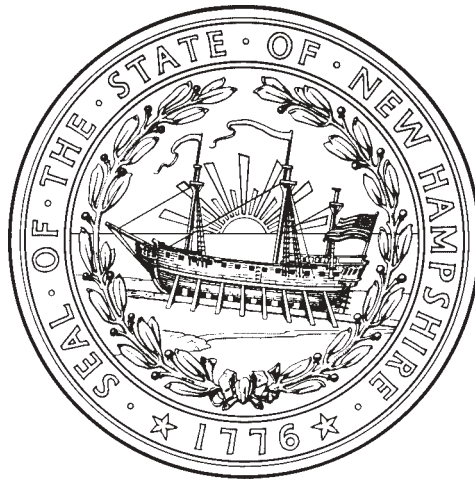


February 3, 2005
Nos. 3 - 4

STATE OF NEW HAMPSHIRE

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



Legislative

SENATE JOURNAL

ADJOURNMENT – JANUARY 27, 2005 SESSION
COMMENCEMENT – FEBRUARY 3, 2005 SESSION

SENATE JOURNAL 3 *(Cont.)*

January 27, 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 135-FN-A, establishing a committee to study funding sources for the state laboratories and extending the appropriation to the department of corrections for the prison automation system.

INTRODUCTION OF HOUSE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered 135, shall be by this resolution read a first and second time by the therein listed titles and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 135-FN-A, establishing a committee to study funding sources for the state laboratories and extending the appropriation to the department of corrections for the prison automation system. (Rep. Weyler, Rock 8; Rep. Dodge, Rock 9; Rep. Graham, Hills 18; Rep. M. Smith, Straf 7; Rep. Welch, Rock 8; Sen. Morse, Dist 22; Sen. Clegg, Dist 14: Capital Budget)

INTRODUCTION OF SENATE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate Bills numbered from 33 to 210, shall be by this resolution read a first and second time by the therein listed titles and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

05-1032

SB 33-FN, requiring the department of health and human services to seek national accreditation. (Martel, Dist 18: Executive Departments and Administration)

05-1034

SB 35-FN, relative to the transfer of certain real property of the youth development center in Manchester for a charter school for children with autism. (Martel, Dist 18: Capital Budget)

05-0787

SB 58-FN, relative to the workers' compensation special fund for second injuries. (Flanders, Dist 7; Infantine, Hills 13: Banks and Insurance)

05-0995

SB 62-FN, allowing court fees to be paid by credit card. (Foster, Dist 13; Dokmo, Hills 6: Ways and Means)

05-1008

SB 63-FN-A, establishing a court mediation fund to pay the costs of a mediation program in the district courts. (Foster, Dist 13; Dokmo, Hills 6: Ways and Means)

05-0414

SB 92-FN, relative to registering to vote. (Roberge, Dist 9: Internal Affairs)

05-0543

SB 93-FN, transferring the electricians board to the department of safety. (Clegg, Dist 14; Letourneau, Dist 19; O'Neil, Rock 15: Executive Departments and Administration)

05-0578

SB 94-FN-A-LOCAL, prohibiting the taxation of internet access and internet activities under the communications services tax and repealing the local property tax exemption for wooden poles and conduits. (Green, Dist 6: Energy and Economic Development)

05-0691

SB 97-FN, abolishing county departments of corrections and authorizing the department of corrections to contract with the counties to utilize former county correctional facilities as state facilities. (Burling, Dist 5; Fuller Clark, Dist 24: Executive Departments and Administration)

05-0927

SB 101-FN, relative to residential placements for certain disabled individuals between the ages of 18 and 21. (Estabrook, Dist 21: Health and Human Services)

05-0931

SB 102-FN, relative to the unlawful possession and consumption of alcoholic beverages by persons under 21 years of age. (Flanders, Dist 7; Knowles, Straf 6: Judiciary)

05-0944

SB 106-FN, making unauthorized recording in a motion picture theater a crime. (Johnson, Dist 2: Judiciary)

05-0950

SB 107-FN, relative to sale of tobacco products. (Johnson, Dist 2: Ways and Means)

