charts shall be filed immediately upon any change of status. ~~[New agency heads shall]~~ **Any person required under this section to file a statement of financial disclosure shall do so** no later than the first day of service.

III. Statements of financial disclosure and organizational charts filed with the secretary of state shall be public documents.

7 Executive Order Superseded. The provisions of this act and RSA 21-G:21-28 supersede and replace the provisions of Executive Order Number 98-1, dated May 19, 1998.

8 Effective Date. This act shall take effect July 1, 2005.

2005-0696s

AMENDED ANALYSIS

This bill:

I. Expands the state code of ethics to members of the executive branch elected by the public or the general court.

II. Establishes an executive ethics commission to address ethics complaints involving public officials and public employees, other than classified employees.

III. Prohibits a public employee, public official, and his or her spouse or dependent from accepting or giving a gift to a person who is subject to or interested in any matter or action before the public employee or public official.

IV. Extends the restriction on lobbying by former public officials from 6 months to 12 months after leaving office.

V. Requires a person who is not employed by the state but who is acting on behalf of the governor or an agency and engaged in state business to file a financial disclosure statement with the secretary of state.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 37, relative to disclosure of expert testimony. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary

March 15, 2005

2005-0644s

09/01

Amendment to SB 37

Amend the bill by replacing section 1 with the following:

1 Disclosure of Expert Testimony. Amend RSA 516:29-b, III to read as follows:

III. These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures ***in a civil case*** shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 30 days after the disclosure made by the other party. ***The disclosures in a criminal case shall be made pursuant to an order of the court, and the court shall provide that disclosures be made at least 60 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 30 days after the disclosure made by the other party.*** The parties shall supplement these disclosures when required in accordance with the court's rules.

2005-0644s

AMENDED ANALYSIS

This bill changes certain requirements regarding disclosure of expert testimony in criminal cases.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Foster rule #42.

SB 224, relative to the committee on judicial conduct. Judiciary Committee. Ought to Pass, Vote 4-0. Senator Gottesman for the committee.

Adopted.

Ordered to third reading.

SB 124, relative to the regulation of real estate brokers by the real estate commission. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

Public and Municipal Affairs
March 16, 2005
2005-0676s
10/05

Amendment to SB 124

Amend RSA 331-A:10, II(g) as inserted by section 8 of the bill by replacing it with the following:

(g) Submits evidence acceptable to the commission of at least 6 separate real estate transactions in which the applicant was actively involved and was compensated or proves to the commission that the applicant has equivalent experience; and

Amend RSA 331-A:16, IV(a) as inserted by section 11 of the bill by replacing it with the following:

(a) All advertisements by an associate broker or salesperson shall include ***the associate broker's or salesperson's legal name or reasonable derivative thereof and*** the regular business name of the firm ***or the principal broker's name when licensed under an individual principal broker license. The firm or principal broker's name, within the advertisement, shall be clearly identifiable.*** This requirement shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

Amend RSA 331-A:25-d, I as inserted by section 18 of the bill by replacing it with the following:

I. A licensee may act as a disclosed dual agent only with the written consent of all parties ~~[involved in the real estate transaction]~~ ***to the anticipated transaction at the time in which a dual agency relationship occurs, but no later than the preparation of a written offer for sale or lease.***

Amend RSA 331-A:26, XII as inserted by section 19 of the bill by replacing it with the following:

XII. Acting for more than one party in a transaction without ~~[the knowledge]~~ ***making full disclosure*** and ***obtaining written*** consent ~~[in writing]~~ of all parties ~~[for whom the licensee acts, and without first making full disclosure of all the facts to all parties interested in the transaction]~~ ***to the anticipated transaction at the time in which a dual agency relationship occurs, but no later than the preparation of a written offer for sale or lease.***

Amend the bill by deleting section 4 and renumbering the original sections 5-23 to read as 4-22, respectively.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 143, relative to the adoption and use of impact fees for public open space. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

Public and Municipal Affairs
March 16, 2005
2005-0694s
06/04

Amendment to SB 143

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

2 Open Space Impact Fees; Maximum Fee. RSA 674:21, V(a) is repealed and reenacted to read as follows:

(a) The amount of any open space fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees. The maximum open space impact fee shall be:

- (1) For developments of 50 or fewer housing units, \$250 per unit.
- (2) For developments of 51-200 housing units, \$500 per unit.
- (3) For developments of more than 200 housing units, \$750 per unit.

(4) For developments which include 10 percent or more of the units as workforce housing units, $\frac{1}{2}$ of the amount applicable under subparagraphs (1), (2), or (3).

3 New Paragraph; Method of Enactment in Cities and Towns Which do not Have a Town Meeting Form of Government; Impact Fee for Public Open Space. Amend RSA 675:2 by inserting after paragraph I the following new paragraph:

I-a. A zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of the legal voters present and voting.

4 New Paragraph; Method of Enactment in Towns With a Town Meeting Form of Government and Village Districts; Impact Fee for Public Open Space. Amend RSA 675:3 by inserting after paragraph I the following new paragraph:

I-a. A zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of the legal voters present and voting.

5 New Paragraph; Method of Enactment by Petition; Impact Fee for Public Open Space. Amend RSA 675:4 by inserting after paragraph III the following new paragraph:

III-a. A petitioned zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of the legal voters present and voting.

6 Towns Which do not Have a Town Meeting Form of Government. Amend the section heading of RSA 675:2 to read as follows:

675:2 Method of Enactment in Cities and Towns [~~Operating Under Town Council~~] **Which do not Have a Town Meeting** Form of Government.

