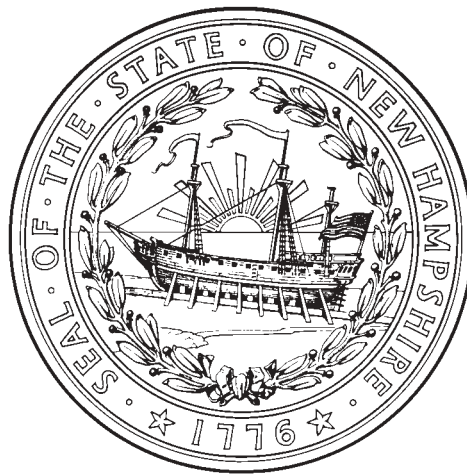


March 17, 2005
Nos. 8 - 9

STATE OF NEW HAMPSHIRE

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Legislative

SENATE JOURNAL

ADJOURNMENT – MARCH 10, 2005 SESSION
COMMENCEMENT – MARCH 17, 2005 SESSION

SENATE JOURNAL 8 *(Cont.)*

March 10, 2005

INTRODUCTION OF SENATE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from SB 227 to SJR 3 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

05-1059

SB 227, naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge. (Burling, Dist 5; Mirski, Graf 10; Mulholland, Graf 10; Solomon, Graf 10; Transportation and Interstate Cooperation)

05-1066

SJR 3, encouraging the New Hampshire Congressional delegation to support the federal Child Custody Protection Act. (Boyce, Dist 4; Letourneau, Dist 19; Itse, Rock 9; Boyce, Belk 5; Slocum, Hills 6; Mirski, Graf 10; Health and Human Services)

Out of Recess.

LATE SESSION

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

Adopted.

Adjournment.

SENATE JOURNAL 9

March 17, 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.

God of saints, rainbows and pots of gold – thank You for the heritage of the people of the Emerald Isle, and for that Welshman, St. Patrick who ministered to them. Give us green courage today to take the risk to kiss the stone that will make our hearts and our words fair, soft and as potent as Irish Whiskey. Amen

Senator Roberge led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Senator Green (Rule #44):

SPECIAL ORDER

SB 11-FN, extending the local property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Ought to Pass, Vote 3-2. Senator Boyce for the committee.

Senator Green offered a floor amendment.

Sen. Green, Dist. 6
March 17, 2005
2005-0709s
09/01

Floor Amendment to SB 11-FN

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

AN ACT repealing the local property tax exemption for wooden poles and conduits and relative to exemptions from the communications services tax.

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

1 Prospective Repeal Date for Exemption of Wooden Poles and Conduits Under RSA 72:8-b. Amend 1998, 304:6, I as amended by 1999, 163:7, 2001, 158:2, 2003, 270:8, and 2004, 35:1 to read as follows:

I. Section 5 of this act shall take effect July 1, [2006] **2005**.

2 Communications Services Tax; Exemption. Amend RSA 82-A:5 to read as follows:

82-A:5 Exemptions. The first [~~\$12~~] **\$20** of the monthly gross charge for a residential customer's telephone exchange access and exchange service ***for one telephone line and the first \$12 of the monthly gross charge for a residential customer's telephone exchange access and exchange service for each additional telephone line*** shall be exempt from the tax imposed by RSA 82-A:3. If billing is other than on a monthly basis, the exemption allowed shall be prorated to the ratio that the billing period bears to a period of 30 days.

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

2005-0709s

AMENDED ANALYSIS

This bill repeals the local property tax exemption for wooden poles and conduits on July 1, 2005.

The bill also changes the exemption amounts for a residential customer's telephone exchange access and exchange service charges under the communications services tax.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Green.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Burling, Green, Roberge, Larsen, Gatsas, Barnes, Estabrook, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Flanders, Odell, Eaton, Bragdon, Gottesman, Clegg, Martel, Letourneau, D'Allesandro, Morse, Hassan.

Yeas: 9 - Nays: 14

Senator Foster rule #42.

Floor amendment failed.

The question is on the motion of ought to pass.

Adopted.

Ordered to third reading.

SB 94-FN-A-L, 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. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 3-2. Senator Boyce for the committee.

Committee report of inexpedient to legislate is adopted.

Senator Foster rule #42.

COMMITTEE REPORTS

SB 111, relative to persons conducting securities broker-dealer and investment advisor businesses. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Barnes for the committee.

Adopted.

Ordered to third reading.

SB 175, requiring insurance coverage for certified midwives. Banks and Insurance Committee. Ought to Pass, Vote 4-2. Senator Gottesman for the committee.

Adopted.

Ordered to third reading.

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. Capital Budget Committee. Inexpedient to Legislate, Vote 4-0. Senator Morse for the committee.

Committee report of inexpedient to legislate is adopted.

SB 127-FN, relative to the regional community-technical college system's acquisition of the building currently leased from the Pease development authority. Capital Budget Committee. Ought to Pass, Vote 4-0. Senator Johnson for the committee.

Senator Odell offered a floor amendment.

Sen. Odell, Dist. 8

March 16, 2005

2005-0695s

05/01

Floor Amendment to SB 127

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

1 Acquisition of Property by Regional Community-Technical College System.

I. The department of regional community-technical colleges shall acquire the building located on the premises at 320 Corporate Drive, Portsmouth, New Hampshire, from the Pease development authority for fair market appraised value, not to exceed \$3,800,000. Prior to acquisition by the department of regional community-technical colleges, the Pease development authority shall obtain required federal approval for the sale proceeds to be used to reduce the Pease development authority's outstanding debt to the state.

II. Prior to acquisition by the department of regional community-technical colleges, and notwithstanding any other provision of law, the department of regional community-technical colleges and the Pease development authority shall negotiate and execute a ground lease, for a term of not less than 20 years at fair market value, not to exceed \$13,000 per acre at the start of the ground lease, for the approximately 13 acres on which the building known as 320 Corporate Drive is located. Such ground lease shall be subject to the approval of the governor and council.

III. If the department of regional community-technical colleges cannot acquire the building known as 320 Corporate Drive on or before July 1, 2005, the department of regional community-technical colleges and the Pease development authority shall enter into a lease agreement for the entirety of the building known as 320 Corporate Drive. In exchange, the state shall reduce by \$675,000 per year, starting with the commencement of the lease on July 1, 2005, the Pease development authority's debt owed to the state relative to start-up funding costs under RSA 12-G:33 through 12-G:35; and 1991, 355:110, as amended by 1992, 260:11; 1992, 260:12, as amended by 1993, 358:3; 1994, 415:1; and 1995, 307:10. The lease term shall be 2 years or until such time as the acquisition by the department of regional community-technical colleges is complete or until such time as the debt owed to the state relative to the authority's start-up funding costs has been exhausted. In the event the regional community-technical college acquires the building known as 320 Corporate Drive after July 1, 2005 but before June 30, 2006, the proceeds from sale by the Pease development authority to the department of regional community-technical colleges shall be prorated.

IV. Any acquisition or lease agreement executed under this section shall supersede any existing lease arrangement for the property between the department of regional community-technical colleges and the Pease development authority.