05-0957

SB 110-FN-A, establishing the New Hampshire Rx plus program for prescription drugs. (Larsen, Dist 15; Burling, Dist 5; D'Allesandro, Dist 20; Gatsas, Dist 16; Martel, Dist 18; Hassan, Dist 23; Estabrook, Dist 21; Gottesman, Dist 12; Foster, Dist 13; DeJoie, Merr 11: Health and Human Services)

05-0977

SB 114-FN, relative to licensing and certification responsibilities under the lead paint poisoning prevention and control program. (Clegg, Dist 14: Environment and Wildlife)

05-0303

SB 118-FN, repealing certain provisions of law regarding small group health insurance. (Hassan, Dist 23; Gallus, Dist 1; Burling, Dist 5; Fuller Clark, Dist 24; Estabrook, Dist 21; Marshall Quandt, Rock 13; Norelli, Rock 16; C. Hamm, Merr 4: Banks and Insurance)

05-0999

SB 127-FN, relative to the regional community-technical college system's acquisition of the building currently leased from the Pease development authority. (Odell, Dist 8; Johnson, Dist 2; Clegg, Dist 14; D'Allesandro, Dist 20; Fuller Clark, Dist 24; O'Neil, Rock 15; S. Scamman, Rock 13; Thomas, Belk 5; S. L'Heureux, Merr 9; Norelli, Rock 16: Capital Budget)

05-1003

SB 128-FN, relative to the establishment of emissions reduction standards as required by the Clean Power Act. (Johnson, Dist 2: Environment and Wildlife)

05-1004

SB 129-FN-A, relative to establishing a fee on the importation of motor fuels to fund air quality mitigation and establishing a dedicated fund. (Johnson, Dist 2: Transportation and Interstate Cooperation)

05-1017

SB 131-FN, establishing a school choice certificate program. (Johnson, Dist 2; Hunt, Ches 7; Alger, Graf 6; Slocum, Hills 6: Education)

05-1031

SB 135-FN, relative to retirement system service and benefits for county corrections employees. (Martel, Dist 18; Johnson, Dist 2: Banks and Insurance)

05-0558

SB 144-FN, relative to certified forensic counselors. (D'Allesandro, Dist 20; Craig, Hills 9: Executive Departments and Administration)

05-0573

SB 145-FN, establishing a medical/vision advisory board. (Letourneau, Dist 19; Morse, Dist 22; Martel, Dist 18; Packard, Rock 3; R. L'Heureux, Hills 19; Dowd, Rock 5; Waterhouse, Rock 4: (Transportation and Interstate Cooperation)

05-0601

SB 146-FN-A-LOCAL, 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. (Foster, Dist 13; Gottesman, Dist 12; Gallus, Dist 1; Odell, Dist 8; Stone, Rock 1; R. Wheeler, Hills 7: Executive Departments and Administration)

05-0605

SB 147-FN-LOCAL, relative to eligibility for local assistance and Temporary Assistance for Needy Families. (Gallus, Dist 1; Johnson, Dist 2; Odell, Dist 8; Clegg, Dist 14; Morneau, Coos 4; Mears, Coos 4; Theberge, Coos 4; Lary, Coos 3; Buzzell, Coos 4: Health and Human Services)

05-0788

SB 150-FN, relative to application fees for certain bank incorporations. (Flanders, Dist 7: Banks and Insurance)

05-0871

SB 151-FN, relative to issuance of dealer plates to bonded motor vehicle dealers. (Clegg, Dist 14: Transportation and Interstate Cooperation)

05-0901

SB 153-FN, relative to the administration of certain programs by the department of environmental services. (Clegg, Dist 14: Executive Departments and Administration)

05-0902

SB 154-FN, relative to costs of criminal and motor vehicle records checks required for employment. (Clegg, Dist 14; Letourneau, Dist 19; Tholl, Coos 2: Executive Departments and Administration)

05-0909

SB 156-FN, relative to criminal trespass. (Johnson, Dist 2; Alger, Graf 6: Judiciary)

