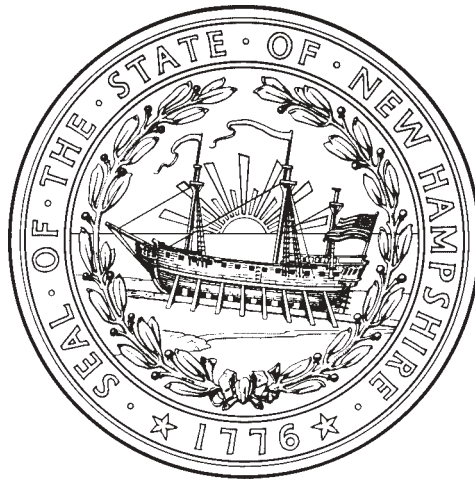


April 29, 2004
Nos. 13 - 14

STATE OF NEW HAMPSHIRE

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Legislative

SENATE JOURNAL

ADJOURNMENT – APRIL 22, 2004 SESSION
COMMENCEMENT – APRIL 29, 2004 SESSION

SENATE JOURNAL 13 (*Cont.*)

April 22, 2004

Out of Recess.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 1254-FN, relative to the postsecondary education vocational school licensing fund and the forgivable loan fund in the workforce incentive program, and authorizing the liquor commission to expend funds for the purpose of leasing new locations in Bedford and Seabrook.

April 22, 2004
2004-1354-EBA
08/01

Enrolled Bill Amendment to HB 1254-FN

The Committee on Enrolled Bills to which was referred HB 1254-FN

AN ACT relative to the postsecondary education vocational school licensing fund and the forgivable loan fund in the workforce incentive program, and authorizing the liquor commission to expend funds for the purpose of leasing new locations in Bedford and Seabrook.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1254-FN

This enrolled bill amendment makes 2 technical corrections.

Enrolled Bill Amendment to HB 1254-FN

Amend RSA 6:12, I(b)(140) as inserted by section 2 of the bill by replacing lines 2 and 3 with the following:

(140) Moneys deposited in the [~~postsecondary education loan fund~~] **forgivable loan fund in the workforce incentive program** under RSA [~~188-D:18-h~~] **188-D:18-f**.

Senator Eaton moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 712-FN, establishing a committee to study methods of improving data collection and service delivery relative to home and community-based long-term care services.

HB 1254-FN, relative to the postsecondary education vocational school licensing fund and the forgivable loan fund in the workforce incentive program, and authorizing the liquor commission to expend funds for the purpose of leasing new locations in Bedford and Seabrook.

SB 450-FN, relative to pari-mutuel licenses, and relative to trainer responsibility for the condition of horses and dogs.

Senator D'Allesandro moved adoption.

Adopted.

April 21, 2004
2004-1330-EBA
04/01

Enrolled Bill Amendment to HB 736

The Committee on Enrolled Bills to which was referred HB 736

AN ACT relative to duties of the fish and game commission and complaints against fish and game commissioners.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 736

This enrolled bill amendment corrects the paragraph numbering in a statutory section.

Enrolled Bill Amendment to HB 736

Amend RSA 206:4-a as inserted by section 1 of the bill by replacing it with the following:

206:4-a Duties. In addition to other duties provided by law, it shall be the duty of the fish and game commissioners, as the citizens' representatives, to be the stewards of the fish, wildlife, and marine resources of the state of New Hampshire and to set general policy in the following areas:

I. Conservation, protection, and management of wildlife populations and habitats, the collection of necessary scientific information, and the enforcement of fish and game laws for the purpose of sustaining healthy populations of fish, wildlife, and marine resources;

II. Development, funding, and implementation of a long-range strategic plan to direct the operation of the fish and game department;

III. Acquisition, development, and maintenance of public access to lands and waters for recreational use consistent with New Hampshire law;

IV. Public education and building support for department programs and objectives; and

V. Establishment of positions on proposed legislation that affects fish, wildlife, and marine resources and the overall management of the fish and game department.

Senator Eaton moved adoption.

Adopted.

April 21, 2004
2004-1338-EBA
05/10

Enrolled Bill Amendment to HB 403

The Committee on Enrolled Bills to which was referred HB 403

AN ACT requiring persons who are acquitted of certain sexual assaults by reason of insanity to register as sexual offenders.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 403

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to HB 403

Amend RSA 651-B:1, III as inserted by section 1 of the bill by replacing line 2 with the following:

insanity, of any violation or attempted violation of:

Senator Eaton moved adoption.

Adopted.

April 20, 2004
2004-1293-EBA
08/09

Enrolled Bill Amendment to HB 1423-FN

The Committee on Enrolled Bills to which was referred HB 1423-FN

AN ACT relative to reimbursement of travel expenses for judges.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1423-FN

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to HB 1423-FN

Amend RSA 502-A:6-c as inserted by section 3 of the bill by replacing line 2 with the following:
personal expenses when absent from their assigned court in the performance of their official duties.
Senator Eaton moved adoption.

Adopted.

April 21, 2004
2004-1326-EBA
04/10

Enrolled Bill Amendment to HB 1225-FN-A

The Committee on Enrolled Bills to which was referred HB 1225-FN-A

AN ACT making administrative changes to the historic agricultural structure matching grants program.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1225-FN-A

This enrolled bill amendment corrects a statutory citation in the bill.

Enrolled Bill Amendment to HB 1225-FN-A

Amend section 4 of the bill by replacing line 1 with the following:

4 Recapture; Agencies Which Determine Non-Eligibility. Amend RSA 227-C:31 to read as follows:

Senator Eaton moved adoption.

Adopted.

April 21, 2004
2004-1341-EBA
03/10

Enrolled Bill Amendment to SB 416

The Committee on Enrolled Bills to which was referred SB 416

AN ACT relative to membership of the advisory committee on child care.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 416

This enrolled bill amendments corrects certain references in the bill.

Enrolled Bill Amendment to SB 416

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

AN ACT relative to membership of the advisory council on child care.

Amend section 1 of the bill by replacing line 1 with the following:

1 Advisory Council on Child Care; Membership; Early Learning New Hampshire Added.

Senator Eaton moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 133, relative to amending certain articles of agreement in the Fall Mountain regional cooperative school district.

HB 440, relative to prohibited methods of taking wildlife in certain fish and game laws.

HB 444, relative to summoning witnesses from another state in certain actions involving children.

HB 622-FN, clarifying certain exemptions from the right-to-know law.

HB 652-FN, relative to qualified wellness or disease management programs.

HB 1138, establishing a Nash Stream forest citizens committee and relative to Connecticut Lakes headwaters tract natural areas camp leases.

HB 1161, relative to solicitation and marketing of insurance products.

HB 1166, clarifying certain local regulation of OHRVs and relative to the operation of snow traveling vehicles on class VI roads.

HB 1414, establishing a commission to study issues regarding the women's prison facility.

HB 1417, relative to examination of persons called as jurors in civil cases.

HB 1419, relative to the dispensing of noncontrolled prescription drugs by registered nurses in certain facilities under contract with the department of health and human services.

SB 311, relative to civil penalties for unlawful campaign practices.

SB 330-FN, relative to creditable service of retirement system members reemployed after qualifying military service.

SB 337, relative to the regulation of traps by the fish and game department and relative to the liability of trappers for certain injuries to domestic animals.

SB 345, exempting payroll accounts from trustee process.

SB 346, relative to prohibiting the operation of snowmobiles on open water.

SB 347-FN, relative to financial responsibility and conduct after an OHRV accident.