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

2005-0695s

AMENDED ANALYSIS

This bill provides for the department of regional community-technical colleges to acquire or lease certain property from the Pease development authority. The bill also provides that proceeds from the sale or lease shall be used to reduce the authority's debt owed to the state.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

SB 161, relative to certain licenses issued by the liquor commission. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 6-0. Senator Kenney for the committee.

Committee report of inexpedient to legislate is adopted.

SB 173, relative to exceptions to licensure for electricians. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Flanders for the committee.

Adopted.

Ordered to third reading.

SB 19, relative to qualifications to sell lottery tickets. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

Senate Judiciary

March 10, 2005

2005-0552s

10/05

Amendment to SB 19

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

AN ACT relative to qualifications to sell lottery, bingo, and lucky 7 tickets.

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

1 Qualifications to Sell Lottery Tickets. Amend RSA 284:21-h, II(e) to read as follows:

(e) Persons who have been convicted of a felony ***within the previous 10 years which has not been annulled by a court, or a misdemeanor involving falsehood or dishonesty within the previous 5 years which has not been annulled by a court***, shall not be allowed to sell lottery tickets.

2 Bingo and Lucky 7; Licenses; Ticket Sales. Amend RSA 287-E:5, V(c) to read as follows:

(c) That neither the applicant nor any member of the charitable organization who will be participating in the operation of the bingo games and sale of lucky 7 tickets has been convicted of a felony [~~or class A misdemeanor~~] within the previous 10 years which has not been annulled by a court, or a [~~class B~~] misdemeanor ***involving falsehood or dishonesty*** within the [~~past~~] ***previous*** 5 years which has not been annulled by a court, or has violated the statutes or rules governing charitable gambling.

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

2005-0552s

AMENDED ANALYSIS

This bill restricts people who have been convicted of misdemeanors involving falsehood or dishonesty from selling lottery, bingo, or lucky 7 tickets.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 46, relative to the duties of law enforcement officials upon receiving reports of missing adults. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary
March 10, 2005
2005-0549s
09/01

Amendment to SB 46

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

3 New Chapter; Missing Adults. Amend RSA by inserting after chapter 106-H the following new chapter:

CHAPTER 106-I
MISSING ADULTS

106-I:1 Definitions. In this chapter, "missing adult" means any person:

- I. Who is 18 years of age or older;
- II. Whose residence is in New Hampshire or is believed to be in New Hampshire;
- III. Who has been reported to a law enforcement agency as missing; and
- IV. Who falls within one of the following categories:

(a) The person is under proven physical or mental disability or is senile, thereby subjecting himself or herself or others to personal and immediate danger;

(b) The circumstances indicate that the person's physical safety may be in danger;

(c) The circumstances indicate that the person's disappearance may not have been voluntary;

(d) The person is missing after a catastrophe; or

(e) The person does not meet any of above criteria but there is reasonable concern for the person's safety.

106-I:2 Procedures.

I. Upon receiving notice of a missing adult, a law enforcement agency shall complete a missing person report and immediately provide identifying and descriptive information about the missing adult to the National Crime Information Center (NCIC) for inclusion in the missing person file of its computerized database.

II. It shall be the duty of the initial investigating law enforcement agency to immediately notify the NCIC when the missing adult is located or returned.

III. No law enforcement agency shall delay providing the missing person's information to the NCIC based on an agency rule or policy which specifies an automatic waiting period.

2005-0549s

AMENDED ANALYSIS

This bill requires the attorney general to establish uniform procedures for law enforcement officials when receiving reports of missing adults.

The bill also requires law enforcement agencies to immediately complete a missing person report and provide identifying and descriptive information to the National Crime Information Center, if an adult is reported missing under certain circumstances.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 60, clarifying probate court procedures in cases involving the Uniform Transfers to Minors Act. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

Senate Judiciary

March 10, 2005

2005-0548s

09/01

Amendment to SB 60

Amend RSA 463-A:6, III(c) as inserted by section 1 of the bill by replacing it with the following:

(c) The transfer is ~~[authorized by the court if it exceeds]~~ ***less than or equal to \$10,000 in value; otherwise a guardianship over the estate of the minor shall be required by the probate court pursuant to RSA 463, unless otherwise ordered by the court.***

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 102-FN, relative to the unlawful possession and consumption of alcoholic beverages by persons under 21 years of age. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

Senate Judiciary

March 10, 2005

2005-0551s

03/01

Amendment to SB 102-FN

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

AN ACT limiting liability for failure to arrest persons under 21 years of age illegally transporting alcoholic beverages.

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

1 Alcoholic Beverages; Seizure; Liability Limited. Amend RSA 179:2 to read as follows:

179:2 Seizure. Any beverage or liquor possessed, kept for sale, or transported in violation of the provisions of this title or any law of the state, together with the casks, bottles, or other paraphernalia used in such illegal possession, keeping, or transportation, shall be subject to seizure either upon a warrant issued upon a complaint against the person charged with violating the law, and containing a command for such seizure, or upon a libel directed against the property, filed in accordance with the provisions of RSA 617, and upon due proceedings may be adjudged forfeited. When any sheriff or deputy sheriff, duly appointed police officer or constable of any city or town, or other duly appointed law enforcement officer, shall discover any person in the act of transporting beverages or liquor in violation of this chapter or any other law of this state, in any wagon, buggy, automobile, watercraft, aircraft, or other vehicle, or any other conveyance, it shall be his ***or her*** duty to seize all beverage and liquor found therein being transported contrary to law. No officer shall, without a warrant, cause any automobile or other vehicle traveling upon a public highway in this state to be stopped for the purpose of searching the same for beverages or liquor unless ~~[he]~~ ***the officer*** has reasonable cause to believe that such automobile or other vehicle is, at the time of said stopping or search, being used for the illegal transportation of beverage or liquor. Whenever beverage or liquor being illegally transported shall be seized by an officer, ~~[he]~~ ***the officer*** shall take possession of any vehicle, team, automobile, boat, aircraft, watercraft, or any other conveyance engaged in such illegal transportation, and shall arrest any person or persons in charge of such transportation; ***provided, however, that failure to arrest a person pursuant to this section for violating RSA 179:10 shall not give rise to any liability if such failure is pursuant to an established policy of the officer's department.*** Such officer shall at once proceed against the person or persons arrested under the provisions of this chapter in any court having competent jurisdiction, and the vehicle or conveyance, on due proceedings in accordance with the provisions

of RSA 617, may be adjudged forfeited, unless by intervention or otherwise at hearing, or in some other proceeding brought for the purpose, a lien or liens shall be established to have been created without notice that such vehicle was being used or was to be used for the illegal transportation of beverage or liquor. The vehicle may be ordered sold by the court, and the proceeds of the sale, after deducting the expenses of keeping and sale, used for the purpose of paying such liens in the order of their priority, and the balance disposed of as provided in RSA 179:3. If a lien or liens shall be established in excess of the value of such vehicle, the court shall order its surrender to the first lienholder upon payment of costs of seizure, but subsequent lienholders shall have the right of redemption in the order of their liens upon satisfaction of prior liens and charges, provided such right is asserted within such time as the court shall fix in its order of surrender.

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

2005-0551s

AMENDED ANALYSIS

This bill limits liability for failure to arrest persons under 21 years of age for illegally transporting alcoholic beverages, if such failure is pursuant to an established policy of the officer's department.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 106-FN, making unauthorized recording in a motion picture theater a crime. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Gottesman for the committee.