7 Towns Which Have a Town Meeting Form of Government. Amend the section heading of RSA 675:3 to read as follows:

675:3 Method of Enactment in [~~Certain~~] Towns **Which Have a Town Meeting Form of Government** and Village Districts.

8 Method of Enactment in Towns With a Town Meeting Form of Government and Village Districts. Amend RSA 675:3, I to read as follows:

I. Any town [~~not operating under the town council~~] **with a town meeting** form of government, or any village district which is specifically authorized by law to enact a zoning ordinance, shall establish and amend a zoning ordinance, historic district ordinance, or building code upon the affirmative vote by ballot of a majority of the legal voters present and voting on the day of the meeting, as provided in paragraph VII. Any proposed zoning ordinance, as submitted by a planning board or any amendment to an existing zoning ordinance as proposed by a planning board, board of selectmen or village district commission shall be submitted to the voters of a town or village district in the manner prescribed in this section.

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

2005-0694s

AMENDED ANALYSIS

This bill allows a town to adopt a zoning ordinance, or an amendment to a zoning ordinance, that includes impact fees for public open space if the ordinance or amendment receives an affirmative vote of 60 percent of the voters. The bill also establishes maximum impact fees and reduces the maximum impact fee by $\frac{1}{2}$ for developments that include workforce housing units

MOTION TO TABLE

Senator Barnes moved to have SB 143 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 143, relative to the adoption and use of impact fees for public open space.

SB 95-L, relative to noise from motor vehicles. Transportation and Interstate Cooperation Committee. Re-refer to committee, Vote 6-0. Senator Letourneau for the committee.

Committee report of re-refer is adopted.

SB 138-L, relative to motor vehicle liability for municipal workers. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 6-0. Senator Burling for the committee.

Adopted.

Ordered to third reading.

SB 145-FN, establishing a medical/vision advisory board. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

March 17, 2005

2005-0703s

03/10

Amendment to SB 145-FN

Amend RSA 263:6-b, I as inserted by section 1 of the bill by replacing it with the following:

I. In order to advise the director on medical criteria for the reporting and examination of drivers with medical impairments, a medical/vision advisory board is hereby established within the division. The board shall be composed of 3 members appointed by the director. Two of the members of the board shall be licensed physicians and residents of this state, and one member of the board shall be a licensed optometrist and a resident of this state. Of the original appointees, one shall serve for a term of 2 years and 2 shall serve for terms of 4 years. Subsequent appointees shall each serve for a term of 4 years or until their successors are appointed and approved. Any vacancy shall be filled in the same manner as the original appointment for the remainder of the term. The members of the board shall receive no compensation for their services and shall not hire any staff personnel but shall be paid mileage when attending to the duties of the committee at the maximum rate established in the Internal Revenue Code and regulations. After the first full year of operation of the advisory board, the board shall meet no more than 4 times per year.

Amend RSA 263:6-b as inserted by section 1 of the bill by inserting after paragraph II the following new paragraph:

III. The medical/vision advisory board shall:

(a) Create and keep current criteria and science-based guidelines for use by division hearing examiners in making licensing determinations.

(b) Develop and promote assessment techniques available to healthcare providers to assist patients in driving-related issues.

(c) Assist the division in developing policy regarding medical conditions' effects on driving.

(d) Serve as liaison to the healthcare community in promoting best medical practices related to driving safely.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 178, designating a certain highway the Gold Star Mothers Highway. Transportation and Interstate Cooperation Committee. Re-refer to committee, Vote 6-0. Senator Flanders for the committee.

Committee report of re-refer is adopted.

SB 194-FN-L, relative to the use of domestic steel. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 6-0. Senator Letourneau for the committee.

Committee report of inexpedient to legislate is adopted.

SB 25-FN, relative to the allocation of a portion of unrefunded road tolls to the dam maintenance fund. Ways and Means Committee. Inexpedient to Legislate, Vote 4-0. Senator Gallus for the committee.

Committee report of inexpedient to legislate is adopted.

SB 107-FN, relative to the sale of tobacco products. Ways and Means Committee. Re-refer to committee, Vote 4-0. Senator Boyce for the committee.

Committee report of re-refer is adopted.

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 37, relative to disclosure of expert testimony.

SB 49-FN, including multiple sclerosis in the catastrophic illness program.

SB 62-FN, allowing court fees to be paid by credit card.

SB 64, establishing a committee to study small group health insurance plans.

SB 69-L, relative to certain insurance liens.

SB 93-FN, transferring the electricians board to the department of safety.

SB 108-FN, relative to newborn screening tests and fees for newborn screening tests.

SB 110-FN-A, establishing the New Hampshire Rx plus program for prescription drugs.

SB 112-FN, establishing a committee to study viatical settlements.

SB 113-FN, relative to the use of federal funds for technology improvements within the department of employment security.

SB 115-FN, relative to the transfer of responsibility for asbestos-related issues from the department of health and human services to the department of environmental services.

SB 124, relative to the regulation of real estate brokers by the real estate commission.

SB 128-FN, relative to the establishment of emissions reduction standards as required by the Clean Power Act.

SB 138-L, relative to motor vehicle liability for municipal workers.

SB 180-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs.

SB 206-FN, relative to the state code of ethics and establishing an executive ethics commission.

SB 209-FN, relative to licensing of money transmitters and check cashers.

SB 215-FN, creating a committee to study banning the incineration of construction and demolition debris.

SB 223-FN, relative to licensing nondepository mortgage bankers and brokers.

SB 224, relative to the committee on judicial conduct.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.