SB 358, relative to incompatibility of municipal offices.

SB 379, relative to safety inspection and certification of certain equipment of vehicles.

SB 412, extending a public trust grant for the Gunstock Area ski resort's snowmaking.

SB 424-FN, relative to boating and carnival-amusement regulation by the department of safety.

SB 438, relative to immunization practices for hospitals, residential care facilities, adult day care facilities, and assisted living facilities.

SB 456, relative to record books maintained by registers of deeds.

SB 457, relative to animal population control.

SB 466, relative to records management services of a municipality.

SB 497-FN, relative to renewal of electrician's licenses.

SB 499, making a change to the electrician licensing exemption.

Senator D'Allesandro moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 369, relative to examinations of insurance companies by the insurance department.

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

SB 513, relative to the death penalty.

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

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 53, relative to the sale of salvage and rebuilt vehicles and relative to abandoned vehicles.

HB 532, relative to notice and filing of divorce petitions.

HB 761, enabling municipalities to adopt subdivision and site plan review regulations that require innovative land use controls on certain lands when supported by the master plan, making a change in an innovative land use control, and relative to the preliminary review of subdivisions.

HB 1133, relative to disclosures required prior to a condominium sale.

HB 1155, clarifying alternative budget adoption procedures in school administrative units.

HB 1212, relative to the circumstances under which a juvenile may be committed to the youth development center until the age of 18.

HB 1301, relative to extensions to the intent to cut and relative to the care, maintenance, and repair of the law enforcement memorial.

HB 1309, relative to noise pollution from shooting ranges.

HB 1311-FN, establishing a committee to study decreasing the insurance premium tax.

HB 1355, changing the name of the sweepstakes commission to the lottery commission.

HB 1370, establishing a committee to study property tax relief.

HB 1410, relative to the release of information to persons receiving a child for placement and relative to the department of health and human service's disclosure of information regarding the death of a child from abuse and neglect.

HOUSE MESSAGE

The House of Representatives has referred for Interim Study the following entitled Bills sent down from the Senate:

SB 525-FN-A, relative to land and community heritage investment program administration.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

CACR 27, relating to elective franchises. Providing that the right to vote in elections shall be limited to citizens of the United States.

SB 318, relative to the applicability of driving while intoxicated prohibitions.

SB 320-FN, relative to penalties for damaging emergency vehicles.

SB 372, relative to the definition of necessary shelter for dogs.

SB 417, relative to vicious dog assaults.

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

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

SB 532-FN, exempting biodiesel from the road toll.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 1363, establishing a policy for naming state highways, bridges, and buildings.

LATE SESSION

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

Adopted.

Adjournment.

SENATE JOURNAL 14

April 29, 2004

The Senate met at 10:00 a.m.

A quorum was present.

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

Lord, for some strange reason You have hard wired free will into our very beings, and You invite us and demand of us that we use that capacity to honor You and to care for one another. Give to the members of this Senate, and to those who advise them, the capacity to see what is right and best and bravest that our privileges might always be used in the service of our responsibilities.
Amen

Senator Larsen led the Pledge of Allegiance.

INTRODUCTION OF GUESTS**COMMITTEE REPORTS**

HB 1413, relative to the creation of mandatory panels for medical injury claims and to the testimony of expert witnesses and establishing a committee to study medical malpractice insurance rates and mandatory panels for medical injury claims. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Peterson for the committee.

Senate Judiciary

April 21, 2004

2004-1337s

06/09

Amendment to HB 1413

Amend RSA 519-B:3, I-IV as inserted by section 1 of the bill by replacing them with the following:

I. The chief justice of the superior court shall maintain a list of active and retired judges from which the chief justice of the superior court shall choose a panel chairperson under paragraph II of this section. The chief justice of the superior court shall maintain a list of active and retired judges and arbitrators to serve on panels under this chapter.

II. Panel members shall be selected by the chief justice as follows.

(a) Upon the entry of a medical injury case, the clerk of the superior court in which the medical injury case is filed shall notify the chief justice of the superior court.

(b) Within 14 days following the return date, the chief justice shall choose a judge or retired judge from the list maintained by the chief justice to serve as chairperson of the panel to screen the claim. If at any time a chairperson chosen under this paragraph is unable or unwilling to serve, the chief justice shall appoint a replacement following the procedure in this paragraph for the initial appointment of a chairperson.

(c) The chief justice of the superior court shall choose 2 additional panel members from the lists.

III. The panel process shall not delay or postpone the trial of a medical injury case. The superior court, in coordination with the chairperson of the panel, shall establish a trial date at a structuring conference, or other scheduling conference, and all interim deadlines as it would in any other case.

IV. The chief justice of the superior court shall establish the compensation of panel members not otherwise compensated by the state of New Hampshire.

Amend RSA 519-B:9, I(b) and (c) as inserted by section 1 of the bill by replacing them with the following:

(b) If the panel findings under RSA 519-B:6, I(a) are unanimous and unfavorable to the defendant, the findings shall be admitted in accordance with RSA 519-B:10.

(c) If the panel findings as to any question under RSA 519-B:6, I are unanimous and unfavorable to the plaintiff, the findings shall be admitted in accordance with RSA 519-B:10.

Amend RSA 519-B:10 as inserted by section 1 of the bill by replacing it with the following:

519-B:10 Mandatory Instructions.

I. When the panel makes unanimous findings on all questions under RSA 519-B:6, I, the court shall furnish the following information to provide a basis for the jury to understand the nature of the panel findings and to put the panel findings in context in evaluating all of the evidence presented at the trial:

- (a) The panel process is a preliminary procedural step through which malpractice claims proceed;
- (b) The panel in this case consisted of (insert the name and identity of the members);
- (c) The panel conducts a summary hearing and is not bound by the rules of evidence;
- (d) The hearing is not a substitute for a full trial and may or may not have included all of the evidence that is presented at the trial;
- (e) The jury is not bound by the findings of the panel and it is the jurors' duty to reach their own conclusions based on all of the evidence presented to them; and
- (f) The panel proceedings are privileged and confidential. Consequently, the parties may not introduce panel documents or present witnesses to testify about the panel proceedings, and they may not comment on the panel findings or proceedings except as provided in subparagraphs (a) through (f).

II. The information specified in paragraph I shall be provided to the jury when the findings are admitted into evidence and when the court instructs the jury prior to submitting the case to the jury.

Amend the introductory paragraph of RSA 519-B:13, IV as inserted by section 1 of the bill by replacing it with the following:

IV. The committee may:

Amend RSA 519-B:13, II as inserted by section 1 of the bill by replacing it with the following:

II. The committee shall consist of 9 members as follows:

- (a) Seven members of the house of representatives, appointed by the speaker of the house as follows:
 - (1) Three members of the house judiciary committee.
 - (2) Two members of the house health, human services and elderly affairs committee.
 - (3) Two members of the house commerce committee.
- (b) Two members of the senate, appointed by the president of the senate.

Amend RSA 519-B:13, IV as inserted by section 1 of the bill by inserting after subparagraph (d) the following new subparagraph:

(e) Investigate available no-fault insurance and other alternatives to address the particular needs of obstetric and gynecologic providers.

Question is on the adoption of the committee amendment.

A division vote was requested.

Yeas: 6 - Nays: 16

Amendment failed.

Senator Gallus offered a floor amendment.