Senate Judiciary

March 10, 2005

2005-0550s

09/01

Amendment to SB 106-FN

Amend RSA 644:19, IV-VII as inserted by section 2 of the bill by replacing them with the following:

IV. This section does not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent, of the local, state, or federal government or a duly authorized private investigator, from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

V. This section does not apply to a person who operates the audiovisual recording function of a device in a retail establishment solely to demonstrate the use of that device for sales purposes.

VI. Nothing in this section prevents prosecution, instead of prosecution pursuant to this section, under any provision of law providing for a greater penalty.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 156-FN, relative to criminal trespass. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Foster for the committee.

Senate Judiciary

March 10, 2005

2005-0547s

09/01

Amendment to SB 156-FN

Amend RSA 635:2, II as inserted by section 1 of the bill by replacing it with the following:

II. Criminal trespass is a class B felony if the person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another.

2005-0547s**AMENDED ANALYSIS**

This bill establishes the crime of felony criminal trespass if a person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 184-FN, adopting the Uniform Child-Custody Jurisdictional Enforcement Act. Judiciary Committee. Ought to Pass, Vote 4-0. Senator Foster for the committee.

Adopted.

Ordered to third reading.

SB 207-FN, establishing the crime of assault against the elderly. Judiciary Committee. Re-refer to committee, Vote 4-0. Senator Foster for the committee.

Adopted.

SB 207-FN is re-referred to the Judiciary Committee.

SB 130-FN, relative to the "Nursing Home Residents Bill of Rights." Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 3-2. Senator Martel for the committee.

Committee report of inexpedient to legislate is adopted.

SB 176, creating a public safety exception to a municipality's denial of an appropriation or budgetary item. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

March 9, 2005

2005-0543s

08/09

Amendment to SB 176

Amend the bill by replacing section 1 with the following:

1 Transfer of Appropriations. Amend RSA 32:10, I(e) to read as follows:

(e) The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meeting deletes a purpose, or reduces the amount appropriated for that purpose to zero or does not approve an appropriation contained in a separate article, that purpose or article shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose, ***unless such purpose is related to public safety.***

2005-0543s

AMENDED ANALYSIS

This bill allows a municipality to expend funds for public safety despite voter denial of a warrant article appropriation.

The question is on the adoption of the committee amendment.

A division vote was requested.

Yeas: 18 - Nays: 5

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 188, relative to allowing the construction of seasonal dwellings on certain properties without street frontage. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Roberge for the committee.

Public and Municipal Affairs

February 28, 2005

2005-0483s

06/03

Amendment to SB 188

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

AN ACT relative to the construction of buildings on properties without street frontage.

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

1 New Paragraph; Erection of Buildings on Streets; Exemptions. Amend RSA 674:41 by inserting after paragraph II-a the following new paragraph:

II-b. A town or city, by action of its local legislative body, may vote to exempt from the provisions of this section any specified category of structures. Unoccupied structures used in conjunction with a recreational, agricultural, or forestry-related business shall be exempt from the requirements of this section unless the local legislative body has passed a regulation that requires such structures to be built on lots that conform to paragraph I. Prior to beginning construction of a structure in an exempted category on a lot whose only frontage is on a class VI or a private road, the owner or the owner's designee shall produce evidence to the local governing body or building inspector that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot on which the structure will be located.

2 Erection of Buildings on Streets; Rights of Way. Amend RSA 674:41, III to read as follows:

III. [~~This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section.~~] For purposes of paragraph I, "the street giving access to the lot" means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), [~~or~~] (c), **(d)**, **or (e)**.

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

2005-0483s

AMENDED ANALYSIS

This bill allows towns to exempt certain structures from the requirement that they be built on streets as long as the owner or owner's designee has filed a limitation on municipal liability in the registry of deeds. This bill also exempts unoccupied recreational, agricultural, or forestry-related structures from the street access requirement unless specifically included by local regulation.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 198-FN, relative to regulating home contractors. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-1. Senator Burling for the committee.

Senator Burling offered a floor amendment.

Sen. Larsen, Dist 15
Sen. Burling, Dist 5
Sen. D'Allesandro, Dist 20
Sen. Martel, Dist 18
Sen. Roberge, Dist 9
March 9, 2005
2005-0558s
08/10

Floor Amendment to SB 198-FN

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

1 New Subparagraph; Consumer Protection and Antitrust Bureau; Duties. Amend RSA 21-M:9, II by inserting after subparagraph (u) the following new subparagraph:

(v) Enforcing the provisions of RSA 310-A:140 - 163, relative to home contractors.

2 Chapter Heading Change. Amend the chapter heading of RSA 310-A to read as follows:

PROFESSIONAL ENGINEERS, ARCHITECTS, LAND SURVEYORS,
 PROFESSIONAL GEOLOGISTS, **HOME CONTRACTORS**, AND NATURAL SCIENTISTS

3 Joint Board; Member Added. Amend RSA 310-A:1 to read as follows:

310-A:1 Joint Board Established. There shall be a joint board of professional engineers, architects, land surveyors, foresters, professional geologists, **home contractors**, and natural scientists, consisting of each of the members of the board of professional engineers, board of architects, state board of licensure for land surveyors, foresters' board, board of professional geologists, **board of home contractors**, and the board of natural scientists. The joint board shall meet at least quarterly to carry out its duties established under this chapter.

4 New Subdivision; Home Contractors. Amend RSA 310-A by inserting after section 139 the following new subdivision:

Home Contractors

310-A:140 Definitions. In this subdivision:

I. "Actual loss" means the amounts payable for the cost of repair, replacement, completion, or performance under the terms of a residential contracting agreement with respect to which a claim is made.

II. "Apprentice" means any person who is engaged in learning and assisting in home construction or home improvement under an apprenticeship program acceptable to the board.

III. "Board" means the state board of registration for home contractors, established by RSA 310-A:141.

IV. "Claimant" means an owner and resident of a residential building, containing at least one but not more than 4 dwelling units, who has entered into a construction contract with a contractor to carry out construction work on such building, and who is making a claim against the contractor for failure of performance under the contract.

V. "Contract" means an agreement, written or oral, for the performance of certain residential contracting work, including all labor, goods, and services set forth under such agreement.

VI. "Employee" means any person employed by and under the direction and control of a contractor or subcontractor and who performs services for wages or salary.

VII. "Home contractor" means any person who owns or operates a contracting business who, personally or through others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for residential contracting work.

VIII. "Owner" means any homeowner of a pre-existing building containing at least one but not more than 4 dwelling units, or a tenant thereof, who orders, contracts for, or purchases the services of a home contractor or subcontractor, and such owner's primary business is not rental of tenant housing.

IX. "Person" means any individual, partnership, corporation, association, or other organization.

X. "Registrant" means any contractor or subcontractor duly registered under the provisions of this subdivision.

XI. "Residential contracting" means the construction, reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, demolition, or construction of an addition to any building containing at least one but not more than 4 dwelling units, which building or portion thereof is used or designed to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or building.

XII. "Salesperson" means any person other than a supplier of material or a laborer, who solicits, offers, negotiates, executes, or otherwise endeavors to procure by any means whatsoever, directly or indirectly, a contract for residential contracting services from an owner on behalf of a contractor or subcontractor.

