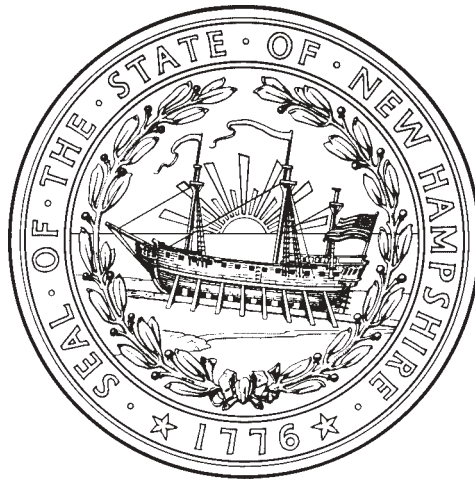


April 13, 2006
Nos. 10 - 11

STATE OF NEW HAMPSHIRE

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



Legislative

SENATE JOURNAL

ADJOURNMENT – APRIL 6, 2006 SESSION
COMMENCEMENT – APRIL 13, 2006 SESSION

SENATE JOURNAL 10 (*Cont.*)

April 6, 2006

HOUSE MESSAGE

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

SB 256, relative to the definition of “harm” for purposes of the crime of improper influence.

SB 274, adding court security to the duties of the New Hampshire court accreditation commission.

SB 289-FN, relative to the brain and spinal cord advisory council.

SB 296-FN, relative to recovery of public assistance.

SB 349, relative to the HIV/AIDS service delivery system.

SB 379-FN, relative to harm or threats to certain government officials.

SB 396, repealing the rulemaking authority of the New Hampshire children’s trust fund board.

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:

SB 350-FN, relative to boarding kennels.

HOUSE MESSAGE

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

HB 1147, relative to the conduct of recounts.

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 334, relative to the type of notice provided in court proceedings.

HB 413, relative to the appointment of the chief justice of the superior court and the number of superior court associate justices.

HB 460-FN, relative to the reimbursement to certain providers by the bureau of emergency communications.

HB 544, relative to the land and community heritage program.

HB 649-FN-A-L, establishing a commission to study the costs and funding of medicolegal investigations and autopsies.

HB 1657, establishing a wildlife legacy initiative for gifts and donations for fish and wildlife conservation programs.

Out of Recess.

LATE SESSION

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

Adopted.

Adjournment.

SENATE JOURNAL 11

April 13, 2006

The Senate met at 10:00 a.m.

A quorum was present.

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

Lord of endless, uncompromising and unconditional forgiveness, in the midst of our sometimes flailing brokenness, give us a few Maundy moments to remind us of those better angels that lie within us all. Amen

Senator Foster led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

MOTION TO VACATE

Senator Odell moved to vacate **HB 1626**, relative to appropriations for the expenses of certain departments of the state, from the Energy and Economic Development Committee to the Finance Committee.

Adopted.

HB 1626, relative to appropriations for the expenses of certain departments of the state is vacated to the **Finance Committee**.

COMMITTEE REPORTS

HB 1692-FN, establishing the New Hampshire sexual predators act. Judiciary Committee. Ought to pass with amendment, Vote 4-1. Senator Foster for the committee.

Senate Judiciary

April 7, 2006

2006-1700s

04/05

Amendment to HB 1692-FN

Amend the bill by replacing section 13 with the following:

13 New Sections; Registration of Criminal Offenders; Registration Fee; Application. Amend RSA 651-B by inserting after section 10 the following new sections:

651-B:11 Registration Fee.

I. A sexual offender or offender against children shall pay a fee of \$15 at the time of the offender's initial registration and semi-annually at the time of the offender's re-registration. The department shall use all fees collected under this paragraph to defray the costs of maintaining the sex offender registry. Such funds shall be nonlapsing and shall be continually appropriated to the department for such use.

II. Anyone required to pay the registration fee who cannot afford to pay the fee shall, within 10 days of registration, request a waiver of the fee and a hearing on the matter before the commissioner. If such a request is made, the commission shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. At the hearing the offender shall have the burden to prove that the offender cannot afford to pay the fee because the offender is indigent. After hearing, the decision of the commission shall be final, and the offender shall have a right to appeal the decision in the superior court. Under no circumstances shall the offender's request for a hearing or indigency relieve the offender of the obligation to register pursuant to the time-frames required by this chapter.

651-B:12 Application. Whenever possible, the provisions of this chapter shall be interpreted and applied consistent with the provisions of the federal Jacob Wetterling Act, as amended.

Amend the introductory paragraph to RSA 651:6, IV and RSA 651:6 IV(a) as inserted by section 20 of the bill by replacing them with the following:

IV. If authorized by subparagraphs I(l), (m), or (n) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person shall be sentenced to an extended term of imprisonment as follows:

(a) A minimum to be fixed by the court of not less than 25 years and a maximum of life imprisonment; and

Amend RSA 135-E:10 as inserted by section 21 of the bill by replacing it with the following:

135-E:10 Rules of Procedure and Evidence. In all civil commitment proceedings for sexually violent predators under this chapter:

I. The doctor-patient privilege under RSA 329:26, privileged communications pursuant to RSA 330-A:32, or other similar statutes or rules shall not apply in proceedings under this chapter.

II. The court may consider evidence of the person's prior conduct if such evidence is relevant to the issue of whether the person is a sexually violent predator.

III. Reports by a member of the multidisciplinary team or reports provided on behalf of the multidisciplinary team shall be inadmissible in proceedings under this chapter unless the court finds the report's probative value substantially outweighs its prejudicial effect.

Amend RSA 135-E:11, II as inserted by section 21 of the bill by replacing it with the following:

II. If the court or jury determines that the person is a sexually violent predator, upon the expiration of the incarcerative portion of all criminal sentences and disposition of any detainers other than detainers for deportation by the United States Bureau of Citizenship and Immigration Services, the person shall be committed to the custody of the department of corrections for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person no longer poses a potentially serious likelihood of danger to others. Persons who are detained or committed under this chapter shall be held at the secure psychiatric unit of the New Hampshire state prison or other appropriate facility controlled or contracted by the department of corrections if available. An order committing a person shall be valid for up to 5 years.

Amendment adopted.