Sen. Gallus, Dist. 1
 Sen. Gatsas, Dist. 16
 Sen. Barnes, Dist. 17
 Sen. Johnson, Dist. 2
 Sen. Sapareto, Dist. 19
 Sen. Odell, Dist. 8
 Sen. Green, Dist. 6
 Sen. Below, Dist. 5
 Sen. Estabrook, Dist. 21
 Sen. Martel, Dist. 16
 Sen. Kenney, Dist. 3
 Sen. Roberge, Dist. 9
 April 28, 2004
 2004-1447s
 06/01

Floor Amendment to HB 1413

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

AN ACT creating panels for medical injury claims and establishing a committee to study medical malpractice insurance rates and mandatory panels for medical injury claims.

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

1 New Chapter; Screening Panels for Medical Injury Claims. Amend RSA by inserting after chapter 519-A the following new chapter:

CHAPTER 519-B SCREENING PANELS FOR MEDICAL INJURY CLAIMS

519-B:1 Findings, Purpose and Intent.

I. Availability and affordability of insurance against liability for medical injury is essential for the protection of patients as well as assuring availability of and access to essential medical and hospital care. This chapter affirms the intent of the general court to contain the costs of the medical injury reparations system and to promote availability and affordability of insurance against liability for medical injury. Claims for medical injury should be resolved as early and inexpensively as possible to contain system costs. Claims that are resolved before court determination cost less to resolve than claims that must be resolved by a court. Meritorious claims should be identified as quickly as possible, as should non-meritorious claims. Defendants should consider paying or compromising meritorious claims and plaintiffs should consider withdrawing or compromising non-meritorious claims, as soon as the merits of the claims are known to the parties. Presentation of claims to a medical review panel is intended to help identify both meritorious and non-meritorious claims without the delay and expense of a court trial. It is essential to the effectiveness of the panel process that panel proceedings be confidential unless and until a matter heard by a panel proceeds to trial. It is equally essential to the effectiveness of the panel process that a panel's unanimous findings be presented to the jury in any matter that is not resolved prior to trial. The panel process will encourage the prompt resolution of claims, because both sides will be given an objective view of the merits. If the panel finds that a claim has merit, the defendant will be more likely to pay the claim or negotiate a compromise that is favorable to the claimant. If the panel finds that the claim lacks merit, the claimant is more likely to withdraw the claim or accept a nominal settlement.

II. The purposes of pretrial screening panels are:

(a) To identify claims of professional negligence which merit compensation and to encourage early resolution of those claims prior to commencement of a lawsuit; and

(b) To identify claims of professional negligence and to encourage early withdrawal or dismissal of nonmeritorious claims.

519-B:2 Definitions. In this chapter:

I. "Action for medical injury" means an action for medical injury as defined in RSA 507-E:1, I.

II. "Medical care provider" means a medical care provider as defined in RSA 507-E:1, II.

III. "Medical injury" means a medical injury as defined in RSA 507-E:1, III.

519-B:3 Formation and Procedure.

I. The chief justice of the superior court shall maintain a list of retired judges, persons with judicial experience, and other qualified persons to serve on screening panels under this chapter, from which he or she shall choose a panel chairperson under paragraph II of this section. The chief justice of the superior court shall maintain lists of health care practitioners and attorneys with litigation experience, recommended by their respective professional organizations to serve on screening panels under this chapter. As required by the chief justice, the professional organization of each profession shall inform the chief justice of the names of volunteers to serve on panels.

II. Screening panel members shall be selected as follows:

(a) Upon the entry of a medical injury case, the clerk of the superior court in which the medical injury case is filed shall notify the chief justice of the superior court.

(b) Within 14 days following the return date, the chief justice shall choose a retired judge, a person with judicial experience, or other qualified person from the list maintained by the chief justice to serve as chairperson of the panel to screen the claim. If at any time a chairperson chosen under this paragraph is unable or unwilling to serve, the chief justice shall appoint a replacement following the procedure in this paragraph for the initial appointment of a chairperson. Persons other than retired judges or those with judicial experience may be appointed as chairperson based on appropriate trial experience. If the chief justice appoints as chairperson a person who is not a retired judge or who does not have judicial experience, each side may make one challenge to the appointment.

(c) The chief justice shall notify the clerk of the name of the person designated to serve as chairperson and shall provide the clerk with the lists of health care practitioners, health care providers, and attorneys maintained under this section. Upon notification of the chief justice's choice of chairperson, the clerk shall notify the chairperson and the parties, and provide them with the lists of health care practitioners, health care providers, and attorneys. The chairperson shall choose 2 or 3 additional panel members from the lists as follows:

(1) One attorney.

(2) One health care practitioner. If possible, the chairperson shall choose a practitioner who practices in the same specialty or profession as the person or entity accused of professional negligence.

(3) Where the claim involves more than one person accused of professional negligence the chairperson may choose a fourth panel member who is a health care practitioner. If possible, the chairperson shall choose a practitioner or provider in the specialty or profession of a person accused.

(4) When agreed upon by all the parties, the list of available panel members may be enlarged in order to select a panel member who is agreed to by the parties but who is not on the chief justice's list.

III. The screening panel process is not intended to delay or postpone the trial of a medical injury case. The superior court may establish a trial date at a structuring conference, or other scheduling conference, and all interim deadlines as it would in any other case.

IV. The chief justice of the superior court shall establish the compensation of the panel chairperson if he or she is not otherwise compensated by the state of New Hampshire. Other panel members shall serve without compensation or payment of expenses.

V. The clerk of the superior court in the county in which a medical injury case is filed shall, with the consent of the chief justice of the superior court, provide clerical and other assistance to the panel chairperson.

VI.(a) Only challenges for cause shall be allowed.

(b) If a panel member other than the chairperson is challenged for cause, the party challenging the member shall notify the panel chairperson. If the panel chairperson finds cause for the challenge, he or she shall replace the panel member.

(c) If the chairperson is challenged for cause, the party challenging the chairperson shall notify the chief justice of the superior court. If the chief justice finds cause for the challenge, he or she shall replace the chairperson.

VII. The panel, through the chairperson, shall have the same subpoena power as exists for a superior court judge. The chairperson shall have sole authority, without requiring the agreement of other panel members, to issue subpoenas.

VIII. The New Hampshire superior court rules shall govern discovery conducted under this chapter. The parties shall attempt in good faith to resolve discovery issues themselves. The chairperson shall rule on disputes regarding discovery. Any person aggrieved by a chairperson's ruling regarding discovery may appeal to the superior court, which shall defer to the chairperson's factual findings unless they are clearly erroneous.

519-B:4 Panel Procedures.

I. All documents filed with the court in a medical injury action that are part of the screening process are confidential.

II. Within 20 days of the return date, the person or persons accused shall contact the claimant's counsel and by agreement shall designate a timetable for filing all the relevant medical and provider records necessary to a determination by the panel. If the parties are unable to agree on a timetable within 60 days of the return date, the claimant shall notify the chairperson of the panel. The chairperson shall then establish a timetable for the filing of all relevant records and reasonable discovery, which shall be filed at least 30 days before any hearing date. The hearing shall be no later than 6 months from the return date, except when the time period has been extended by the panel chairperson in accordance with this chapter.

III. The pretrial screening may be bypassed if all parties agree upon a resolution of the claim by trial.

IV. All parties to a claim may, by written agreement, submit a claim to the binding determination of the panel. Both parties may agree to bypass the panel for any reason, or may request that certain preliminary legal affirmative defenses or issues be litigated prior to submission of the case to the panel. The panel shall have no jurisdiction to hear or decide, absent agreement of the parties, dispositive legal affirmative defenses, other than comparative negligence. The panel chairperson may require the parties to litigate, by motion, such dispositive legal affirmative defenses in the superior court prior to submission of the case to the panel. Any such defense, as well as any motion relating to discovery that the panel chairperson has chosen not to rule on may be presented, by motion, in superior court.