XIII. "Subcontractor" means any person other than a supplier of material or labor, who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than as a subcontractor.

XIV. "Tenant" means a person who has entered into a lease or other contractual arrangement with the owner.

310-A:141 Board Established.

I. There shall be a state board of registration for home contractors consisting of 5 members: 2 contractors, one subcontractor, and 2 public members. Each member shall be appointed by the governor, with the approval of the council, to a term of 5 years. No member of the board shall be appointed to more than 2 consecutive terms.

II. Any public member of the board shall be a person who is not, and never was, a contractor, subcontractor, or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of residential contracting services or an activity directly related to residential contracting, including the representation of the board or trade for a fee at any time during the 5 years preceding appointment.

310-A:142 Compensation and Expenses. Members of the board shall serve without compensation, but shall be reimbursed for all actual traveling, incidentals, and clerical expenses necessarily incurred in carrying out the provisions of this subdivision.

310-A:143 Organization and Meetings. The board shall hold at least 4 regular meetings each year, and special meetings may be held at such times as the business of the board may require. Notice of all meetings shall be given in such manner as the rules of the board may provide. The board shall annually elect a chairperson and a vice-chairperson from among its members. A quorum of the board shall consist of not less than 3 members, at least one of whom shall be a public member.

310-A:144 Rulemaking Authority. The board shall adopt rules, pursuant to RSA 541-A, relative to:

I. The design and content of all forms and applications required under this subdivision.

II. The application procedure to register under this subdivision.

III. The qualifications of registration applicants in addition to those requirements established under this subdivision.

IV. Registration approval, denial, renewal, suspension, or revocation.

V. Ethical and professional standards required to be met by each registrant under this subdivision, and how disciplinary actions by the board shall be implemented for violations of these standards.

VI. Fees authorized under this subdivision.

VII. Procedures for the conduct of hearings consistent with the requirements of due process.

310-A:145 Fees. The board shall establish fees for registration of applicants and for renewal of registration to provide services under this subdivision, 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.

310-A:146 Receipts and Disbursements. The secretary of the board shall receive and account at least monthly for all moneys derived under the provisions of this subdivision, and shall pay the same to the state treasurer. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this subdivision. Under no circumstances shall the total amount of payments made exceed the amount of fees collected.

310-A:147 Registration of Contractors Required; Registration by Corporation or Partnership.

I. The board shall register and regulate home contractors and subcontractors. When issued, a registration shall be valid throughout the state, and the registrant shall be entitled to perform the work of a home contractor or subcontractor, as the case may be, anywhere within the state without any payment or additional fee. Each applicant for registration shall present to the secretary of the board on a form furnished by the board a written application for registration, containing such information as the board may require, accompanied by the required fee.

II. No contractor or subcontractor shall undertake, offer to undertake, or agree to perform residential contracting services unless registered therefor with the approval of the board.

III. It shall be the duty of the board to issue and deliver a certificate of registration to all applicants who have been approved for registration.

IV. In the case of registration by a corporation or partnership, an individual shall be designated to be responsible for the corporation's or partnership's work. The corporation or partnership and its designee shall be jointly and severally liable for the payment of the registration fee and for violations of any provisions of this subdivision, including actions by the registrant's employees, subcontractors, or salespersons.

310-A:148 Application for Registration; Required Information. In order to be registered as a contractor or subcontractor, an applicant shall make a written application under oath to the board on a form provided by the board. Said application shall set forth information that includes, but shall not be limited to:

I. The applicant's name, home address, and business address exclusive of post office box addresses.

II. The names and addresses of all owners, partners or trustees of an applicant including, in case of corporate entities, the names and addresses of all officers, directors and principal shareholders, and evidence of registration with the secretary of state under RSA 293-A, 305-A, or 349, as appropriate. If such corporate information is accurately reflected in the articles of organization or amendments thereto, or a current annual report of condition or other documents on file with the secretary of state or the Securities and Exchange Commission, a copy of the relevant sections of such filing shall satisfy the application requirements specified in this paragraph.

III. Whether the applicant has ever been previously registered in the state as a contractor or subcontractor pursuant to this subdivision, under what other names he or she was previously registered, whether there have been previous judgments or arbitration awards against him or her, and whether the registration has ever been suspended or revoked.

310-A:149 Registration Applications to be Public Records; Display of Registration Number by Contractors.

I. The board shall keep on file, in convenient form and open to public inspection, all applications for registration and copies of registrations issued and the names of all contractors or subcontractors whose registration has been revoked, suspended, or surrendered.

II. Every written contract, building permit, and advertisement shall display the contractor's or subcontractor's certificate of registration number.

310-A:150 Changes of Name or Address; Procedure Upon Expiration of Certificate; Replacement Certificates.

I. Every registered contractor or subcontractor shall notify the board within 30 days of any change of trade name or address.

II. Upon the expiration, termination, or voluntary surrender of a registration, the registrant shall deliver the registration to the board which shall cancel the registration and endorse the date of expiration, termination, or surrender.

III. If a certificate of registration is lost, misplaced, or destroyed, the registrant shall file an affidavit to that effect and the board, for a nominal fee, shall issue a replacement registration, clearly identified as such, both on the certificate of registration and in the records of the board.

310-A:151 Expiration and Renewal of Registration. Regardless of any outstanding registration to the contrary, all registrations issued by the board shall expire on the last day of the month of the registrant's birth, but may be renewed during the following month, retroactive to the first day of the month. The fee for renewal of all registrations issued under this subdivision shall be established by the board. Upon failure to pay the renewal fee within the required period, a registrant may renew the registration by submitting the re-

quired fee plus \$10 before the last day of the second month following the month of the registrant's birth. Any application received thereafter shall be rejected, unless accompanied by a new written application pursuant to RSA 310-A:147 and RSA 310-A:148.

310-A:152 Grounds for Denying Registration or Renewal; Reconsideration. No application for registration or renewal conforming to the requirements of this subdivision may be denied except for a finding by the board that the applicant has done one or more of the following acts which are grounds for denial:

I. Made material omissions or misrepresentations of fact on application for registration or renewal under this subdivision.

II. Failed to pay the registration fee required by this subdivision.

III. Failed consistently to perform contracts or has performed the contracts in an unprofessional manner, or has failed to complete the contracts with no good cause, or has engaged in fraud or bad faith with respect to the contracts.

IV. Failed to meet or has violated any of the requirements for a registered contractor or subcontractor set forth in this subdivision or has performed or is attempting to perform any act prohibited by this subdivision.

V. Has engaged in an unfair or deceptive act or practice in violation of RSA 358-A. If a registration is refused, the applicant may, within 10 days from the date notice of refusal is mailed, make a request for reconsideration. The board shall render its decision within a reasonable period of time, but not more than 60 days following the request.

310-A:153 Suspension or Revocation of Registration; Grounds. Prior to its expiration date, a certificate of registration may be suspended or revoked by the board in accordance with the procedures and on the grounds set forth in section RSA 310-A:152, or may be terminated by voluntary surrender by the registrant. Further grounds for suspension or revocation include any violation by a registrant or any agent or employee of the registrant of any of the provisions of this subdivision.

310-A:154 Prohibited Acts by Contractors and Subcontractors.

I. The following acts are prohibited by contractors or subcontractors:

(a) Operating without a certificate of registration issued by the board.