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17

April 12, 2006

2006-1769s

04/10

Floor Amendment to HB 1692-FN

Amend RSA 651:6, I (l) as inserted by section 18 of the bill by replacing it with the following:

(l) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, II where the defendant was 18 years of age or older at the time of the offense;

Amend the introductory paragraph to RSA 651:6, IV as inserted by section 20 of the bill by replacing it with the following:

IV. If authorized by subparagraphs I(m) or (n) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person may be sentenced to an extended term of imprisonment as follows:

Amend the bill by inserting after section 20 the following and renumbering the original sections 21-29 to read as 22-30, respectively:

21 New Chapter; Surgical Castration. Amend RSA by inserting after chapter 651-D the following new chapter:

CHAPTER 651-E SURGICAL CASTRATION

651-E:1 Surgical Castration for Offenders Against Children.

I. In lieu of incarceration, or confinement under RSA 135-E, the court shall order a defendant convicted under RSA 632-A:2, I(l) to be surgically castrated. The department of corrections shall provide the medical services required under this section through a licensed physician employed or retained by the department.

II. The surgery shall be performed no more than 5 days after the exhaustion of all available legal appeals. The defendant shall be incarcerated while awaiting appeal and shall be released immediately upon completion of the surgical castration procedure.

III. No physician shall be subject to civil or criminal liability for providing medical services as required under this section, unless such actions constituted gross negligence or recklessness.

IV. Any cost associated with the medical procedure required under this chapter shall be borne by the state. Amend the bill by replacing section 30 with the following:

30 Effective Date.

I. Sections 27, 28, and 30 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2007.

A division vote was requested.

Yeas: 8 - Nays: 16

Floor amendment failed.

The question is on the motion of ought to pass as amended.

A roll call was requested by Senator Clegg.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, Morse, Hassan, Fuller Clark.

The following Senators voted No: Gottesman, D'Allesandro, Estabrook.

Yeas: 21 - Nays: 3

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

Adopted.

Ordered to third reading.

HB 1452-FN, requiring insurance coverage for the cost of testing for bone marrow donation. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Gottesman for the committee.

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

A roll call was requested by Senator Barnes.

Seconded by Senator Kenney.

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

The following Senators voted No: None.

Yeas: 23 - Nays: 0

Adopted.

Ordered to third reading.

Senator Green is in favor of HB 1452-FN.

HB 1209, relative to notification requirements for criminal offenders. Education Committee. Ought to Pass, Vote 2-0. Senator Eaton for the committee.

MOTION TO TABLE

Senator Clegg moved to have HB 1209 laid on the table.

Adopted.

LAID ON THE TABLE

HB 1209, relative to notification requirements for criminal offenders.

HB 1214, establishing a study committee to identify and assess community-based, educational and social/human services programs that serve families with children 8 years old and younger. Education Committee. Ought to Pass, Vote 4-0. Senator Estabrook for the committee.

MOTION TO TABLE

Senator Estabrook moved to have HB 1214 laid on the table.

Adopted.

LAID ON THE TABLE

HB 1214, establishing a study committee to identify and assess community-based, educational and social/human services programs that serve families with children 8 years old and younger.

HJR 21, urging the university of New Hampshire to restore intercollegiate baseball and softball. Education Committee. Ought to Pass, 4-0. Senator Johnson for the committee.

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

A roll call was requested by Senator Green.

Seconded by Senator Barnes.

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

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

HB 1433, establishing a committee to study secured landfills and establishing a moratorium on the incineration of construction and demolition waste. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Bragdon for the committee.

Senator Odell offered a floor amendment.

Sen. Odell, Dist. 8

Sen. Larsen, Dist. 15

April 12, 2006

2006-1790s

08/09

Floor Amendment to HB 1433

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

AN ACT establishing a moratorium on the incineration of construction and demolition waste.

Amend the bill by deleting sections 1-5 and renumbering the original sections 6-7 to read as 1-2, respectively.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect June 30, 2006.

2006-1790s

AMENDED ANALYSIS

This bill establishes a moratorium on the incineration of construction and demolition waste.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

HB 1491, establishing a committee to study the publicly owned treatment plant needs of New Hampshire. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-0. Senator Burling for the committee.

Energy and Economic Development

April 5, 2006

2006-1636s

08/01

Amendment to HB 1491

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

AN ACT establishing a committee to study the publicly owned treatment plant needs of New Hampshire and extending certain deadlines relating to the Great Bay Estuary Commission.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 8:

6 Great Bay Estuary Commission; Reporting Date Extended. Amend 2003, 236:5 as amended by 2004, 20:11 and 2005, 104:4 to read as follows:

236:5 Report. The commission shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before ~~[November 1, 2006]~~ **June 1, 2008**.

7 EAST; First Meeting Deadline, Extended. Amend 2004, 258:2 to read as follows:

258:2 First Meeting. The chairperson of the Great Bay Estuary commission, established by 2003, 236, shall call the first meeting of EAST prior to ~~[November 1, 2005]~~ **June 1, 2008**.

2006-1636s

AMENDED ANALYSIS

This bill establishes a committee to study the publicly owned treatment plant needs of New Hampshire.

This bill also extends the reporting deadline of the Great Bay Estuary Commission and extends the first meeting deadline of the Estuary Alliance for Sewage Treatment.

MOTION TO TABLE

Senator Burling moved to have HB 1491 laid on the table.

Adopted.

LAI D ON THE TABLE

HB 1491, establishing a committee to study the publicly owned treatment plant needs of New Hampshire.

HB 1568, establishing a committee to study the siting and construction of commercial wind energy facilities. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Odell for the committee.

MOTION TO TABLE

Senator Odell moved to have HB 1568 laid on the table.

Adopted.

LAI D ON THE TABLE

HB 1568, establishing a committee to study the siting and construction of commercial wind energy facilities.

HB 1269, relative to the taking of red deer or elk. Environment and Wildlife Committee. Inexpedient to Legislate, Vote 3-2. Senator Barnes for the committee.

MOTION TO TABLE

Senator Barnes moved to have HB 1269 laid on the table.

Adopted.

LAI D ON THE TABLE

HB 1269, relative to the taking of red deer or elk.

HB 1324, relative to the commission to study the state park system. Environment and Wildlife Committee. Ought to Pass, Vote 3-0. Senator Gallus for the committee.

Adopted.

Ordered to third reading.