V. Except as otherwise provided in this section, there shall be one combined hearing for all claims under this section arising out of the same set of facts. Where a medical injury case has been filed against more than one person accused of medical injury based on the same facts, the parties may, upon agreement of all parties, require that hearings be separated. The chairperson may, for good cause, order separate hearings.

VI. All requests for extensions of time under this section shall be made to the panel chairperson. The chairperson may extend any time period for good cause, except that the chairperson may not extend any time period that would result in the hearing being held more than 11 months following the return date unless good cause is shown.

VII.(a)(1) On failure of the plaintiff to prosecute or to comply with rules or any order of the chairperson, or if the plaintiff fails to attend a properly scheduled hearing, and on motion by the chairperson or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chairperson may order appropriate sanctions, which may include dismissal of the case. If any sanctions are imposed, the chairperson shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chairperson or the panel in an order for dismissal specifies otherwise, a dismissal under this subparagraph is with prejudice for purposes of proceedings before the panel. A dismissal with prejudice is the equivalent of a finding for the defendant on all issues before the panel.

(b)(1) On failure of a defendant to comply with the rules or any order of the chairperson, or if a defendant fails to attend a properly scheduled hearing, and on motion by the chairperson or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chairperson may order appropriate sanctions, which may include default. If any sanctions are imposed, the chairperson shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chairperson or the panel in its order for default specifies otherwise, a default under this paragraph is the equivalent of a finding against the defendant on all issues before the panel.

(c) Any person aggrieved by a chairperson's ruling regarding sanctions may appeal to the superior court, which shall defer to the chairperson's factual findings unless they are clearly erroneous.

519-B:5 Hearing.

I.(a) The claimant or a representative of the claimant shall present the case before the panel. The person accused of professional negligence or that person's representative shall make a responding presentation. The panel shall afford the parties wide latitude in the conduct of the hearing including, but not limited to, the right of examination and cross-examination by attorneys. Depositions are admissible whether or not the person deposed is available at the hearing. The chairperson shall make all procedural rulings, which shall be final. The New Hampshire rules of evidence shall not apply. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The panel shall make findings upon such evidence as is presented at the hearing, the records, and any expert opinions provided by or sought by the panel or the parties.

(b) After presentation by the parties, the panel may request additional facts, records, or other information from either party to be submitted in writing or at a continued hearing, which continued hearing shall be held as soon as possible. The continued hearing shall be attended by the same members of the panel who have sat on all prior hearings in the same claim, unless otherwise agreed by all parties. Replacement panel members shall be appointed pursuant to this chapter.

II. The panel shall maintain a tape-recorded record. Except as provided in RSA 519-B:8, the record may not be made public and the hearings may not be public without the consent of all parties.

III. The chair of the panel shall attempt to mediate any differences of the parties before proceeding to findings.

519-B:6 Findings by Panel.

I. At the conclusion of the presentations, the panel shall make its findings regarding negligence and causation in writing within 30 days by answering the following questions:

(a) Whether the acts or omissions complained of constitute a deviation from the applicable standard of care by the medical care provider charged with that care;

(b) Whether the acts or omissions complained of proximately caused the injury complained of; and

(c) If fault on the part of the medical care provider is found, whether any fault on the part of the patient was equal to or greater than the fault on the part of the provider.

II. The standard of proof used by the panel shall be as follows.

(a) The plaintiff shall prove negligence and proximate causation by a preponderance of the evidence; and

(b) The defendant shall prove comparative negligence by a preponderance of the evidence.

519-B:7 Notification of Findings. The panel's findings, signed by the panel members, indicating their vote, shall be sent by registered or certified mail to the parties within 7 days of the date of the findings. The findings and record of the hearing shall be preserved until 30 days after final judgment or final resolution of the case, after which time it shall be destroyed. All medical and provider records shall be returned to the party providing them to the panel.

519-B:8 Confidentiality and Admissibility.

I. Except as provided in this section, all proceedings before the panel, including its final determinations, shall be treated as private and confidential by the panel and the parties to the claim.

(a) The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible in court and shall not be submitted or used for any purpose in a subsequent trial and shall not be publicly disclosed, except as follows:

(1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment.

(2) The party who made a statement or presented evidence may agree to the submission, use, or disclosure of that statement or evidence.

(b) If the panel findings as to both the questions under RSA 519-B:6, I(a) and (b) are unanimous and unfavorable to the defendant, the findings are admissible in any subsequent trial of the medical injury case.

(c) If the panel findings as to any question under RSA 519-B:6, I are unanimous and unfavorable to the plaintiff, the findings are admissible in any subsequent trial of the medical injury case.

II. The confidentiality provisions of this section shall not apply if the findings were influenced by fraud.

III. The deliberations and discussion of the panel and the testimony of any expert, whether called by a party or the panel, shall be privileged and confidential, and no such person may be asked or compelled to testify at a later court proceeding concerning the deliberations, discussions, findings or expert testimony or opinions expressed during the panel hearing, unless by the party who called and presented the nonparty expert, except such deliberation, discussion, and testimony as may be required to prove an allegation of fraud.

519-B:9 Mandatory Instructions.

I. When panel findings are offered and admitted into evidence in a subsequent court action in accordance with RSA 519-B:8, I(b) or (c), the trial court shall provide the following information to the jury to provide a basis for the jury to understand the nature of the panel findings and to put the panel findings in context in evaluating all of the evidence presented at the trial:

(a) The panel process is a preliminary procedural step through which malpractice claims proceed.

(b) The panel in this case consisted of (insert the name and identity of the members).

(c) The panel conducts a summary hearing and is not bound by the rules of evidence.

(d) The hearing is not a substitute for a full trial and may or may not have included all of the evidence that is presented at the trial.

(e) The jury is not bound by the findings of the panel and it is the jurors' duty to reach their own conclusions based on all of the evidence presented to them.

(f) The panel proceedings are privileged and confidential. Consequently, the parties may not introduce panel documents or present witnesses to testify about the panel proceedings, and they may not comment on the panel findings or proceedings except as provided in subparagraphs (a) through (e).

II. The information specified in paragraph I shall be provided to the jury when the findings are admitted into evidence and when they the court instructs the jury prior to submitting the case to the jury.

519-B:10 Effect of Panel Findings. Unanimous findings entered by the panel under RSA 519-B:6, I shall be implemented as follows.

I. If findings are in the plaintiff's favor, the defendant shall promptly enter into negotiations to pay the claim or admit liability. If liability is admitted, the claim may be submitted to the panel, upon agreement of the parties, for determination of damages. If the claim goes to a trial, the findings of the panel are admissible as provided in RSA 519-B:8, I(b).

II. If the findings are in the defendant's favor, the plaintiff shall release the claim or claims based on the findings, without payment, or be subject to the admissibility of those findings under RSA 519-B:8, I(c).

519-B:11 Medical Malpractice Panel and Insurance Oversight Committee Established.

I. There is established a committee to study medical malpractice insurance rates in this state and the mandatory panels for medical injury claims process.

II. The committee shall consist of 4 members of the senate appointed by the senate president, and 4 members of the house of representatives, appointed by the speaker of the house. The house members shall include at least:

(a) One member of the house judiciary committee.

(b) One member of the house health, human services and elderly affairs committee.

(c) One member of the house commerce committee.