05-0912

SB 157-FN, relative to all terrain vehicles used for agricultural purposes. (Flanders, Dist 7; Johnson, Dist 2; B. Williams, Graf 8; Owen, Merr 4; Alger, Graf 6: Transportation and Interstate Cooperation)

05-0924

SB 158, relative to the disclosure of department of revenue administration records for purposes of assisting the state in the recovery of medical assistance. (Clegg, Dist 14; Odell, Dist 8; Boyce, Dist 4; Roberge, Dist 9; Wendelboe, Belk 1; Rogers Johnson, Rock 13; Kurk, Hills 7: Judiciary)

05-0928

SB 159, relative to verbal identification by public officials and employees. (Estabrook, Dist 21; Knowles, Straf 6: Judiciary)

05-0929

SB 160, providing that the state board of education shall appoint the commissioner, deputy commissioner, and division directors of the department of education. (Estabrook, Dist 21: Executive Departments and Administration)

05-0942

SB 161, relative to certain licenses issued by the liquor commission. (D'Allesandro, Dist 20; Gallus, Dist 1: Executive Departments and Administration)

05-0969

SB 162-FN-A, increasing the appropriation to the firemen's relief fund. (Gallus, Dist 1; Odell, Dist 8; Green, Dist 6; Kenney, Dist 3; Boyce, Dist 4; D'Allesandro, Dist 20; Currier, Merr 5; Russell, Belk 6; Tholl, Coos 2; Theberge, Coos 4; H. Richardson, Coos 2: Finance)

05-0974

SB 163-FN, establishing the New Hampshire pharmaceutical assistance program. (Clegg, Dist 14: Health and Human Services)

05-0975

SB 164-FN, relative to the disposal of real property purchased with highway or turnpike funds. (Clegg, Dist 14; Morse, Dist 22; Larsen, Dist 15; Foster, Dist 13; Rausch, Rock 5; Graham, Hills 18; Cloutier, Sull 4: Transportation and Interstate Cooperation)

05-0981

SB 166-FN, relative to procedures for the forfeiture and sale of unstamped tobacco products. (Clegg, Dist 14; Odell, Dist 8; Dickinson, Carr 1: Ways and Means)

05-0988

SB 167, relative to extension of guardianship. (Foster, Dist 13: Judiciary)

05-0989

SB 168, relative to administration of estates. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

05-0994

SB 169, relative to access to confidential court records. (Foster, Dist 13: Judiciary)

05-1001

SB 170, revising the nurse practice act. (Kenney, Dist 3; Martel, Dist 18: Executive Departments and Administration)

05-1039

SB 171, establishing a committee to study HIV/AIDS service delivery. (Estabrook, Dist 21; Odell, Dist 8; Fuller Clark, Dist 24; Gallus, Dist 1; Kenney, Dist 3; Schulze, Hills 26; Pilliod, Belk 5; Batula, Hills 19; MacKay, Merr 11; French, Merr 5: Health and Human Services)

05-1041

SB 172, establishing a committee to study a medical fee schedule for workers' compensation. (Johnson, Dist 2: Banks and Insurance)

05-1044

SB 173, relative to exceptions to licensure for electricians. (Flanders, Dist 7; Hebert, Hills 17; Infantine, Hills 13: Executive Departments and Administration)

05-1050

SB 174, relative to itemizing indirect collective bargaining costs on budget warrant articles. (Kenney, Dist 3: Internal Affairs)

05-0276

SB 175, requiring insurance coverage for certified midwives. (Kenney, Dist 3; Larsen, Dist 15; Dickinson, Carr 1; S. Scamman, Rock 13; Kennedy, Merr 4; Gile, Merr 10: Banks and Insurance)

05-0327

SB 176, creating a public safety exception to a municipality's denial of an appropriation or budgetary item. (Morse, Dist 22; Winchell, Rock 6; Belanger, Rock 4; Major, Rock 8: Public and Municipal Affairs)

05-0707

SB 179, requiring hunters to report the death or injury of domestic animals. (Roberge, Dist 9: Environment and Wildlife)

05-0755

SB 180-FN-A-LOCAL, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. (D'Allesandro, Dist 20; Gallus, Dist 1: Transportation and Interstate Cooperation)