HB 1407-FN-A, relative to funding exotic aquatic weeds eradication and control. Environment and Wildlife Committee. Ought to Pass, Vote 5-0. Senator Johnson for the committee.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

April 6, 2006

2006-1685s

06/04

Floor Amendment to HB 1407-FN-A

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

AN ACT relative to funding exotic aquatic weeds eradication and control and relative to boat fee agents of the department of safety and increasing the boat registration fee.

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

2 Collection; Agents; Fee Remitted to Department of Safety. Amend RSA 72-A:4, I(a) to read as follows:

(a) An agent of the department of safety duly authorized to issue boat registrations under RSA 270-E. These agents shall furnish a surety bond as required in RSA 41:6 **and except for the collection fee under paragraph III, shall remit all fees collected to the department of safety,**

3 Town Treasurer; Payment by Agents of the Department of Safety Removed. Amend RSA 72-A:5 to read as follows:

72-A:5 [~~Town Treasurer.~~] **Disposition of Fees.**

I. Every clerk[;] **and** tax collector[~~, and authorized agent~~] shall each week send all boat fees collected to [his] **the** town or city treasurer. Except as provided in paragraph II, boat fees shall be for the general use of the town or city.

II. When the boat fee is collected by the department of safety **or its agents**, the fee shall **each week** be deposited in the navigation safety fund established under RSA 270-E:6-a.

4 Increase in Boat Registration Fee for Lakes Restoration and Preservation Fund. Amend RSA 270-E:5, II(a) to read as follows:

(a) [~~\$5~~] **\$9** for each registration specified in paragraph I. The fees collected under this subparagraph shall be paid into the lake restoration and preservation fund established under RSA 487:25.

5 Lake Restoration and Preservation Fund; Milfoil and Other Exotic Aquatic Plants Prevention Program. Amend RSA 487:25, I to read as follows:

I. The fee of [~~\$5~~] **\$9** collected under the provisions of RSA 270-E:5, II(a) shall be paid to the director of the division of motor vehicles. The director of the division of motor vehicles shall pay over said fee to the state treasurer who shall keep the fee in a special fund to be expended by the department of environmental services. The department shall use \$.50 of the fee for lake restoration and preservation measures, exclusive of exotic aquatic weed control, [~~\$1.50~~] **\$5.50** of the fee for the control of exotic aquatic weeds, and \$3 of the fee for the milfoil and other exotic aquatic plants prevention program. The department shall deposit the \$3 into a special account within the lake restoration and preservation fund which shall be used to administer the milfoil and other exotic aquatic plants prevention program. The special fund shall be nonlapsing. All funds received under this section are continually appropriated to the department for the purposes of this subdivision.

6 Effective Date. This act shall take effect July 1, 2007.

2006-1685s

AMENDED ANALYSIS

This bill:

I. Makes permanent the milfoil and other exotic aquatic plants prevention program and the increase in the boat registration fee used to fund the lakes restoration and preservation fund for exotic aquatic weeds prevention and eradication. Currently the increase in the boat registration fee is repealed on January 1, 2008.

II. Requires the agents of the department of safety who collect boat fees to remit the fees to the department of safety.

III. Increases the boat registration fee and applies the increase in the boat registration fee to exotic aquatic weed control.

Floor amendment adopted.

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

Adopted.

Referred to the Finance Committee (Rule #26).

Senators Barnes, Clegg, Gatsas and Letourneau are in opposition to HB 1407-FN-A.

HB 1464-FN-A-L, relative to mosquito control, establishing a mosquito control fund and making an appropriation therefor. Environment and Wildlife Committee. Ought to Pass, Vote 5-0. Senator Hassan for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 1603-FN, relative to administration and enforcement by the division of forests and lands over forest resources and timber harvesting. Environment and Wildlife Committee. Ought to Pass, Vote 4-0. Senator Johnson for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 1688, prohibiting the use of gasoline-powered watercraft on Head's Pond in Hooksett. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Environment and Wildlife

April 4, 2006

2006-1634s

03/04

Amendment to HB 1688

Amend the bill by replacing section 2 with the following:

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

Amendment adopted.

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

Adopted.

Ordered to third reading.

HB 115, allowing pharmacists to establish collaborative practice agreements with medical practitioners. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

Adopted.

Ordered to third reading.

HB 624-FN, relative to penalties in certain health and health-related professions. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Barnes for the committee.

Adopted.

Ordered to third reading.

HB 1590-FN, relative to the pari-mutuel commission. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Kenney for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 1671-FN, relative to the regulation of dentists and dental hygienists by the board of dental examiners. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

April 5, 2006

2006-1659s

10/03

Amendment to HB 1671-FN

Amend RSA 317-A:21-c, II(f) as inserted by section 2 of the bill by replacing it with the following:

(f) The administration of nitrous oxide/oxygen minimal sedation (anxiolysis); provided the dental hygienist is qualified by the board after training and after passing an examination approved by the board.

Amendment adopted.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

April 13, 2006

2006-1802s

10/09

Floor Amendment to HB 1671-FN

Amend RSA 317-A:27-a as inserted by section 3 of the bill by replacing it with the following:

317-A:27-a Dental Records. Dentists and dental hygienists shall make a record of all examinations and treatments performed or recommended. The record shall be in such a manner and in sufficient detail that it may be used for identification purposes. A dentist shall maintain patients' ***paper, electronic, and radiographic*** records for at least 7 years from the time the dentist or dental hygienist last treated the patient. In the case of a minor patient, a dentist shall maintain a patient's ***paper, electronic, and radiographic*** dental records for at least 7 years past the age of majority.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

HB 1697-FN, relative to certain state salaries. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Flanders for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 1722-FN, relative to the New Hampshire council on developmental disabilities. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Flanders for the committee.

Adopted.

Ordered to third reading.

Senator Green is in favor of HB 1722-FN.

HB 234-FN, relative to the development of a state and political subdivision information network. Finance Committee. Inexpedient to Legislate, Vote 6-0. Senator Odell for the committee.

Committee report of inexpedient to legislate is adopted.

HB 690-FN, relative to aid to the needy blind and relative to undue hardship for public assistance. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

Senate Finance

April 5, 2006

2006-1653s

01/09

Amendment to HB 690-FN

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

AN ACT relative to aid to the needy blind to undue hardship for public assistance, and to eligibility for and recovery of public assistance.