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

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

V. The committee shall review and analyze information provided by the administrative office of the courts and the insurance department related to medical injury liability claim activity in order to determine the effectiveness of mandatory screening panels for medical injury claims established in this chapter. The committee's review shall include, but not be limited to, whether medical malpractice insurance premiums have been affected and whether there has been any limitation of access to the courts by injured parties.

VI. Oversight committee reports.

(a) The committee shall make an interim report of its findings about medical insurance rates and the mandatory panel process and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2007.

(b) The committee shall make a final report of its findings about medical insurance rates and the mandatory panel process and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2009. The report shall include a recommendation to terminate, continue, or amend RSA 519-B.

519-B:12 Reports.

I.(a) The administrative office of the courts shall collect data on medical injury claims and submit a report on the screening panel process to the committee established in RSA 519-B:11 and to the insurance commissioner on or before September 30 of each year.

(b) The report required by this paragraph shall include the number of medical injury cases filed, pending, and resolved; and the number of panel hearings and the number of panel hearing days during the fiscal year ending on the June 30 preceding the report date.

(c) The report required by this paragraph shall also include, for medical injury cases resolved during the fiscal year,

(1) The mean and median lengths of time from initial filing to final resolution.

(2) The number and average settlement amount of cases that were resolved prior to the panel hearing.

(3) The number and average settlement amount of cases that were resolved after a panel hearing but before trial.

(4) The number and average settlement amount of cases that were resolved by or after a jury verdict.

(d) The report required by this paragraph shall also include, for medical injury cases in which a panel made findings during the fiscal year, the number of cases that fell into each category of possible results of a panel hearing (unanimous for the plaintiff; majority for the plaintiff; unanimous for the defendant; majority for the defendant), the status, and, if applicable, the results of the cases in each category.

(e) To the extent possible, the report required by this paragraph shall include comparative data from the previous 5 years.

II.(a) The insurance commissioner shall report to the committee established in RSA 519-B:11 annually, on or before November 1 of each year, on the medical malpractice market and the effects of the panel process established in this chapter. Such reports shall include, but not be limited to, the average rates of medical liability insurance for categories of medical providers and specialties identified by the insurance commissioner, the frequency and severity of medical injury claims, and the time for resolution of medical injury claims from first notice to final resolution.

(b) The insurance commissioner may adopt rules to collect the data from insurers necessary to prepare the report required by this paragraph. To the extent the commissioner collects information from insurers regarding individual claims, loss adjustment and other expenses, reserves, indemnity payments, or other financial information that is not otherwise reported to the commissioner and available to the public, such information shall be treated as examination materials, kept confidential and not be subject to RSA 91-A.

2 Repeal. RSA 519-A, relative to professional malpractice claims, is repealed.

3 Repeal. The following are repealed:

I. RSA 519-B:11, relative to the medical malpractice panel and insurance oversight committee.

II. RSA 519-B:12, relative to reports.

4 Effective Date.

I. Section 3 of this act shall take effect December 31, 2009.

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

2004-1447s

AMENDED ANALYSIS

This bill:

I. Creates panels for medical injury claims.

II. Establishes a committee to study medical malpractice insurance rates and the effectiveness of the mandatory panel process.

III. Requires certain reports relative to medical malpractice insurance and the mandatory panels.

IV. Repeals the current hearing panels for professional malpractice claims.

A roll call was requested.

The roll call was withdrawn.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

A roll call was requested by Senator Gatsas.

Seconded by Senator Sapareto.

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

The following Senators voted No: Foster, D'Allesandro, Cohen.

Yeas: 19 - Nays: 3

Adopted.

Ordered to third reading.

Senator Larsen rule #42 on HB 1413.

HB 1282, authorizing the commissioner of insurance and the commissioner of banking to order the payment of restitution to individuals harmed by unfair or deceptive practices of licensees. Insurance Committee. Ought to pass with amendment, Vote 3-0. Senator Roberge for the committee.

Insurance

April 20, 2004

2004-1279s

01/09

Amendment to HB 1282

Amend the bill by replacing section 3 with the following:

3 Insurance; Orders and Penalty. Amend RSA 417:10 to read as follows:

417:10 Orders and Penalty.

I. If after hearing or at the expiration of the period set forth in a show cause order issued pursuant to this chapter, any person is found to have violated RSA 417:3, the commissioner may suspend, revoke, or refuse to renew the license of that person. The commissioner, in the commissioner's discretion, in addition to or in lieu of such suspension, revocation, or refusal to renew, may impose upon that person an administrative penalty of not more than \$2,500 for each method of competition, act, or practice found to be in violation of RSA 417:3. The commissioner shall collect the amount so imposed and may bring an action in the name of the state to enforce collection.

II. *In lieu of the monetary penalties provided for under paragraph I, the commissioner, after hearing, may order relief for actual economic losses to restore, in whole or in part, any individual*

consumer; as opposed to a group or class of consumers, in interest to the position that the consumer formerly occupied either by the return of that which the consumer formerly had or by receipt of its equivalent in money. Unless the parties agree, an order of relief under this paragraph shall not exceed \$2,500 for each method of competition, act, or practice found to be in violation of RSA 417:3 and where a pattern of conduct or practice has been established. Relief may be ordered under this paragraph only when the consumer in interest has agreed that such relief shall constitute a waiver of any action for the same cause that might otherwise be filed before an administrative agency or any court. Relief ordered under this paragraph shall not apply to disputes regarding claims or losses.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 1335-L, establishing a commission to examine the workers' compensation system in New Hampshire. Insurance Committee. Ought to pass with amendment, Vote 3-0. Senator Martel for the committee.

Insurance

April 20, 2004

2004-1277s

05/10

Amendment to HB 1335-LOCAL

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

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

(a) Six members of the house of representatives, 2 of whom shall serve as alternates, appointed by the speaker of the house of representatives.

(b) Three members of the senate, one of whom shall serve as an alternate, appointed by the president of the senate.

(c) The commissioner of labor, or designee.

(d) The insurance commissioner, or designee.

(e) A representative of the governor's office, appointed by the governor.

(f) Two attorneys, appointed by the department of labor, one of whom shall have expertise defending workers compensation claims and one of whom shall have expertise representing plaintiffs in workers compensation cases.

(g) A licensed physician, familiar with workers compensation issues, appointed by the New Hampshire Medical Society.

(h) Two representatives of business interests, one of whom shall be appointed by the Business and Industry Association of New Hampshire and one of whom shall be appointed by the New Hampshire chapter of the National Federation of Independent Businesses.

(i) One member of the labor field, appointed by the AFL-CIO.

Amend the bill by replacing section 4 with the following:

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

MOTION TO TABLE

Senator Martel moved to have **HB 1335-L**, laid on the table.

Adopted.

LAIID ON THE TABLE

HB 1335-L, establishing a commission to examine the workers' compensation system in New Hampshire.

CACR 5, relating to the rulemaking authority of the supreme court. Providing that the supreme court may adopt rules, that the general court may regulate these matters by statute, and that in the event of a conflict between a statute and a rule, the statute, if otherwise valid, shall prevail over the rule. Internal Affairs Committee. Ought to Pass, Vote 2-0. Senator Boyce for the committee.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

April 29, 2004

2004-1459s

06/09

Floor Amendment to CACR 5

Amend the resolution by replacing paragraph I with the following:

I. That part II, article 73-a of the constitution be repealed and reenacted in order to clarify that both the judiciary and the legislature have the authority to regulate court practices and procedures and to resolve potential conflicts that may arise, so that it reads as follows:

[Art.] 73-a. [Court Practices and Procedures.] The chief justice of the supreme court shall be the administrative head of all the courts in the state. The chief justice shall have the power, with the concurrence of a majority of the other supreme court justices, to make rules of general application regulating court administration and the practice, procedure, and admissibility of evidence, in all courts in the state. The legislature shall have a concurrent power to regulate the practice, procedure and admissibility of evidence in the courts by statutes of general application, except that such legislative enactments may not abridge the judiciary's necessary adjudicatory functions. In the event of a conflict between a rule promulgated by the judiciary and a statute enacted by the legislature, the statute, if not otherwise contrary to this constitution shall prevail over the rule.