05-0836

SB 181-FN-A, making an appropriation to the postsecondary education commission for the purpose of the New Hampshire incentive program. (Odell, Dist 8; D'Allesandro, Dist 20; Larsen, Dist 15; Johnson, Dist 2; Fuller Clark, Dist 24; Alger, Graf 6; Nordgren, Graf 9: Finance)

05-0908

SB 182-FN, relative to electronic issuance of warrants. (Clegg, Dist 14; D'Allesandro, Dist 20; Flanders, Dist 7; Bicknell, Rock 1: Judiciary)

05-0914

SB 183, authorizing licensed medical adult day program facilities to assist clients with medication. (Flanders, Dist 7; Bragdon, Dist 11; Morse, Dist 22; Carter, Hills 3; Irwin, Hills 3: Health and Human Services)

05-0916

SB 184-FN, adopting the Uniform Child-Custody Jurisdictional Enforcement Act. (D'Allesandro, Dist 20: Judiciary)

05-0959

SB 185, relative to the possibility of reverter. (Larsen, Dist 15; Kenney, Dist 3; Burling, Dist 5; Martel, Dist 18; Gallus, Dist 1; Emerton, Hills 7: Judiciary)

05-0986

SB 186, allowing probate court judges and district court justices to sit on probate or district court cases. (Foster, Dist 13: Judiciary)

05-0997

SB 187, relative to allowing alternative certified hazardous waste coordinator programs. (Foster, Dist 13; Johnson, Dist 2; Roberge, Dist 9; Clegg, Dist 14; Gottesman, Dist 12; Stone, Rock 1; Michon, Hills 25; Hinkle, Hills 19: Environment and Wildlife)

05-1006

SB 188, relative to allowing the construction of seasonal dwellings on certain properties without street frontage. (Johnson, Dist 2: Public and Municipal Affairs)

05-1011

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua. (D'Allesandro, Dist 20; Martel, Dist 18: Ways and Means)

05-1012

SB 190-LOCAL, relative to workforce housing opportunities. (D'Allesandro, Dist 20; Foster, Dist 13; Larsen, Dist 15; Martel, Dist 18; Burling, Dist 5; Craig, Hills 9; S. Scamman, Rock 13; Barry, Hills 16: Executive Departments and Administration)

05-1013

SB 191-FN, allowing retirement system members to make additional contributions to their accounts. (Odell, Dist 8; D'Allesandro, Dist 20; Parkhurst, Ches 4: Banks and Insurance)

05-1014

SB 192, relative to service in a war or conflict qualifying for the veterans' tax credit. (Odell, Dist 8; Clegg, Dist 14; Kenney, Dist 3; Letourneau, Dist 19; Gale, Sull 3; Heon, Straf 2: Public and Municipal Affairs)

05-1026

SB 193, relative to Occupational Safety and Health Administration Certification requirements for state contracts. (Gallus, Dist 1; Larsen, Dist 15; Hassan, Dist 23; Barnes, Dist 17; D'Allesandro, Dist 20; H. Richardson, Coos 2; Theberge, Coos 4; Mears, Coos 4; Clemons, Hills 24; Michon, Hills 25: Internal Affairs)

05-1027

SB 194-FN-LOCAL, relative to the use of domestic steel. (Gallus, Dist 1; Barnes, Dist 17; D'Allesandro, Dist 20; C. Brown, Carr 1; Alger, Graf 6; Gionet, Graf 3; Mears, Coos 4: Transportation and Interstate Cooperation)

05-1047

SB 195, relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies. (Letourneau, Dist 19; Barnes, Dist 17; Kenney, Dist 3; Johnson, Dist 2; Dickinson, Carr 1; Dodge, Rock 9; Packard, Rock 3; P. Smith, Rock 3; Rausch, Rock 5: Transportation and Interstate Cooperation)

05-0490

SB 197-FN, relative to captive insurance companies and reciprocal insurers. (Flanders, Dist 7; Hunt, Ches 7: Banks and Insurance)

05-0917

SB 200-FN, establishing the uniform athlete agents act. (D'Allesandro, Dist 20; Gallus, Dist 1; Craig, Hills 9: Public and Municipal Affairs)