Amend the bill by replacing all after section 2 with the following:

3 Eligibility for Assistance. Amend RSA 167:4, IV(b) to read as follows:

(b) **(1)** Notwithstanding any provision of law to the contrary *and consistent with section 1917(e) of the Social Security Act as amended by the Deficit Reduction Act of 2005, (DEFRA), Public Law 190-171*, for purposes of medicaid eligibility, investment in annuities shall be limited to those annuities that:

[4] **(A)** Are actuarially sound as measured against the Social Security Administration Life Expectancy tables as amended;

[2] **(B)** Provide equal or nearly equal payments for the duration of the device and which exclude "balloon" style final payments; and

[3] **(C)** Provide state of New Hampshire secondary or contingent beneficiary status ensuring payment if the individual predeceases the duration of the annuity, in an amount equal to the medicaid expenditure made by the state of New Hampshire on the individual's behalf.

(2) All such annuities owned by the applicant or the applicant's spouse shall be disclosed to the department at the time of the application.

4 Eligibility for Assistance. RSA 167:4, IV(d) is repealed and reenacted to read as follows:

(d) Pursuant to section 1917(b)(1) of the Social Security Act as amended by DEFRA, the commissioner shall submit a state plan amendment establishing a long-term care partnership recognizing the investment in long-term care insurance policies by Medicaid applicants by disregarding resources or assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy which meets the criteria described in DEFRA and regulations promulgated thereunder. The estates of recipients of medical assistance for institutional level of care for whom the resource ceiling has been adjusted as described in this subparagraph, shall be exempt from recovery pursuant to RSA 167:13 and RSA 167:14 in an amount equal to the insurance benefit payments received.

5 Claims and Liens. Amend RSA 167:14-a, VI to read as follows:

VI. For purposes of recovering the costs of medical assistance, the estate of a recipient shall include all property, real or personal, which at the time of a recipient's death was held by the recipient in joint tenancy with rights of survivorship, tenancy in common, *or* life estate~~[-or living trust]~~, without regard to the date that such title or interest was established. No sooner than 45 days from the death of the recipient, the department shall provide the other joint owner or owners notice of the department's claim. Within 30 days of the receipt of notification of the department's claim, the joint owner or owners shall acknowledge receipt of the department's claim and, provided that there shall not be undue hardship imposed upon the surviving joint owner or owners, either tender an amount equal to the deceased recipient's interest in the identified property and/or financial instrument to the state of New Hampshire toward the deceased's medical assistance bill, but such amount shall not exceed the total amount of medical assistance provided to the deceased recipient, or enter into a binding agreement to make such payment as soon as is practicable. If the joint owner or owners refuse to acknowledge receipt of the department's claim or to tender payment or fail to fulfill the agreement to pay without good cause, as required by this paragraph, the commissioner may bring an action in superior court to compel such payment. Nothing in this paragraph shall be interpreted or applied so as to violate RSA 167:16-a, IV or 42 U.S.C. section 1396p(b)(2)(A) prohibiting recovery when the recipient is survived by a spouse, minor children, or disabled children.

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

2006-1653s

AMENDED ANALYSIS

This bill adds the category of aid to the needy blind to a certain provision of law. This bill clarifies undue hardship for purposes of public assistance.

This bill also clarifies eligibility for assistance procedures regarding annuities and recovery of such assistance regarding certain insurance.

Amendment adopted.

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

Adopted.

Ordered to third reading.

HB 1189, relative to audits by the legislative budget assistant. Finance Committee. Ought to Pass, Vote 5-2. Senator Morse for the committee.

Adopted.

Ordered to third reading.

HB 1227-FN, relative to late fees and reinstatement fees paid by business entities. Finance Committee. Ought to Pass, Vote 6-0. Senator Boyce for the committee.

Adopted.

Ordered to third reading.

Senator Clegg (Rule #42) on HB 1227-FN.

HB 1243-FN, reducing certain fines for motor vehicle violations. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator Morse for the committee.

Senate Finance

April 5, 2006

2006-1654s

03/09

Amendment to HB 1243-FN

Amend the bill by replacing section 30 with the following:

30 Effective Date. This act shall take effect one day after the passage of the state operating budget for the biennium ending June 30, 2009.

Amendment adopted.

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

Adopted.

Ordered to third reading.

HB 1465-FN, relative to food stamp overpayments. Finance Committee. Ought to Pass, Vote 7-0. Senator Larsen for the committee.

Adopted.

Ordered to third reading.

HB 1679-FN-L, relative to the property tax exemption for university system property. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator D'Allesandro for the committee.

Senate Finance

April 5, 2006

2006-1656s

10/04

Amendment to HB 1679-FN-LOCAL

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

2 New Subparagraph; Property Taxation; Exempt Property; University System. Amend RSA 72:23, I by inserting after subparagraph (c) the following new subparagraph:

(d) The exemptions provided in subparagraph (a) shall apply to the lands and the buildings and structures thereon and therein and personal property owned by the university system of New Hampshire. The requirements of subparagraph (b) shall apply to all leases and other agreements entered into or renewed on or after April 1, 2006, the terms of which provide for the use or occupation by others of real or personal

property owned by the university system of New Hampshire. The remedies set forth in subparagraph (c) shall be available to enforce the payment of real and personal property taxes assessed against the lessees of property owned by the university system of New Hampshire pursuant to this subparagraph.

3 University System; Taxation of Property. Amend RSA 187-A:25 to read as follows:

187-A:25 Tax Exemption. The property of the university system of New Hampshire and each of its constituent institutions and divisions is exempt from taxation, ***as provided in RSA 72:23.***

4 Application. This act shall apply to property taxes assessed for the tax year beginning April 1, 2006. No property taxes shall be due with respect to the property of the university system of New Hampshire for any prior tax year.

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

Amendment adopted.

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

Adopted.

Ordered to third reading.

HB 1563, establishing a committee to study immigration. Health and Human Services Committee. Inexpedient to Legislate, Vote 3-0. Senator Gallus for the committee.

Committee report of inexpedient to legislate is adopted.

HB 1683-FN, establishing a homestead food license for residential, non-commercial kitchens. Health and Human Services Committee. Ought to Pass, Vote 3-0. Senator Kenney for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 1718-FN, requiring a written disclosure statement be provided to prospective nursing home facility clients. Health and Human Services Committee. Ought to Pass, Vote 2-0. Senator Kenney for the committee.

Adopted.

Ordered to third reading.

HB 221, relative to eligibility for absentee ballots. Internal Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Flanders for the committee.