Amend the resolution by replacing paragraph IV with the following:

IV. That the wording of the question put to the qualified voters shall be:

"Are you in favor of repealing and reenacting part II, article 73-a of the constitution in order to clarify that both the judiciary and legislature have the authority to regulate court practices and procedures and to resolve potential conflicts that may arise so that it reads as follows:

[Art.] 73-a. [Court Practices and Procedures.] The chief justice of the supreme court shall be the administrative head of all the courts in the state. The chief justice shall have the power, with the concurrence of a majority of the other supreme court justices, to make rules of general application regulating court administration and the practice, procedure, and admissibility of evidence, in all courts in the state. The legislature shall have a concurrent power to regulate the practice, procedure, and admissibility of evidence in the courts by statutes of general application, except that such legislative enactments may not abridge the judiciary's necessary adjudicatory functions. In the event of a conflict between a rule promulgated by the judiciary and a statute enacted by the legislature, the statute, if not otherwise contrary to this constitution shall prevail over the rule."

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Larsen.

Seconded by Senator Barnes.

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

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

Yeas: 6 - Nays: 17

Floor amendment failed.

Question is on the committee report of ought to pass.

A 3/5 vote is necessary.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Peterson, O'Hearn, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.

The following Senators voted No: Below, Foster, Larsen, D'Allesandro, Estabrook, Cohen.

Yeas: 18 - Nays: 6

Adopted.

Ordered to third reading.

HB 1422, relative to qualifications for persons who negotiate on behalf of the state. Internal Affairs Committee. Ought to pass with amendment, Vote 2-0. Senator Boyce for the committee.

Internal Affairs
April 14, 2004
2004-1212s
05/10

Amendment to HB 1422

Amend RSA 273-A:9, III-a as inserted by section 1 of the bill by replacing it with the following:

III-a. No person who is appointed to serve as a state negotiator or as a member of the state negotiating team or any person who serves as a member of the employee bargaining committee shall use his or her position to obtain anything of value for the private benefit of such person or the person's immediate family. Nothing in this section shall prevent an employee or taxpayer from serving on a negotiating team or bargaining committee.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 1224, establishing the Uniform Trust Code in New Hampshire. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

Senate Judiciary
April 21, 2004
2004-1340s
09/01

Amendment to HB 1224

Amend RSA 564-B:3-301 as inserted by section 1 of the bill by replacing it with the following:

564-B:3-301 Representation; Basic Effect.

(a) Notice to a person who may represent and bind another person under this article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in RSA 564-B:6-602, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) During the lifetime of the settlor, the provisions of this article shall not apply and prior law shall continue to apply in connection with a modification or termination of a trust.

Amend RSA 564-B:4-411 as inserted by section 1 of the bill by replacing it with the following:

(a) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(b) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.

(d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

Amend RSA 564-B:4-412(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Upon petition by the trustee or trustees, the director of charitable trusts or an interested party other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

Amend RSA 564-B:4-413(a)(3) as inserted by section 1 of the bill by replacing it with the following:

(3) upon petition by the trustee or trustees, the director of charitable trusts or an interested party other than the settlor, the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, to a charitable purpose which is useful to the community and which fulfills as nearly as possible the general charitable intent of the settlor.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

MOTION OF RECONSIDERATION

Senator Cohen, having voted with the prevailing side, moved reconsideration **HB 1422**, relative to qualifications for persons who negotiate on behalf of the state, whereby we ordered it to third reading.

Motion failed.

HB 1367, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Sapareto for the committee.

Senate Judiciary
April 22, 2004
2004-1359s
04/10

Amendment to HB 1367

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

AN ACT permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings; relative to simple assault; relative to requiring written notification concerning certain offenders against children; and relative to the involuntary commitment of certain persons found not competent to stand trial for certain criminal offenses.

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

1 New Paragraph; Sexual Assault; Testimony and Evidence. Amend RSA 632-A:6 by inserting after paragraph IV the following new paragraph:

V. At the request of a sexual assault victim who is 16 years of age or younger, the court shall permit the parents or legal guardians to remain with the sexual assault victim during the entirety of the court proceedings in cases under RSA 632-A.

2 Simple Assault. Amend the introductory paragraph to RSA 631:2-a, I, and RSA 631:2-a, I(a) to read as follows:

I. A person is guilty of simple assault if he *or she*:

(a) Purposely or knowingly causes bodily injury *to another*; or *purposely or knowingly causes* unprivileged physical contact to another *after being warned by such person not to cause such contact*; or

3 New Subparagraph; Registration of Criminal Offenders; Availability of Information. Amend RSA 651-B:7, IV by inserting after subparagraph (b) the following new subparagraph:

(c) A municipality may adopt an ordinance which requires that the neighbor of any person whose name appears on the list compiled under this section, and who has been released into the municipality, be notified of such person's release. The local governing body shall establish the definition of "neighbor" that is best suited to the particular municipality.

4 Involuntary Admission for Persons Found Not Competent to Stand Trial. Amend RSA 171-B:4 and RSA 171-B:5 to read as follows:

171-B:4 Petition. The petition for admission on an involuntary basis shall include:

I. The name of the person sought to be admitted and such person's last known address.

II. The specific facts that the petitioner alleges satisfy RSA 171-B:2, *I – IV. Satisfaction of these 4 criteria shall create a presumption that the person sought to be admitted poses a potentially serious likelihood of danger to others and therefore satisfies RSA 171-B:2, IV.*

III. ~~[A certificate from a physician, psychiatrist, or psychologist who shall have experience and training in mental retardation, who has examined the person and reviewed the condition or behavior of the person sought to be admitted within 10 days of the date the petition is filed and who agrees that, based on this examination, such person satisfies RSA 171-B:2, IV and V.~~

~~IV.]~~ The names and addresses of witnesses who can testify to the specific acts, conditions, or behaviors of the person sought to be admitted which the petitioner alleges will satisfy the requirements of RSA 171-B:2.

IV. The name and address of the victim of the person's alleged felonious conduct. If the victim was a minor, the petition shall include the name and address of the victim's parent or guardian.

171-B:5 Hearing Date. The probate court judge of original jurisdiction shall, upon receipt of the petition, set a hearing date. The hearing shall be held within 20 days, excluding Saturdays, Sundays, and legal holidays, from the date of receipt of the petition. ***The court shall provide notice of the hearing date to the victims identified in the petition.***

5 Involuntary Admission for Persons Found Not Competent to Stand Trial. Amend RSA 171-B:7, II to read as follows:

II. Whether involuntary admission ***into the state developmental services delivery system*** is necessary; and

6 Involuntary Admission for Persons Found Not Competent to Stand Trial. Amend RSA 171-B:12 to read as follows:

171-B:12 Order of Court.