05-0922

SB 206-FN, relative to the state code of ethics and establishing an executive ethics commission. (Larsen, Dist 15; D'Allesandro, Dist 20; Hassan, Dist 23; Clegg, Dist 14; Fuller Clark, Dist 24; Estabrook, Dist 21; Jasper, Hills 27; Craig, Hills 9; S. Francoeur, Rock 15: Internal Affairs)

05-0956

SB 208-FN, relative to certification of driver education instructors and driver training requirements. (Larsen, Dist 15; Kenney, Dist 3; Burling, Dist 5; Fuller Clark, Dist 24; Millham, Belk 5; DeJoie, Merr 11; Zolla, Rock 5; R. Williams, Merr 11; Gile, Merr 10: Transportation and Interstate Cooperation)

05-0958

SB 209-FN, relative to licensing of money transmitters and check cashers. (Larsen, Dist 15; Gottesman, Dist 12; Foster, Dist 13; Fuller Clark, Dist 24; Odell, Dist 8; Flanders, Dist 7; Clegg, Dist 14: Banks and Insurance)

05-0967

SB 210-FN, relative to the nexus required for application of the business profits tax and business enterprise tax and relative to the obligation to collect and remit taxes in another state. (Boyce, Dist 4; Letourneau, Dist 19; Odell, Dist 8; Major, Rock 8; Hunt, Ches 7; Mirski, Graf 10; Giuda, Graf 10: Ways and Means)

Out of Recess.

LATE SESSION

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

Adopted.

Adjournment.

SENATE JOURNAL 4

February 3, 2005

The Senate met at 10:00 a.m.

A quorum was present.

Senate Guest Chaplain, Rabbi Richard L. Klein, from the Temple Beth Jacob in Concord, New Hampshire led the Senate in prayer.

This Sabbath, as part of our annual cycle of reading the Torah (Five Books of Moses), we read from Exodus the follow up to the Giving of the Ten Commandments at Mount Sinai. Few passages in the Torah are as familiar to us as those ten utterances intended to make it possible for the biblical Israelites to live in community. The Book of Exodus goes on to list dozens of other regulations that we, today, would classify as Criminal, Civil and Family Law. Most of these provisions remain as the basic principles for our modern legal system. The message, it seems to me, is that the work you do in shaping New Hampshire statute is as holy an undertaking as those conversations between God and Moses described in Exodus. May you be blessed with wisdom in your deliberations and may we all fully appreciate the sacrifices you make to engage in this sacred task.

Amen

Senator Boyce led the Pledge of Allegiance.

Senator Kenney is excused for the day.

INTRODUCTION OF GUESTS

COMMITTEE REPORTS

SB 44, establishing a study committee on student credit card debt and regulation of credit card solicitation on college campuses. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Barnes for the committee.

Banks and Insurance

January 25, 2005

2005-0078s

06/10

Amendment to SB 44

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

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

Amend paragraph II of section 3 of the bill by replacing it with the following:

II. The committee shall solicit input from representatives of the university system of New Hampshire; representatives of community-technical and private colleges within the state, including financial aid officers, students, and parents of students; the public higher education study committee; relevant industry trade groups including the New England Financial Services Association and the New Hampshire Bankers Association; and the New Hampshire Jumpstart Coalition.

Amend section 4 of the bill by replacing it with the following:

4 Chairperson. 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.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 73, relative to market conduct record retention and production. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Flanders for the committee.

Adopted.

Ordered to third reading.

SB 15-L, relative to the approval process for tuition contracts with schools. Education Committee. Inexpedient to Legislate, Vote 5-0. Senator Gatsas for the committee.

Committee report of inexpedient to legislate is adopted.

SB 51, relative to jurisdiction of the public utilities commission over rural electric cooperatives. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 4-1. Senator Odell for the committee.

Committee report of inexpedient to legislate is adopted.

SB 41, relative to penalties for certain OHRV violations. Environment and Wildlife Committee. Ought to Pass, Vote 5-0. Senator Gallus for the committee.

Adopted.

Ordered to third reading.