Internal Affairs

April 6, 2006

2006-1672s

03/10

Amendment to HB 221

Amend RSA 657:4, I as inserted by section 5 of the bill by replacing it with the following:

I. Absence (Excluding Absence Due to Residence Outside the Continental United States), Religious Observance, and Disability:

New Hampshire law requires that you vote in person at the polling place for your town or ward unless you:

a. Plan to be absent on the day of the election from the city, town, or unincorporated place in which you are registered to vote.

b. Cannot appear in public on election day because of observance of a religious commitment.

c. Are unable to vote in person due to a disability.

d. Cannot appear at any time during polling hours at your polling place because an employment obligation requires you to remain physically at work or to be in transit to or from work from the time the polls open until after the time the polls close.

RSA 657:1. Any person who votes or attempts to vote using an absentee ballot who is not entitled to vote by absentee ballot shall be guilty of a misdemeanor. RSA 657:24.

I am requesting an absentee ballot for the following election:

_____ State Primary. I am member of the:

_____ Republican Party

_____ Democratic Party

or I am now declaring my affiliation with that party and am requesting a ballot for that party's primary.

_____ General Election

Applicant's Name _____ (Last) _____ (First) _____ (Middle) _____ (DOB)

Applicant's Voting Domicile (home address):

_____ (Street) _____ (City/Town) _____ (zip)

Mail the ballot to me at this address:

I hereby declare that:

_____ I am a duly qualified voter who is currently registered to vote in this town/ward.

_____ I am absent from the town/city where I am domiciled and will be until after the next election, or I am unable to register in person due to a disability, and request that the forms necessary for absentee voter registration be sent to me with the absentee ballot.

I will be entitled to vote by absentee ballot at the election designated above because:

_____ I plan to be absent on the day of the election from the city, town, or unincorporated place where I am domiciled.

_____ I cannot appear in public on election day because of observance of a religious commitment.

_____ I am unable to vote in person due to a disability.

_____ I cannot appear at any time during polling hours at my polling place because an employment obligation requires me to remain physically at work or to be in transit to or from work from the time the polls open until after the time the polls close.

This application form must be signed by the applicant. The absentee ballot forms you receive will require you to sign an affidavit confirming that you are entitled to vote by absentee ballot due to one of the reasons stated above. The moderator is required to compare the signature on the affidavit to your signature on this form. The absentee ballot will not be counted if the affidavit and this form do not appear to have been signed by the same person. RSA 659:50.

Signature of the Applicant: _____

Amendment adopted.

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

Adopted.

Ordered to third reading.

HB 345, requiring photo identification to obtain a ballot. Internal Affairs Committee. Ought to Pass, Vote 4-2. Senator Boyce for the committee.

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

A roll call was requested by Senator Gottesman.

Seconded by Senator Barnes.

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

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

Yeas: 14 - Nays: 9

Adopted.

Ordered to third reading.

Senator Martel was excused for this vote.

HB 1166, relative to electronic ballot counting machines. Internal Affairs Committee. Interim Study, Vote 5-0. Senator Bragdon for the committee.

MOTION TO TABLE

Senator Bragdon moved to have HB 1166 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 1166, relative to electronic ballot counting machines.

HB 1238-FN, relative to centralized voter registration database information. Internal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Bragdon for the committee.

Internal Affairs

April 6, 2006

2006-1670s

03/04

Amendment to HB 1238-FN

Amend the bill by deleting section 1 and renumbering the original sections 2-3 to read as 1-2, respectively.

2006-1670s

AMENDED ANALYSIS

This bill permits the secretary of state to make voter database record data available to assist in the preparation of jury lists.

Amendment adopted.

Senator Boyce offered a floor amendment.

Sen. Flanders, Dist. 7

Sen. Bragdon, Dist. 11

April 12, 2006

2006-1779s

03/10

Floor Amendment to HB 1238-FN

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

1 Availability of Checklist. Amend RSA 654:31 to read as follows:

654:31 Availability of Checklist.

I. In this section:

(a) "Checklist information" means the data, in any form, required to be placed on the public checklist by RSA 654:25, when that data is obtained or derived from a checklist or from the statewide centralized voter registration database maintained by the secretary of state.

(b) "Commercial purposes" means knowingly using, selling, giving, or receiving the checklist information for the purpose of selling or offering for sale any property or service unrelated to an election or political campaign.

(c) "Nonpublic checklist" means the checklist bearing the names of voters who by law are entitled to have their status as a voter kept nonpublic.

(d) "Public checklist" means the checklist required by RSA 654:25 which contains the names of voters who by law are to be listed on a checklist available to the public in accordance with the restrictions established by this section.

II. In towns and cities, the public checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The supervisors of the checklist shall furnish one or more copies of the most recent public checklist of their town or city to any person requesting such copies. [If the supervisors maintain or have access to the checklist or information from which the checklist was derived in more than one form, the person requesting copies shall be furnished copies in any of those forms according to his preference. The supervisors may charge a reasonable fee for copies that is based on the actual costs incurred when reproducing an existing checklist, except that in no event shall the fee for paper copies of any single town or ward checklist be less than \$5 nor more than \$25 per checklist. The fee charged for checklists on computer disk or tape, or in any form other than paper, shall be based solely on the additional costs incurred to provide such checklist to the individual requesting it. The fee shall be for the use of the town or city.] The supervisors of the checklist may only provide checklist information for their town or city. The supervisors of the checklist may charge a fee of up to \$25 for each copy of the public checklist for a town or ward. For public checklists containing more than 2,500 names, the supervisors of the checklist may charge a fee of up to \$25, plus \$0.50 per thousand names or portion thereof in excess of 2,500, plus any shipping costs. The supervisors of the checklist may provide public checklist information on paper, computer disk, computer tape, electronic transfer, or any other form.

III. Any person may view the data that would be available on the public checklist, as corrected by the supervisors of the checklist, on the statewide centralized voter registration database maintained by the secretary of state at the state records and archives center during normal business hours, but the person viewing data at the state records and archives center may not print, duplicate, transmit, or alter the data. The secretary of state may only provide copies of the most recent public checklist to a political committee of a political party as defined in RSA 664:2, V, or to a candidate who has filed for consideration for any office in any primary or general election or who has been nominated for any office in a general election. The secretary of state may not provide public checklists of less than the entire state. The secretary of state may charge a fee of up to \$25 plus \$0.50 per thousand names or portion thereof in excess of 2,500 plus shipping charges for each copy of the statewide public checklist. The secretary of state may provide public checklists as prescribed in this section on paper, computer disk, computer tape, electronic transfer, or any other form.