I. If, after the hearing, the court finds by clear and convincing evidence that the person meets the standard set forth in RSA 171-B:2, the court shall order the person to submit to:

~~[I.]~~ ***(a)*** Treatment and services in a receiving facility within the state developmental services delivery system;

~~[II.]~~ ***(b)*** Treatment and services within the state developmental services delivery system other than inpatient treatment; or

~~[III.]~~ ***(c)*** Treatment and services in the secure psychiatric unit if the court determines that the programs and placements enumerated in paragraph I or II do not provide sufficient security and protection to the public.

II. The court shall provide a copy of the order to the victims identified in the petition.

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

2004-1359s

AMENDED ANALYSIS

This bill:

I. Provides that the court, at the request of a sexual assault victim who is 16 years of age or younger, shall permit the parents or legal guardians to remain with the sexual assault victim during the entirety of the court proceedings in cases under RSA 632-A.

II. Provides that an actor who purposely or knowingly ignores another person's warning not to engage in physical contact with such person shall be guilty of simple assault.

III. Provides that a municipality may adopt an ordinance which requires that the neighbor of any person whose name appears on the list of registered criminal offenders, and who has been released into the municipality, be notified of such person's release.

IV. Makes various changes to the petition and hearing procedures for involuntary commitment.

Senator Below moved to divide the question.

The Chair announced that if there were no objections it would be divisible.

There were no objections.

The question is on adoption of sections one, three and seven.

Adopted.

The question is on the adoption of sections two, four, five and six.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Green, Flanders, Odell, Roberge, Peterson, O'Hearn, Foster, Clegg, Gatsas, Barnes, Martel, Sapareto, Morse, Prescott.

The following Senators voted No: Below, Larsen, D'Allesandro, Estabrook, Cohen.

Yeas: 17 - Nays: 5

Adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Boyce is excused.

HB 1394, relative to de novo appeals in certain criminal proceedings. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Clegg for the committee.

Committee report of inexpedient to legislate is adopted.

HB 493, relative to the municipal budget act. Public Affairs Committee. Ought to Pass, Vote 4-0. Senator Morse for the committee.

Adopted.

Ordered to third reading.

HB 1172-L, relative to compensation of county convention members for county business. Public Affairs Committee. Inexpedient to Legislate, Vote 3-1. Senator Roberge for the committee.

Committee report of inexpedient to legislate is adopted.

HB 1263, establishing a committee to study the feasibility of creating a trust fund to support a family and disability leave program. Public Affairs Committee. Inexpedient to Legislate, Vote 4-0. Senator Green for the committee.

Committee report of inexpedient to legislate is adopted.

HB 1302, relative to rental contracts or leases entered into by individuals who are subsequently called to service in the armed forces. Public Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

Public Affairs
April 21, 2004
2004-1332s
06/09

Amendment to HB 1302

Amend RSA 540:11-a, II as inserted by section 1 of the bill by replacing it with the following:

II. The lessee or tenant shall give notice of termination within 7 days of receipt of notice of being called to active duty or being reassigned out of the state.

III. The lessee or tenant shall terminate the lease or rental agreement by a written notice in accordance with the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C., section 534.

2004-1332s

AMENDED ANALYSIS

This bill allows a member of the armed services reserve or national guard, who is called to active duty, or a member of the military on active duty who is transferred to another state, to terminate a real estate lease or rental agreement.

Amendment adopted.

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17

April 28, 2004

2004-1425s

06/01

Floor Amendment to HB 1302

Amend RSA 540:11-a, III as inserted by section 1 of the bill by replacing it with the following:

III. The lessee or tenant shall terminate the lease or rental agreement by a written notice in accordance with the Service members Civil Relief Act, Public Law 108-189, Section 305.

Floor amendment adopted.**Question is on the adoption of the bill as amended.****Adopted.****Ordered to third reading.**

HB 1376, relative to agency fees assessed pursuant to public employer collective bargaining agreements. Public Affairs Committee. Ought to Pass, Vote 4-0. Senator Roberge for the committee.

MOTION TO TABLE

Senator Roberge moved to have **HB 1376**, laid on the table.

Adopted.**LAID ON THE TABLE**

HB 1376, relative to agency fees assessed pursuant to public employer collective bargaining agreements.

HB 1401-FN, limiting the use of traffic signal preemption devices. Transportation Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

Senate Transportation

April 14, 2004

2004-1211s

04/10

Amendment to HB 1401-FN

Amend RSA 265:15, II (c) as inserted by section 1 of the bill by replacing it with the following:

(c) This paragraph shall not apply to:

(1) Federal, state, or local law enforcement personnel while in the course of their official duties.

(2) Firefighters while in the course of their official duties.

(3) Emergency medical services personnel while in the course of their official duties.

(4) State or municipal department of transportation or highway personnel while in the course of their official duties.

(d) The exemptions set forth in subparagraphs (c)(1)-(c)(4) shall only apply to such personnel when they are operating licensed ambulances, licensed fire apparatus, or government-owned vehicles.

Amendment adopted.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7
 April 15, 2004
 2004-1236s
 04/05

Floor Amendment to HB 1401-FN

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

AN ACT limiting the use of traffic signal preemption devices, establishing a commission to study railroad matching funds, and authorizing an expenditure for a certain feasibility study.

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

2 Commission Established. There is established a commission to study railroad matching funds.

3 Membership and Compensation.

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

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

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

(c) The governor, or designee.

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

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

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

4 Duties. The commission shall study innovative ways to fund railroad construction and shall look at the availability of matching funds for railroad projects.

5 Chairperson; Quorum. The governor, or designee shall be the chairperson. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Five members of the commission shall constitute a quorum.

6 Report. The commission shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, 2004.

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

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

8 Effective Date.

I. Section 1 of this act shall take effect January 1, 2005.

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

2004-1236s

AMENDED ANALYSIS

This bill:

I. Prohibits the use of traffic signal preemption devices, except for official use by federal, state, or local law enforcement personnel, firefighters, emergency medical services personnel, and state or municipal department of transportation or highway personnel.

II. Establishes a commission to study innovative ways to fund railroad construction including matching fund programs.

III. Authorizes the commissioner of transportation to spend money in the special railroad fund for the feasibility study for the high speed rail connection between Boston and Montreal.

Floor amendment adopted.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

Sen. Below, Dist. 5

Sen. Barnes, Dist. 17

April 29, 2004

2004-1465s

04/10

Floor Amendment to HB 1401-FN

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

AN ACT limiting the use of traffic signal preemption devices, establishing a commission to study railroad matching funds, authorizing an expenditure for a certain feasibility study, and relative to landowner permission for OHRV operation and loading and unloading OHRVs on highways.

Amend the bill by replacing all after section 7 with the following:

8 OHRV Operation; Permission; Private Property and Public Property. Amend the introductory paragraph of RSA 215-A:29, XI to read as follows:

XI. No person shall operate an OHRV on the [private] property of another unless such operator has obtained written permission from the landowner except as follows:

9 Repeal. RSA 215-A:9, VI, relative to loading and unloading OHRVs on highways for trail access, is repealed.

10 Effective Date.

I. Sections 1, 8, and 9 of this act shall take effect January 1, 2005.

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

2004-1465s

AMENDED ANALYSIS

This bill:

I. Prohibits the use of traffic signal preemption devices, except for official use by federal, state, or local law enforcement personnel, firefighters, emergency medical services personnel, and state or municipal department of transportation or highway personnel.

II. Establishes a commission to study innovative ways to fund railroad construction including matching fund programs.

III. Authorizes the commissioner of transportation to spend money in the special railroad fund for the feasibility study for the high speed rail connection between Boston and Montreal.