SB 45-L, establishing a tax stabilization fund for the Hanover school district. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

Senate Executive Departments and Administration

January 26, 2005

2005-0093s

04/10

Amendment to SB 45-LOCAL

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

AN ACT relative to the Hanover school district tax stabilization fund.

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

1 Hanover School District; Tax Stabilization Fund. Notwithstanding any provision of law to the contrary, the tax stabilization fund established by the Hanover school district at its March 2004 annual school district meeting is hereby ratified and affirmed. Any appropriations to the tax stabilization fund voted by the Hanover school district prior to the effective date of this act are hereby ratified and affirmed. Further, the Hanover school district may make appropriations to, and withdrawals from, the tax stabilization fund as authorized by the legislative body of the school district.

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

2005-0093s

AMENDED ANALYSIS

This bill ratifies and affirms the establishment of a tax stabilization fund by the Hanover school district at its March 2004 annual school district meeting.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 53-FN, relative to increased funding for publication of certain materials by the department of environmental services and changing the title of chief operations officer to chief financial officer in the department of environmental services. Executive Departments and Administration Committee. Ought to Pass, Vote 6-0. Senator Flanders for the committee.

Adopted.

Ordered to third reading.

SB 54, clarifying the role of a guardian ad litem in guardianship proceedings. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary
January 26, 2005
2005-0085s
09/10

Amendment to SB 54

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

1 Conduct of Hearing. Amend RSA 463:8 to read as follows:

463:8 Conduct of Hearing.

I. In any hearing under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material.

II. A minor 14 years of age or older shall attend the hearing unless attendance is excused by the court. All other minors may attend the hearing if authorized or ordered by the court.

III.(a) Except as set forth in subparagraph (b), the burden of proof shall be on the petitioner to establish by a preponderance of the evidence that a guardianship of the person is in the best interests of the minor.

(b) If a parent objects to the establishment of the guardianship of the person requested by a non-parent, the court shall set a date for the hearing specified in this section. The burden of proof shall be on the petitioner to establish by clear and convincing evidence that the best interests of the minor require substitution or supplementation of parental care and supervision to provide for the essential physical and safety needs of the minor or to prevent specific, significant psychological harm to the minor.

(c) The burden of proof shall be on the petitioner for the guardianship of the estate of a minor to establish by a preponderance of the evidence that the guardianship is necessary to provide for the proper management of the property and financial affairs of the minor.

IV. The consent of the minor shall not be necessary for the appointment of a guardian, but the court shall in all cases ascertain the minor's preference, and give to it such weight as under the circumstances may seem just.

V. When before or during the hearing on any proceeding in any court it appears to the court that the interest or rights of a minor are not fully represented or upon the request of any interested person, the court may appoint a competent and disinterested person to act as guardian ad litem for such minor to represent the minor's interest in the case. The guardian ad litem shall have none of the rights of the general guardian. The person appointed guardian ad litem shall make an oath to perform such duty faithfully and impartially.

VI. A guardian ad litem appointed in a child custody proceeding in the probate court or family division shall be subject to the same standards, requirements, and rules as apply to guardians ad litem appointed in divorce, nullity, or legal separation proceedings under RSA 458:17-a.

[V:] **VII.** The court may appoint a guardian of the person or of the estate or of both as requested if, upon hearing, it finds based on the applicable burden of proof:

(a) In the case of guardianship of the person, guardianship is in the best interests of the minor as provided in paragraph III and the person nominated is appropriate.

(b) In the case of guardianship of the estate, that the guardianship is necessary to provide for the proper management of the property and financial affairs of the minor and the person nominated is appropriate.

[VI:] **VIII.** If a parent objects to the appointment or continuation of a guardianship, the court shall issue written findings concerning the petitioner's compliance with the relevant burden of proof under paragraph V.