IV. Fees collected by the secretary of state under this section shall be deposited in the election fund established pursuant to RSA 5:6-d. Fees collected by a town or city under this section shall be for the use of the town or city.

V. No person shall use or permit the use of checklist information provided by the secretary of state for commercial purposes. Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

VI. This section shall not be construed to restrict the transfer of checklist information to the state or federal courts as required by RSA 654:45 for any lawful purpose.

2 Centralized Voter Registration Database; Jury Lists. Amend RSA 654:45, VI to read as follows:

VI. The voter database shall be private and confidential and shall not be subject to RSA 91A and RSA 654:31. **The secretary of state is authorized to provide voter database record data to the administrative office of the courts to assist in the preparation of master jury lists pursuant to RSA 500-A and to the clerk of the District Court of the United States for the District of New Hampshire to assist in the preparation of federal court jury lists.** The voter checklist for a town or city shall be available pursuant to RSA 654:31. Any person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor.

3 Right to Know Exemption; Public Information; Mailing Address. Amend RSA 654:31-a to read as follows:

654:31-a Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, street address, **mailing address**, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Election

officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

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

2006-1779s

AMENDED ANALYSIS

This bill:

- I. Modifies fees and procedures for obtaining copies of voter checklist information.
- II. Prohibits the use of checklist information provided by the secretary of state for commercial purposes.
- III. Permits the secretary of state to make voter database record data available to assist in the preparation of jury lists.
- IV. Adds the mailing address contained on the checklist to the public information subject to RSA 91-A.

Floor amendment adopted.

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

April 13, 2006

2006-1803s

03/04

Floor Amendment to HB 1238-FN

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

AN ACT relative to centralized voter registration database information and relative to interference with campaign communications.

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

2 Election Procedure; Prohibited Acts; Interference With Communications; Penalty. Amend RSA 659:40-a to read as follows:

659:40-a Interference With Communications. Any person who, on the day of any election, knowingly blocks, or solicits another person to block, the access of any candidate or committee to the candidate's or the committee's communications equipment or services with the intent of interfering with campaign activity shall be guilty of a class ~~[A misdemeanor]~~ **B felony**.

3 Election Procedure; Prohibited Acts; Tampering with Voting Machines; Software. Amend RSA 659:42 to read as follows:

659:42 Tampering with Voting Machines. Whoever shall tamper with or injure or attempt to injure any voting machine or device for the computerized casting and counting of ballots to be used or being used in an election or whoever shall prevent or attempt to prevent the correct operation of such machine or device **or whoever shall tamper with software used in the casting or counting of ballots or design such software so as to cause incorrect tabulation of the ballots** or any unauthorized person who shall make or have in his **or her** possession a key to a voting machine to be used or being used in an election shall be guilty of a class B felony if a natural person or guilty of a felony if any other person.

4 Effective Date.

I. Sections 2-3 of this act shall take effect January 1, 2007.

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

2006-1803s

AMENDED ANALYSIS

This bill:

- I. Permits the secretary of state to make voter database record data available to assist in the preparation of jury lists.

II. Increases the penalty for interference with campaign communications.

III. Prohibits tampering with voting machine software.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

HB 1509, relative to campaign expenditure and contribution limitations. Internal Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Boyce for the committee.

Internal Affairs

April 6, 2006

2006-1669s

03//01

Amendment to HB 1509

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

1 Political Contribution Limitations. Amend RSA 664:4, V to read as follows:

V. By any person (1) if in excess of [~~\$5,000~~] **\$25,000** in value, except for contributions made by a candidate in behalf of his **or her** own candidacy, or if in excess of [~~\$1,000~~] **\$2,500** in value by any person or by any political committee to a candidate or a political committee working on behalf of a candidate who does not voluntarily agree to limit his **or her** campaign expenditures and those expenditures made on his **or her** behalf as provided in RSA 664:5-a, (2) if made anonymously or under a name not that of the donor, (3) if made in the guise of a loan, (4) if any other manner concealed, (5) if made without the knowledge and written consent of the candidate or his **or her** fiscal agent, a political committee or its treasurer, or not to any one of the same.

2 Political Expenditure Limitation Amounts. Amend RSA 664:5-b, I-IV to read as follows:

I. For governor:

(a) [~~\$625,000~~] **\$1,250,000** in a state primary election.

(b) [~~\$625,000~~] **\$1,250,000** in a state general election.

I-a. For United States senator:

(a) [~~\$625,000~~] **\$1,250,000** in a state primary election.

(b) [~~\$625,000~~] **\$1,250,000** in a state general election.

II. For representative to Congress:

(a) [~~\$350,000~~] **\$625,000** in a state primary election.

(b) [~~\$350,000~~] **\$625,000** in a state general election.

III. For executive council:

(a) \$50,000 in a state primary election.

(b) \$50,000 in a state general election.

IV. For state senate:

(a) [~~\$20,000~~] **\$50,000** in a state primary election.

(b) [~~\$20,000~~] **\$50,000** in a state general election.

2006-1669s

AMENDED ANALYSIS

This bill increases the limitation on campaign expenditures for candidates for the offices of governor, United States senator, representative to Congress, and state senate who agree to limit campaign expenditures. This bill also increases the limitation on the amount that may be contributed to a candidate.

MOTION TO TABLE

Senator Boyce moved to have HB 1509 laid on the table.

Adopted.

LAID ON THE TABLE

HB 1509, relative to campaign expenditure and contribution limitations.

HB 1662-FN, establishing the crime of peonage. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Bragdon for the committee.

Internal Affairs

April 6, 2006

2006-1671s

04/03

Amendment to HB 1662-FN

Amend RSA 633:5, II as inserted by section 1 of the bill by replacing it with the following:

II. The use of the labor of any person incarcerated in a state or county correctional facility or municipal jail shall be exempt from this section.

Amendment adopted.

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

Adopted.

Ordered to third reading.

HCR 22, relative to the right to pursue a livelihood in natural resources industries. Internal Affairs Committee. Ought to Pass, Vote 6-0. Senator Hassan for the committee.

Adopted.

Ordered to third reading.