(b) Abandoning or failing to perform, without justification, any contract or project engaged in or undertaken by a registered contractor or subcontractor, or deviating from or disregarding plans or specifications in any material respect without the consent of the owner.

(c) Failing to credit to the owner any payment the owner has made to the contractor or the contractor's salesperson in connection with a residential contracting transaction.

(d) Making any material misrepresentation in the procurement of a contract or making any false promise of a character likely to influence, persuade, or induce the procurement of a contract.

(e) Contracting beyond the scope of the registration as a contractor or subcontractor.

(f) Acting directly, regardless of the receipt or the expectation of receipt of compensation or gain from the mortgage lender, in connection with a residential contracting transaction by preparing, offering or negotiating or attempting to or agreeing to prepare, arrange, offer, or negotiate a mortgage loan on behalf of a mortgage lender.

(g) Acting as a mortgage broker or agent for any mortgage lender.

(h) Publishing, directly or indirectly, any advertisement relating to home contracting which does not contain the contractor's or subcontractor's certificate of registration number or which does contain an assertion, representation, or statement of fact which is false, deceptive, or misleading.

(i) Advertising in any manner that a registrant is registered under this subdivision unless the advertisement includes an accurate reference to the contractor's or subcontractor's certificate of registration.

(j) Violating the building laws of the state or of any its political subdivisions.

(k) Misrepresenting a material fact by an applicant in obtaining a certificate of registration.

(l) Failing to notify the board of any change of trade name or address as required by RSA 310-A:150, I.

(m) Conducting a residential contracting business in any name other than the one in which the contractor or subcontractor is registered.

(n) Failing to pay for materials or services rendered in connection with operating as a contractor or subcontractor where sufficient funds are received as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased.

(o) Failing to comply with any order, demand, or requirement lawfully made by the board or attorney general under and within the authority of this subdivision.

(p) Demanding or receiving payment in violation of RSA 310-A:157, I(f).

(q) Violating any other provision of this subdivision.

II. Violations of this section may subject the violator to the administrative sanctions of RSA 310-A:158 and to the penalties described in RSA 310-A:160.

III. Violations of any of the provisions of this subdivision shall constitute an unfair or deceptive act or practice within the meaning of RSA 358-A:2.

310-A:155 Persons Exempt From Registration Requirement. The following persons are not required to be registered under this subdivision:

I. The state or any of its political subdivisions.

II. Any school, public or private, offering as part of a vocational education program courses and training in any aspects of home contracting.

III. Electricians, plumbers, architects or any other persons who are required by New Hampshire law to attain standards of competency or experience as a prerequisite to licensure for and engaging in such profession and who are acting exclusively within the scope of the profession for which they are currently licensed pursuant to such other law, construction supervisors excepted.

IV. Persons dealing in the sale of goods or materials who neither arrange to perform nor perform directly or indirectly any work or labor in connection with the installation of or application of the goods or materials.

V. Persons building their own homes or personally doing the renovations, and any individual who performs labor or services for a contractor or subcontractor, for wages or salary, and who does not act in the capacity of a contractor.

VI. Any contractor or subcontractor who works on one undertaking or project by one or more contracts where the aggregate contract price is less than \$500, provided, however, that the contract is not in an amount of less than \$500 for the purpose of evading this subdivision.

VII. Any person who engages in the business of a contractor or subcontractor on other than a full-time basis, and who has earned in gross revenues, as a contractor or subcontractor, less than \$5,000 in the previous 12-month period.

VIII. Any person acting as a contractor or subcontractor who was enrolled as a full-time student in a secondary school or college with degree granting authority from the government of the state in which the school is located for the immediately preceding academic semester, and is also enrolled as a full-time student for the next academic semester in the same or a similar degree granting secondary school or college, provided that at least 2/3 of the number of the employees of the contractor or subcontractor are similarly enrolled in secondary schools or colleges and that the contractor or subcontractor does not reasonably expect to earn or does not in fact earn, in gross revenues, more than \$5,000.

IX. Persons who install central heating, air-conditioning systems, energy-conservation devices, or provide conservation services conducted by or on behalf of a public utility.

310-A:156 Inspectors.

I. The board shall have the authority to appoint such inspectors as are necessary to ensure compliance with home construction and home improvement practices consistent with the public safety and welfare.

II. Upon written request of the board, a building inspector appointed by a local municipality pursuant to RSA 673:1, III, shall have the authority to perform inspections as an agent of the board to ensure compliance with home construction and home improvement practices consistent with this subdivision.

III. An inspector appointed under this section shall have the authority to enter any premises, with the owner's consent, in which a home construction project subject to regulation under this subdivision is being conducted for the purpose of making such inspection as is necessary to carry out the inspector's duties under this section. If the residence to be inspected is occupied by a tenant, the owner shall give notice to the tenant as required under the terms of the owner's lease before granting consent for an inspection under this section.

310-A:157 Residential Contracting Agreements; Owner to be Given Copy of Agreement; Alternative Dispute Resolution Clauses Permitted.

I. Every agreement to perform residential contracting services in an amount in excess of \$1,000 shall be in writing and shall include the following documents and information:

(a) The complete agreement between the owner and the contractor and a clear description of any other documents which are or shall be incorporated into the agreement.

(b) The full names, dates of birth, physical addresses, and registration numbers of the contractor and any subcontractor or subcontractors, the name of the salesperson, if any, who solicited or negotiated the contract, and the date when the contract was executed by the parties.

(c) The anticipated date on which the work under the contract is scheduled to begin and the anticipated date on which the work is scheduled to be substantially completed.

(d) A detailed description of the work to be done and the materials to be used in the performance of the contract.

(e) The total amount agreed to be paid for the work to be performed under the contract.

(f) A time schedule of payments to be made under the contract and the amount of each payment stated in dollars, including all finance charges. Any deposit required under the contract to be paid in advance of the commencement of work under the contract shall not exceed the greater of 1/3 of the total contract price or the total of the actual cost of any materials or equipment of a special order or custom-made nature, which must be ordered in advance of the commencement of work, in order to assure that the project will proceed on schedule. No final payment shall be demanded until the contract is completed to the satisfaction of the parties.

(g) The signatures of all parties shall be affixed to the contract.

(h) There shall be a clear and conspicuous notice appearing in the contract:

(1) That all contractors and subcontractors must be registered by the board and that any inquiries about a contractor or subcontractor relating to a registration should be directed to the board.

(2) Of the registration number of the contractor or subcontractor.

(3) Of an owner's 3 day cancellation rights.

(4) Of all warranties and the owner's rights under the provisions of this subdivision.

(5) In 10 point bold type or larger, directly above the space provided for the signature, "Do not sign this contract if there are any blank spaces."

(6) Of any lien on or security interest on the residence as a consequence of the contract.

(i) An enumeration of such other matters upon which the owner and the contractor may lawfully agree, provided, however, that no such agreement may waive any rights conveyed to the owner under the provisions of this subdivision.

(j) Any other provision otherwise required by the applicable laws of the state.

II. No contract shall contain an acceleration clause under which any part or all of the balance not yet due may be declared due and payable because the holder deems himself or herself to be insecure. However, where the contractor deems himself or herself to be insecure he or she may require as a prerequisite to continuing the work that the balance of funds due under the contract, which are in the possession of the owner, shall be placed in a joint escrow account requiring the signature of the contractor and the owner for withdrawal.