IV. Requires persons operating OHRVs to have permission from private and public landowners.

V. Repeals an exception for loading and unloading OHRVs on highways from the prohibition on operating in highway rights-of-way.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 1316-FN-A, relative to the computation of tax on certain telecommunications services under the communications services tax and establishing a committee to study the feasibility of unbundling communications services charges. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator D'Allesandro for the committee.

Adopted.

Ordered to third reading.

MOTION TO TAKE OFF THE TABLE

Senator Gatsas moved to have **HB 1221**, taken of the table.

Adopted.

HB 1221, urging the oversight committee on telecommunications to study aspects of federal universal service funding.

Question is on the adoption of the committee amendment (1100).

Amendment failed.

Senator Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

April 28, 2004

2004-1420s

03/04

Floor Amendment to HB 1221

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

AN ACT relative to the universal service fund.

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

1 Oversight Committee on Telecommunications Study. The oversight committee on telecommunications, established in RSA 374:22-h, is hereby urged to study the reasons for the net loss of money from the state, the low rate of funding for schools and libraries, and to identify viable ways of remedying the situation, whether by:

I. Decreasing payments to the fund, if possible.

II. Advocating for revised program grant criteria that would be more favorable to applicants from New Hampshire.

III. Implementing an ongoing, coordinated, statewide effort to increase the number of successful applications to the fund by eligible New Hampshire parties.

2 Universal Service Fund; Application Instructions. The commissioner of the department of education shall, within 60 days of the effective date of this section, develop and distribute to New Hampshire school districts concise instructions on the proper methods for application for the schools and libraries portion of the universal service fund.

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

2004-1420s

AMENDED ANALYSIS

This bill:

I. Urges the oversight committee on telecommunications to study aspects of federal universal service funding.

II. Requires the commissioner of the department of education to develop and distribute application instructions for universal service funding.

Floor amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

MOTION TO TAKE OFF THE TABLE

Senator Roberge moved to have **HB 85-FN-L**, taken of the table.

Adopted.

HB 85-FN-L, relative to the budget adoption procedure in political subdivisions which have adopted official ballot voting.

Question is on the adoption of the committee amendment (1186).

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SUSPENSION OF THE RULES

Senator Sapareto moved that the rules of the New Hampshire Senate be so far suspended as to dispense with the referral to committee, a committee hearing, notice of hearing, a committee report, and notice of report in the calendar and that **SJR 3**, be on second reading at the present time.

Adopted by the necessary 2/3 vote.

SJR 3, urging the United States Supreme Court to retain the words "under God" in the pledge of allegiance.

Senator Sapareto moved ought to pass.

Question is on the adoption of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Gatsas.

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

The following Senators voted No: None.

Yeas: 21 - Nays: 0

Adopted.

Ordered to third reading.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 19-FN, relative to notification of groundwater contamination and requiring a certain report from the department of environmental services.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 19-FN, relative to notification of groundwater contamination and requiring a certain report from the department of environmental services.

Senator Johnson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 128-FN, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 128-FN, transferring the bureau of vital records and health statistics from the department of health and human services to the department of state.

Senator Prescott moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

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

SENATE CONCURS WITH HOUSE AMENDMENT

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

Senators Roberge moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 344, relative to the use of gifts and donations to the fish and game department and relative to off high-way recreational vehicle fees.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 344, relative to the use of gifts and donations to the fish and game department and relative to off high-way recreational vehicle fees.

Senator Gallus moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 351-FN, relative to concurrent enrollment at regional vocational education centers.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 351-FN, relative to concurrent enrollment at regional vocational education centers.

Senator O'Hearn moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 355, relative to the regulation and servicing of portable fire extinguishers and fixed fire extinguishing systems, fire sprinkler systems, and fire alarm and detection systems.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 355, relative to the regulation and servicing of portable fire extinguishers and fixed fire extinguishing systems, fire sprinkler systems, and fire alarm and detection systems.

Senator Roberge moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 361-FN-A, relative to fees of the postsecondary education commission for preserving certain academic records.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 361-FN-A, relative to fees of the postsecondary education commission for preserving certain academic records.

Senator Green moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 377, relative to damage to land by certain recreational uses.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 377, relative to damage to land by certain recreational uses.

Senator Gallus moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 380, establishing a statewide incident command system.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 380, establishing a statewide incident command system.

Senator Prescott moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 399-FN, relative to the sale of animals.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 399-FN, relative to the sale of animals.

Senator Gallus moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 432-FN, establishing a division of emergency services, communications, and management, a division of fire standards and training and emergency medical services and a division of fire safety in the department of safety.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 432-FN, establishing a division of emergency services, communications, and management, a division of fire standards and training and emergency medical services and a division of fire safety in the department of safety.

Senator Prescott moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 451, giving degree-granting authority to the Hellenic American University and the St. Joseph's School of Nursing.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 451, giving degree-granting authority to the Hellenic American University and the St. Joseph's School of Nursing.

Senator O'Hearn moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 455, removing the requirement that district courts be open on Saturdays for arraignments.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 455, removing the requirement that district courts be open on Saturdays for arraignments.

Senator Peterson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 465, relative to testimony of witnesses about confidential settlements.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 465, relative to testimony of witnesses about confidential settlements.

Senator Peterson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

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

SENATE CONCURS WITH HOUSE AMENDMENT

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

Senator Johnson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 469, relative to licensing of boiler inspectors.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 469, relative to licensing of boiler inspectors.

Senator Prescott moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 488, establishing a committee to study the effects of electric utility restructuring on state dams and the alternatives for the operation and maintenance of state-owned dams.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 488, establishing a committee to study the effects of electric utility restructuring on state dams and the alternatives for the operation and maintenance of state-owned dams.

Senator Odell moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SCR 5, commending the United States Congress for supporting full concurrent receipt of disability and retirement benefits by disabled veterans.

SENATE CONCURS WITH HOUSE AMENDMENT

SCR 5, commending the United States Congress for supporting full concurrent receipt of disability and retirement benefits by disabled veterans.

Senator Prescott moved to concur.

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**

HB 85-FN-L, relative to the budget adoption procedure in political subdivisions which have adopted official ballot voting.

HB 493, relative to the municipal budget act.

HB 1221, urging the oversight committee on telecommunications to study aspects of federal universal service funding.

HB 1224, establishing the Uniform Trust Code in New Hampshire.

HB 1282, authorizing the commissioner of insurance and the commissioner of banking to order the payment of restitution to individuals harmed by unfair or deceptive practices of licensees.

HB 1302, relative to rental contracts or leases entered into by individuals who are subsequently called to service in the armed forces.

HB 1316-FN-A, relative to the computation of tax on certain telecommunications services under the communications services tax and establishing a committee to study the feasibility of unbundling communications services charges.

HB 1367, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings.

HB 1401-FN, limiting the use of traffic signal preemption devices.

HB 1413, relative to the creation of mandatory panels for medical injury claims and to the testimony of expert witnesses and establishing a committee to study medical malpractice insurance rates and mandatory panels for medical injury claims.

HB 1422, relative to qualifications for persons who negotiate on behalf of the state.

CACR 5, relating to the rulemaking authority of the supreme court. Providing that the supreme court may adopt rules, that the general court may regulate these matters by statute, and that in the event of a conflict between a statute and a rule, the statute, if otherwise valid, shall prevail over the rule.

SJR 3, urging the United States Supreme Court to retain the words "under God" in the pledge of allegiance.

ANNOUNCEMENTS

Senator Barnes Rule #44.

RESOLUTION

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

Adopted.

In recess to the Call of the Chair.