HB 1135, making a technical correction to the Uniform Interstate Family Support Act. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Gottesman for the committee.

Adopted.

Ordered to third reading.

HB 1153, establishing a commission to study the laws and rules relating to subpoenas, summonses and complaints. Judiciary Committee. Inexpedient to Legislate, Vote 5-0. Senator Letourneau for the committee.

Committee report of inexpedient to legislate is adopted.

HB 1221-FN, relative to recovery of medical assistance. Judiciary Committee. Interim Study, Vote 5-0. Senator Clegg for the committee.

MOTION TO TABLE

Senator Clegg moved to have HB 1221-FN laid on the table.

Adopted.

LAID ON THE TABLE

HB 1221-FN, relative to recovery of medical assistance.

HB 1332, establishing a commission to study health care in New Hampshire correctional facilities. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Roberge for the committee.

MOTION TO TABLE

Senator Roberge moved to have HB 1332 laid on the table.

Adopted.

LAID ON THE TABLE

HB 1332, establishing a commission to study health care in New Hampshire correctional facilities.

HB 1361, relative to the penalty for shoplifting. Judiciary Committee. Ought to Pass, Vote 4-0. Senator Clegg for the committee.

Adopted.

Ordered to third reading.

HB 1620-FN, relative to hunting restrictions of certain convicted felons. Judiciary Committee. Interim Study, Vote 4-0. Senator Letourneau for the committee.

MOTION TO TABLE

Senator Foster moved to have HB 1620-FN laid on the table.

Adopted.

LAIID ON THE TABLE

HB 1620-FN, relative to hunting restrictions of certain convicted felons.

HB 1648-FN, relative to legal residency and financial liability for children in certain residential placements. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Gottesman for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 1660-FN, regulating identity theft. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary

April 7, 2006

2006-1698s

04/10

Amendment to HB 1660-FN

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

1 New Subdivision; Right to Privacy; Notice of Security Breach. Amend RSA 359-C by inserting after section 18 the following new subdivision:

Notice of Security Breach

359-C:19 Definitions. In this subdivision:

I. "Computerized data" means personal information stored in an electronic format.

II. "Encrypted" means the transformation of data through the use of an algorithmic process into a form for which there is a low probability of assigning meaning without use of a confidential process or key, or securing the information by another method that renders the data elements completely unreadable or unusable. Data shall not be considered to be encrypted for purposes of this subdivision if it is acquired in combination with any required key, security code, access code, or password that would permit access to the encrypted data.

III. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, limited liability company, or other form of entity, or any agency, authority, board, court, department, division, commission, institution, bureau, or other state governmental entity, or any political subdivision of the state.

IV.(a) "Personal information" means an individual's first name or initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or other government identification number.

(3) Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(b) "Personal information" shall not include information that is lawfully made available to the general public from federal, state, or local government records.

V. "Security breach" means unauthorized acquisition of computerized data that compromises the security or confidentiality of personal information maintained by a person doing business in this state. Good faith acquisition of personal information by an employee or agent of a person for the purposes of the person's business shall not be considered a security breach, provided that the personal information is not used or subject to further unauthorized disclosure.

359-C:20 Notification of Security Breach Required.

I.(a) Any person doing business in this state who owns or licenses computerized data that includes personal information shall, when it becomes aware of a security breach, promptly determine the likelihood that the information has been or will be misused. If the determination is that misuse of the information has occurred or is reasonably likely to occur, or if a determination cannot be made, the person shall notify the affected individuals as soon as possible as required under this subdivision.

(b) Any person engaged in trade or commerce that is subject to RSA 358-A:3, I shall also notify the regulator which has primary regulatory authority over such trade or commerce. All other persons shall notify the New Hampshire attorney general's office. The notice shall include the anticipated date of the notice to the individuals and the approximate number of individuals in this state who will be notified. Nothing in this section shall be construed to require the person to provide to any regulator or the New Hampshire attorney general's office the names of the individuals entitled to receive the notice or any personal information relating to them. The disclosure shall be made to affected individuals as quickly as possible, after the determination required under this section.

(c) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify and cooperate with the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was acquired by an unauthorized person. Cooperation includes sharing with the owner or licensee information relevant to the breach; except that such cooperation shall not be deemed to require the disclosure of confidential or business information or trade secrets.

II. Notification pursuant to paragraph I may be delayed if a law enforcement agency, or national or homeland security agency determines that the notification will impede a criminal investigation or jeopardize national or homeland security.

III. The notice required under this section shall be provided by one of the following methods:

(a) Written notice.

(b) Electronic notice, if the agency or business' primary means of communication with affected individuals is by electronic means.

(c) Telephonic notice, provided that a log of each such notification is kept by the person or business who notifies affected persons.

(d) Substitute notice, if the person demonstrates that the cost of providing, notice would exceed \$5,000, that the affected class of subject individuals to be notified exceeds 1,000 or the person does not have sufficient contact information or consent to provide notice pursuant to subparagraphs I(a)-I(c). Substitute notice shall consist of all of the following:

(1) E-mail notice when the person has an e-mail address for the affected individuals.

(2) Conspicuous posting of the notice on the person's business website, if the person maintains one.

(3) Notification to major statewide media.

(e) Notice pursuant to the person's internal notification procedures maintained as part of an information security policy for the treatment of personal information.

IV. Notice under this section shall include at a minimum:

(a) A description of the incident in general terms.

(b) The approximate date of breach.

(c) The type of personal information obtained as a result of the security breach.

(d) The telephonic contact information of the person subject to this section.

V. Any person engaged in trade or commerce that is subject to RSA 358-A:3, I which maintains procedures for security breach notification pursuant to the laws, rules, regulations, guidances, or guidelines issued by a state or federal regulator shall be deemed to be in compliance with this subdivision if it acts in accordance with such laws, rules, regulations, guidances, or guidelines.

VI.(a) If a person is required to notify more than 1,000 consumers of a breach of security pursuant to this section, the person shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. section 1681a(p), of the anticipated date of the notification to the consumers, the approximate number of consumers who will be notified, and the content of the notice. Nothing in this paragraph shall be construed to require the person to provide to any consumer reporting agency the names of the consumers entitled to receive the notice or any personal information relating to them.

(b) Subparagraph (a) shall not apply to a person who is subject to Title V of the Gramm, Leach-Bliley Act, 15 U.S.C. section 6801 et seq.

359-C:21 Violation.