III. At the time of signing, the owner shall be furnished with a copy of the contract signed by both the contractor and the owner. No work shall begin prior to the signing of the contract and transmittal to the owner of a copy of such contract.

IV. Any contract entered into between a contractor and owner shall require the contractor to inform the owner of all necessary permits.

V. Any contract entered into between a contractor and owner may provide that the contractor may initiate alternative dispute resolution through any private arbitration services approved by the board, under paragraphs I-V, inclusive, provided that the alternative dispute resolution provision is clearly and conspicuously disclosed in the contract, in language designated by the board, and that each party separately signs and dates the provision, thereby assenting to the procedure. Any contract that includes an arbitration provision shall also authorize the owner to opt out of the arbitration provision and to seek a remedy in a court of competent jurisdiction.

VI. Contracts which fail to comply with the requirements of this section shall not be invalid solely because of noncompliance.

310-A:158 Enforcement; Court Action; Arbitration.

I. Any party may bring an action to enforce any provision of this subdivision, or to seek damages subject to the provisions of this subdivision, in the superior court, the district court, or the small claims court, subject to each court's jurisdictional requirements.

II. In the alternative, any party may request that a dispute resulting from and relating to residential contracting be decided under the terms of a private arbitration program approved by the board.

310-A:159 Private Arbitration Services Program; Two-Year Limitations Period; Appeals.

I. There shall be a private arbitration services program approved by the board, to consider disputes between owners and registered contractors and subcontractors, concerning or arising from contracts for residential contracting services. No claim may be filed for arbitration after 2 years from the date of the contract. Such arbitration shall be performed by private arbitration services approved by the board, and shall operate in accordance with the rules adopted by the board. Either party may elect to pursue an action in small claims court if the amount of the dispute is within small claims court jurisdiction.

II. All registered contractors and subcontractors who enter into contracts for residential contracting impliedly consent to the provisions contained in this section.

III. A contractor or subcontractor who is required to submit to arbitration as a result of an owner's application for arbitration may file a counterclaim, based on or arising from the same contract, in that arbitration.

IV. All findings of fact issuing from arbitration shall be taken as prima facie evidence in any subsequent appeal brought by either party arising from the matter considered in the arbitration.

V. A contractor, subcontractor, or owner may also appeal the decision of an arbitrator for a trial in a New Hampshire court of competent jurisdiction and venue. Such appeal shall be filed within 21 days from the issuance of such findings and shall stay any work or payment to the owner, contractor, or subcontractor.

310-A:160 Penalties for Violation.

I. If the board determines that any registrant is liable for a violation of any of the provisions of this subdivision, the board may suspend the registrant's certificate of registration for such period of time as shall be determined by the board, revoke the registrant's certificate of registration, or reprimand the registrant.

II. The board may assess an administrative penalty not to exceed \$2,000, payable within 30 days of its order, for each violation of any provision of this subdivision committed by contractors or subcontractors who are registered or who are required to be registered under this subdivision.

III. In determining whether to impose an administrative penalty, the board shall consider the seriousness of the violation, the deleterious effect of the violation on the complainant, any good faith on the part of the contractor or subcontractor, and the contractor's or subcontractor's history of previous violations.

310-A:161 Penalty for Knowing Failure to Register or Other Willful Violation.

I. Any contractor or subcontractor who knowingly operates without obtaining a certificate of registration as required by this subdivision and who is not otherwise exempt from the registration requirement or any contractor or subcontractor who continues to operate after revocation of or during suspension of, or who fails to renew his certificate of registration, shall be guilty of a misdemeanor.

II. Any person who knowingly violates any of the provisions of this subdivision, with respect to which a greater penalty is not otherwise provided by the provisions of this subdivision or by any other law shall be guilty of a misdemeanor.

III. Such penalties shall be in addition to any administrative penalty otherwise applicable thereto and may be sought in an action brought by the attorney general pursuant to RSA 21-M:9, II(u) and RSA 358-A.

310-A:162 Actions the Board May Take to Prevent Harm to Citizens.

I. If the board concludes that the continuing conduct of any person alleged to be in violation of this subdivision may result in substantial or irreparable harm to any citizen of the state, it may seek:

(a) A permanent or temporary injunction with respect to the conduct from the superior court of any county in which the alleged violation is occurring, or in which the violator has its principal place of business; or

(b) Restitution or an order requiring satisfactory completion of the contractor's contract.

II. The board shall not be required to file a bond or to show a lack of an adequate remedy at law when seeking an injunction under this section against any person, association, partnership, or corporation not registered under this subdivision.

310-A:163 Subdivision Not to Lessen Individual Responsibility. This subdivision shall not be construed to relieve or lessen the responsibility of any person registered under this subdivision, nor shall the state be deemed to have assumed any such liability by reason of the issuance of registration.

5 Initial Appointments.

I. The initial appointments to the board of registration for home contractors under RSA 310-A:141 as inserted by section 4 of this act shall be staggered as follows:

(a) One contractor, a one-year term.

(b) The subcontractor, a 2-year term.

(c) One public member, a 3-year term.

(d) One contractor, a 4-year term.

(e) One public member, a 5-year term.

II. Except for the appointments made under subparagraphs I(d) and (e), appointments under paragraph I shall not be construed as a term for the purposes of the 2-consecutive-term restriction under RSA 310-A:141, I.

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

2005-0558s

AMENDED ANALYSIS

This bill establishes a board for the registration and regulation of home contractors to be placed under the joint board for professional engineers, architects, land surveyors, professional geologists and natural scientists. The attorney general has enforcement authority.

MOTION TO TABLE

Senator D'Allesandro moved to have SB 198-FN laid on the table.

Motion failed.

The question is on the adoption of the floor amendment.

Floor amendment failed.

The question is on the committee report of ought to pass.

Motion failed.

Senator Clegg moved inexpedient to legislate.

Adopted.

SB 198-FN is inexpedient to legislate.

SB 200-FN, establishing the uniform athlete agents act. Public and Municipal Affairs Committee. Ought to Pass, Vote 3-2. Senator Larsen for the committee.

The question is on the committee report of ought to pass.

A division vote was requested.

Yeas: 11 - Nays: 12

Motion failed.

Senator Morse moved to re-refer.

Adopted.

SB 200-FN is re-referred to the Public and Municipal Affairs Committee.

MOTION TO REMOVE FROM THE TABLE

Senator Estabrook moved to take SB 109-FN off the table.

The question is on the motion to remove from the table.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Burling, Green, Gottesman, Foster, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Letourneau, Morse.

Yeas: 11 - Nays: 13

Motion failed.

SB 13, relative to placement and removal of political advertising. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Estabrook for the committee.