[VII:] **IX.** If a parent consents to the appointment of a guardianship, such consent shall be executed by an instrument in writing, signed by the parent, in the presence and with the approval of the court of the county in which the case is pending. The court may designate a person or another court to take the parent's consent on the court's behalf for good cause shown. The court, or its designee, shall also question the consenting parent regarding his or her understanding and knowledge of the nature and consequences if the petition is granted; and to insure that the parent understands he or she has the right to contest the petition. If the court, based on its own determination or its duly certified designee, finds:

(a) That consent is being given voluntarily and knowingly, the court may conduct a hearing pursuant to this section and thereon make all orders authorized by this chapter; or

(b) That consent is not being given voluntarily and knowingly for any reason such as because the parent lacked the mental capacity to give such consent. In this case, the court may:

(1) Hold a hearing pursuant to this section within 6 months, or earlier, if it is reasonably likely that the parent's mental capacity will be restored within a shorter time period, and during the interim make or renew whatever temporary orders under RSA 463:7 the court deems necessary; or

(2) If it is unlikely that capacity will be restored within 6 months, schedule and conduct a hearing pursuant to this section as if the parent were objecting under paragraph III and make or renew whatever temporary orders under RSA 463:7 the court deems necessary until the hearing is conducted.

[VIII:] **X.** If the parent does not appear at the hearing and the court has not received a properly and duly executed consent form, the court may conduct such hearing as necessary to make the determinations required by this section and thereon make all orders authorized by this chapter.

[IX:] **XI.** When the court grants guardianship as part of the permanency plan for a child in the department's custody pursuant to the Adoption and Safe Families Act of 1997, Public Law 105-89, the court shall so specify in its order.

2 Reference Change; Notice. Amend RSA 463:6, II(b) to read as follows:

(b) That either parent has a right to consent to the granting of the guardianship petition, and if such parent consents, he or she shall do so before the court or the court's designee as specified in RSA 463:8, [VII] **IX.**

3 Appointment of Guardians Ad Litem. Amend RSA 464-A:41 to read as follows:

464-A:41 Appointment of Guardians Ad Litem.

[I:] When before or during the hearing on any proceeding in any court it appears to the court that the interest or rights of a ~~[minor or a]~~ legally incapacitated person ***by age or other cause or circumstance*** are not fully represented ***or upon the request of any interested person***, the court may~~[-and upon the request of any interested person shall;]~~ appoint a competent and disinterested person to act as guardian ad litem for such ~~[minor or]~~ legally incapacitated person and to represent such person's interest in the case. The guardian ad litem shall have none of the rights of the general guardian. The person appointed guardian ad litem shall make oath to perform such duty faithfully and impartially. A bond may be required of the guardian ad litem at the discretion of the court.

~~[II. A guardian ad litem appointed in a child custody proceeding in the superior court shall be subject to the same standards, requirements, and rules as apply to guardians ad litem appointed in divorce, nul-~~

~~lity, or legal separation proceedings under RSA 458:17-a. In a child custody proceeding in the superior court, the guardian ad litem for a child whose parents are indigent shall be compensated from the special guardian ad litem fund established under RSA 458:17-b.]~~

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

2005-0085s

AMENDED ANALYSIS

This bill clarifies the role of a guardian ad litem in guardianship proceedings.

This bill was requested by the administrative judge of the probate courts.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 59, relative to the general powers and duties of guardianship. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

Senate Judiciary
January 26, 2005
2005-0086s
01/09

Amendment to SB 59

Amend RSA 464-A:25, I(c) as inserted by section 1 of the bill by replacing it with the following:

(c) A guardian shall file an annual report with the probate court, unless the court finds that such report is not necessary.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

MOTION TO TABLE

Senator Larsen moved to have **SB 29**, relative to processing absentee ballots, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 29, relative to processing absentee ballots.

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 41, relative to penalties for certain OHRV violations.

SB 44, establishing a study committee on student credit card debt and regulation of credit card solicitation on college campuses.

SB 45-L, relative to the Hanover school district tax stabilization fund.

SB 53-FN, relative to increased funding for publication of certain materials by the department of environmental services and changing the title of chief operations officer to chief financial officer in the department of environmental services.

SB 54, clarifying the role of a guardian ad litem in guardianship proceedings.

SB 59, relative to the general powers and duties of guardianship.

SB 73, relative to market conduct record retention and production.

ANNOUNCEMENTS

RESOLUTION

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

Adopted.

In recess to the Call of the Chair.