Transportation and Interstate Cooperation

March 10, 2005

2005-0565s

03/09

Amendment to SB 13

Amend the bill by replacing section 1 with the following:

1 Placement and Removal of Political Advertising. Amend RSA 664:17 to read as follows:

664:17 Placement and Removal of Political Advertising. No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. ~~[The earliest date on which political advertising may be placed or affixed shall be the last Friday in July prior to a state primary.]~~ ***Political advertising may be placed within state-owned rights-of-way as long as the advertising does not obstruct the safe flow of traffic and the advertising is placed with the consent of the owner of the land over which the right-of-way passes.*** All political advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary. No person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to any private property except the owner of the property ~~[or a law enforcement officer removing improper advertising].~~ ***Political advertising placed contrary to the requirements of this section shall be removed by law enforcement officers or employees of the department of transportation;*** provided, however, that, before a law enforcement officer removes any advertisement, ~~[he]~~ ***the officer*** shall notify the candidate ***and the owner of the advertisement*** that it is improper, and allow the candidate ***or the owner of the advertisement*** 24 hours to remove the advertisement ~~[himself]~~.

2005-0565s**AMENDED ANALYSIS**

This bill eliminates the date requirements for placement of political advertising and changes the requirements for advertising removal. This bill also permits the placement of political advertising in state-owned rights-of-way under certain circumstances.

Amendment adopted.**The question is on the adoption of the bill as amended.****Adopted.****Ordered to third reading.**

SB 31, establishing a committee to study a recycling fee for automobiles. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 3-1. Senator Morse for the committee.

Committee report of inexpedient to legislate is adopted.

SB 89-FN, relative to financing federally aided highway projects. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Morse for the committee.

Adopted.**Referred to the Finance Committee (Rule #26).**

SB 120, relative to the purchase of rail properties. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Morse for the committee.

Transportation and Interstate Cooperation**March 10, 2005****2005-0562s****06/01****Amendment to SB 120**

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

1 Purchase Price for Rail Properties; Time Limits. Amend RSA 228:60-b, I and II to read as follows:

I. All rail properties within the state offered for sale by any railway corporation after July 1, 1990, shall be offered for sale in writing to the commissioner in the first instance. In no event shall a railroad corporation offer to sell or otherwise dispose of rail properties to any person or entity on terms or conditions more favorable than those offered to the state. The state of New Hampshire acting through the commissioner shall notify such railroad corporation in writing of its acceptance or rejection of an offer within 90 calendar days of receipt of such offer. ***When the commissioner accepts an offer, he or she shall promptly notify the governor and the governor's council.***

II. ***When the governor receives notice of the commissioner's acceptance of an offer to purchase rail property, he or she shall schedule the offer for consideration by the council within 90 days of the date on the notice.*** The state of New Hampshire, acting through the commissioner with the approval of governor and council, may match any verifiable bona fide offer made for any rail properties within the limits of funds available to the commissioner for this purpose. In the event that the property offered for sale to the commissioner is to be purchased for other transportation purposes, including recreational trails, funds for such purchase shall be identified and provided by the state agency or political subdivision requesting the commissioner to acquire the property. The state or a political subdivision thereof shall retain title to all land purchased under the right of first refusal. Cooperative use and management agreements with state agencies or political subdivisions providing acquisition funds shall be executed for parcels acquired with other than department of transportation funds. In the event that all or any part of the parcel so acquired is needed for transportation of goods or services of any kind or for any other purpose deemed necessary by the commissioner, the contributing entity shall be entitled to a refund of contribution or replacement land as determined by RSA 4:40. Any such right of first refusal shall be offered in writing to the commissioner who shall notify such railroad corporation in writing of acceptance or rejection of such an offer within 90 calendar days of receipt of such offer.

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

2005-0562s**AMENDED ANALYSIS**

This bill requires the commissioner of transportation to notify the governor and council when accepting an offer to purchase railway property and requires the governor and council to act on the acceptance within 90 days of notification.

Amendment adopted.

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

Adopted.

Ordered to third reading.

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. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 4-2. Senator Martel for the committee.

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

A division vote was requested.

Yeas: 13 – Nays: 11

Committee report of inexpedient to legislate is adopted.

Senator Barnes is in opposition to the motion of inexpedient to legislate on SB 129-FN-A.

SB 148, relative to motorcycle inspections. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-2. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

March 15, 2005

2005-0638s

03/01

Amendment to SB 148

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

AN ACT relative to motorcycle inspections and relative to electronic inspection information.

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

2 Electronic Transmission of Vehicle Inspection Information.

I. Notwithstanding any other provision of law to the contrary, the department of safety shall not require, as a condition of being a vehicle inspection station, that any inspection station contract with Gordon-Darby NHOST Services, Inc., or otherwise participate in any department-run program requiring state vehicle inspection information to be transmitted to the department of safety electronically.

II. To the extent that anything contained in paragraph I conflicts with the terms of the department of safety's contract with Gordon-Darby NHOST Services, Inc., the department shall terminate the contract pursuant to paragraph 5 of the contract.

III. The department of safety shall adopt emergency rules, pursuant to RSA 541-A, that have the effect of establishing the broadest possible waivers for consumers consistent with 40 C.F.R. sections 51.350 through 51.373.

IV. The department of safety shall not require, as a condition of being a vehicle inspection station, that any inspection station perform OBD II testing on vehicles that are not equipped with on-board diagnostic systems meeting the federal Environmental Protection Agency OBD II standard.

3 Effective Date.

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

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

2005-0638s

AMENDED ANALYSIS

This bill permits an inspection station to be designated as a "motorcycle only" inspection station, which shall be exempt from the OBD II emission testing requirements. This bill also prohibits the department of safety from requiring inspection stations to enter into certain contracts or participate in certain programs as a condition of being a vehicle inspection station. This bill also requires the department of safety to adopt emergency rules.

Amendment adopted.**Senator Burling offered a floor amendment.****Sen. Burling, Dist. 5****March 15, 2005****2005-0643s****03/01****Floor Amendment to SB 148**

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

AN ACT relative to motorcycle inspections and relative to emission inspection requirements.

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

2 Emission Control Equipment; Temporary Waivers. Amend RSA 266:59-b, V to read as follows:

V. If a vehicle fails the EPA OBD II test and it passes all other inspection requirements under this chapter, then it shall be issued a temporary waiver that permits its operation for 60 days from the date of issuance, in order to make required repairs. A vehicle shall be eligible for only one such waiver during its inspection cycle. ***No person may sell a vehicle that is the subject of a temporary waiver without notifying the purchaser of the OBD II test failure; knowing failure to give such notice shall constitute grounds for rescission by the purchaser of the sales contract.***

3 OBD II Temporary Waiver. No temporary waiver issued pursuant to RSA 266:59-b, V shall expire before April 1, 2006.

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

2005-0643s

AMENDED ANALYSIS

This bill:

I. Permits an inspection station to be designated as a "motorcycle only" inspection station, which shall be exempt from the OBD II emission testing requirements.

II. Prohibits a person from selling a vehicle that has failed the EPA OBD II test without notice of the failure to the purchaser.

III. Prohibits temporary waivers from the EPA OBD II test requirements from expiring before April 1, 2006.

Senator Burling moved to withdraw his amendment without objection.**Floor amendment 0643 withdrawn without objection.****The question is on the adoption of the bill as amended.****Adopted.****Ordered to third reading.**

SB 151-FN, relative to issuance of dealer plates to bonded motor vehicle dealers. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 4-0. Senator Letourneau for the committee.

Motion failed.**Senator Letourneau moved to re-refer.****Adopted.****SB 151-FN is re-referred to the Transportation and Interstate Cooperation Committee.**

SB 155-FN, prohibiting rafting of boats on lakes and ponds. Transportation and Interstate Cooperation Committee. Re-refer to committee, Vote 6-0. Senator Letourneau for the committee.

Adopted.

SB 155-FN is re-referred to the Transportation and Interstate Cooperation Committee.

Senator Boyce is in opposition to the motion of re-refer on SB 155-FN.

SB 157-FN, relative to all terrain vehicles used for agricultural purposes. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 6-0. Senator Flanders for the committee.

Adopted.

Ordered to third reading.

SB 164-FN, relative to the disposal of real property purchased with highway or turnpike funds. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 6-0. Senator Morse for the committee.

Adopted.

Ordered to third reading.

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, Vote 5-1. Senator Letourneau for the committee.

MOTION TO TABLE

Senator Letourneau moved to have SB 180-FN-A-L laid on the table.

Adopted.

LAIID ON THE TABLE

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

SB 195, relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

March 10, 2005

2005-0560s

06/01

Amendment to SB 195

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

AN ACT relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

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

1 Contingency; Date Changed. Amend 2004, 175:9, I to read as follows:

I. Section 4 of this act shall take effect on ~~[the later of]~~ January 1, 2007 ~~[or 6 months after federal approval has been received under paragraph II of section 1 of this act, as certified by the commissioner of the department of environmental services to the director of the office of legislative services].~~

2 Repeal. 2004, 175:1, II, relative to opting out of the reformulated gasoline program, is repealed.

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

2005-0560s

AMENDED ANALYSIS

This bill changes the effective date of the law requiring the elimination of certain substances from gasoline supplies to January 1, 2007. This bill also repeals a requirement that the department of environmental services seek federal approval to opt out of the federal reformulated gasoline program.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 208-FN, relative to certification of driver education instructors and driver training requirements. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Burling for the committee.

Transportation and Interstate Cooperation

March 10, 2005

2005-0563s

10/01

Amendment to SB 208-FN

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

AN ACT relative to certification of driver education instructors.

Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

2005-0563s

AMENDED ANALYSIS

This bill allows persons approved to teach driver education, but who are not certified secondary school teachers, to teach driver education in schools.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SCR 2, relative to reauthorization of the Transportation Equity for the 21st Century Act (TEA-21). Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

Transportation and Interstate Cooperation

March 10, 2005

2005-0561s

06/01

Amendment to SCR 2

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

That the state of New Hampshire strongly supports a timely reauthorization of TEA-21 with sufficient funding levels and no unfunded mandates or burdensome conditions attached to funding, thereby allowing states to address the transportation needs of their citizens and community; and

That the state of New Hampshire urges members of the New Hampshire congressional delegation to work with other members of Congress to adequately consider the needs of the Northeast, with its higher labor costs, denser populations and severe weather conditions and to ensure that New Hampshire receives the amount of funding necessary to meet our needs; and

That copies of this resolution be forwarded by the senate clerk to the members of the New Hampshire congressional delegation.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 84, relative to live racing at licensed pari-mutuel facilities. Ways and Means Committee.

Inexpedient to Legislate, Vote 4-0. Senator Boyce for the committee.

Committee report of inexpedient to legislate is adopted.

SB 116, relative to payment procedures for the utility property tax. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator Odell for the committee.

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

March 17, 2005

2005-0720s

09/04

Floor Amendment to SB 116

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

AN ACT relative to payment procedures for the utility property tax and prohibiting the taxation of internet access and internet activities under the communications services tax.

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

4 New Section; Communications Services Tax; Prohibition on Taxing Internet Access and Internet Activities. Amend RSA 82-A by inserting after section 5 the following new section:

82-A:5-a Prohibition on Taxation of Internet Access and Internet Activities. This tax shall not be imposed on internet access and internet activities.

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

2005-0720s

AMENDED ANALYSIS

This bill changes payment procedures for the utility property tax.

This bill also prohibits the taxation of internet access and internet activities under the communications services tax.

MOTION TO TABLE

Senator Larsen moved to have SB 116 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 116, relative to payment procedures for the utility property tax.

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator D'Allesandro for the committee.

MOTION TO TABLE

Senator Barnes moved to have SB 189 laid on the table.

A roll call was requested by Senator Foster.

Seconded by Senator D'Allesandro.

The following Senators voted Yes: Kenney, Boyce, Green, Roberge, Bragdon, Gatsas, Barnes, Morse.

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

Yeas: 8 - Nays: 16

Motion failed.

The question is on the committee report of ought to pass.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

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

The following Senators voted No: Boyce, Green, Roberge, Bragdon, Gatsas, Barnes, Morse.

Yeas: 17 - Nays: 7

Adopted.

Ordered to third reading.

SB 202, relative to property taxable as utility property. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator D'Allesandro for the committee.

Adopted.

Ordered to third reading.

SB 212, relative to the railroad tax. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator Gallus for the committee.

Adopted.

Ordered to third reading.

SB 217-FN, relative to the use of lottery revenue as purses for horse and dog racing. Ways and Means Committee. Inexpedient to Legislate, Vote 3-2. Senator D'Allesandro for the committee.

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

A roll call was requested by Senator Roberge.

Seconded by Senator Green.

The following Senators voted Yes: Johnson, Kenney, Flanders, Odell, Eaton, Bragdon, Foster, Clegg, Martel, Letourneau, D'Allesandro, Morse, Hassan.

The following Senators voted No: Gallus, Boyce, Burling, Green, Roberge, Gottesman, Larsen, Gatsas, Barnes, Estabrook, Fuller Clark.

Yeas: 13 - Nays: 11

Committee report of inexpedient to legislate 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 11-FN, extending the local property tax exemption for wooden poles and conduits.

SB 13, relative to placement and removal of political advertising.

SB 19, relative to qualifications to sell lottery, bingo, and lucky 7 tickets.

SB 46, relative to the duties of law enforcement officials upon receiving reports of missing adults.

SB 60, clarifying probate court procedures in cases involving the Uniform Transfers to Minors Act.

SB 102-FN, limiting liability for failure to arrest persons under 21 years of age illegally transporting alcoholic beverages.

SB 106-FN, making unauthorized recording in a motion picture theater a crime.

SB 111, relative to persons conducting securities broker-dealer and investment advisor businesses.

SB 120, relative to the purchase of rail properties.

SB 127-FN, relative to the regional community-technical college system's acquisition of the building currently leased from the Pease development authority.

SB 148, relative to motorcycle inspections and relative to electronic inspection information.

SB 156-FN, relative to criminal trespass.

SB 157-FN, relative to all terrain vehicles used for agricultural purposes.

SB 164-FN, relative to the disposal of real property purchased with highway or turnpike funds.

SB 173, relative to exceptions to licensure for electricians.

SB 175, requiring insurance coverage for certified midwives.

SB 176, creating a public safety exception to a municipality's denial of an appropriation or budgetary item.

SB 184-FN, adopting the Uniform Child-Custody Jurisdictional Enforcement Act.

SB 188, relative to the construction of buildings on properties without street frontage.

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua.

SB 195, relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

SB 202, relative to property taxable as utility property.

SB 208-FN, relative to certification of driver education instructors.

SB 212, relative to the railroad tax.

SCR 2, relative to reauthorization of the Transportation Equity for the 21st Century Act (TEA-21).

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.