I. Any person injured by any violation under this subdivision may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages. If the court finds that the act or practice was a willful or knowing violation of this chapter, it shall award as much as 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any attempted waiver of the right to the damages set forth in this paragraph shall be void and unenforceable. Injunctive relief shall be available to private individuals under this chapter without bond, subject to the discretion of the court.

II. The New Hampshire attorney general's office shall enforce the provisions of this subdivision pursuant to RSA 358-A:4.

III. The burden shall be on the person responsible for the determination under RSA 359-C:20, I to demonstrate compliance with this subdivision.

2 Effective Date. This act shall take effect January 1, 2007.

Amendment adopted.

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

Adopted.

Ordered to third reading.

HB 1674-FN, requiring emergency care providers to report information on certain sexual assault crimes to law enforcement officials. Judiciary Committee. Interim Study, Vote 5-0. Senator Clegg for the committee.

MOTION TO TABLE

Senator Clegg moved to have HB 1674-FN laid on the table.

Adopted.

LAID ON THE TABLE

HB 1674-FN, requiring emergency care providers to report information on certain sexual assault crimes to law enforcement officials.

HB 1725-FN, extending the pilot project relative to abuse and neglect hearings and relative to confidentiality in pilot project abuse and neglect cases. Judiciary Committee. Ought to Pass, Vote 3-0. Senator Letourneau for the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 203-FN, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-2. Senator Roberge for the committee.

Public and Municipal Affairs
April 3, 2006
2006-1608s
03/10

Amendment to HB 203-FN

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

1 New Chapter; Regulation of Tracking Devices. Amend RSA by inserting after chapter 358-R the following new chapter:

CHAPTER 358-S
REGULATION OF TRACKING DEVICES

358-S:1 Definitions.

I. "Consumer product" means a physical object that is, or is intended to be, used or consumed by a consumer and includes food, alcoholic and nonalcoholic beverages, and prescription and nonprescription drugs; clothing; merchandise; motor vehicles and their component parts; advertising and sales documents and literature; and books, magazines, and greeting and business cards. A "consumer product" does not include an identification document or any product to the extent that unique identification via radio waves is an essential part of the consumer's use, including, but not limited to, cellular phones, EZ Pass transponders, keys, and garage door openers.

II. "Identification document" means any document or object containing personal information that an individual uses alone or in conjunction with any other information to establish his or her identity, to engage in government-regulated activities, or to engage in financial transactions. Identification documents shall include but shall not be limited to:

(a) Drivers' licenses, identification cards, and license plates issued by the director of the division of motor vehicles, department of safety;

(b) E-Z Pass transponders;

(c) Identification cards or badges issued to employees or contractors;

(d) Insurance benefit cards;

(e) Identification cards issued by public and private schools and educational institutions;

(f) Benefit cards issued in conjunction with any government-supported aid program;

(g) Credit, debit, and financial account cards;

(h) Licenses, certificates, registrations, or other means to engage in a business or profession regulated by the state or its political subdivisions; and

(i) Library cards issued by any public library.

III. "Personal information" means information that can be used to identify an individual. Such information includes an individual's name, address, telephone and cellular telephone number, social security number, credit card and financial account numbers, driver's license number, e-mail address, date of birth, race, religion, ethnicity, nationality, political affiliation, photograph and digital image, fingerprint or other biometric identification, and any other unique personal identifier or number.

IV. "RFID" or "radio frequency identification" means technologies that use radio waves to identify individual physical objects.

V. "Tracking device" means any item or application that is passively or actively capable of transmitting unique identification or location information. Tracking devices shall include devices that use radio frequency identification technology; tracking device shall not include bar codes or similar markings that do not transmit information.

VI. "Universally accepted symbol" means a graphical system designed to provide a standard way to show the presence of an RFID transponder, its frequency, and data structure.

VII. "Consumer notice of RFID" means a graphical system designed to provide a standard way to show the presence of an RFID transponder, its frequency, and data structure, or notice given with the following text: "This product is known to the state of New Hampshire to contain a radio frequency identification chip which contains a unique identification number that can be read without your knowledge if it is brought within range of a reader device."

358-S:2 Labels Required; Consumer Products.

I. No consumer product or identification document, to which a tracking device or devices have been affixed or implanted, shall be sold or offered for sale or provided to a consumer without a label containing consumer notice of RFID. Consumer products offered for loan or rental may include the following notice in lieu of a label: "This (specify product type) may contain a radio frequency identification chip or other tracking device which contains a unique identification number that can be read without your knowledge if it is brought within range of a reader device."

II. Identifying labels shall be affixed to the consumer product, identification document, or its packaging, by the entity that implants the tracking device in the product or by the entity that imports products that contain tracking devices.

358-S:3 Human Implantation Prohibited. No person shall implant or attempt to implant a tracking device into any individual without the informed, written consent of the individual, or an individual's legal guardian. No individual shall be offered an incentive, denied an opportunity, or in any way treated differently from any other individual as a consequence of providing or withholding such consent.

358-S:4 Restrictions on State Use of Tracking Devices.

I. The state or a political subdivision, department, or agency shall not issue, or permit others to issue on its behalf, any identification document that contains a tracking device or uses tracking devices to locate an individual, either directly or indirectly through other persons, except in the following circumstances:

(a) To locate a person who is incarcerated in the state prison or county jail, is housed in a mental health facility pursuant to a court order after having been charged with a crime, is subject to court-ordered electronic monitoring, or is a resident of a state or county hospital, nursing facility or assisted living facility; or

(b) When the tracking device is implanted in an identification document that is to be used on a toll road or bridge owned or operated by the state or a political subdivision, department, or agency thereof, but only for the specific purpose of collecting funds for the use of that road or bridge.

II. No identification document issued pursuant to this section shall contain, transmit, or enable the remote reading of any personal information other than a unique personal identifier number issued by the state.

III. This section shall not apply to the court authorized use of tracking devices by law enforcement officials.

358-S:5 Electronic Tracking Prohibited. No person may use any electronic means of tracking another person without a valid court order or other legal authorization or the consent of person being tracked. Any person who violates this section shall be guilty of a violation. This section shall not be construed to apply to locating technology used by the enhanced 911 system or to commercial mobile radio service pursuant to 47 U.S.C. section 332.

358-S:6 Penalties.

I. Any person convicted of violating RSA 358-S:2 shall be guilty of a misdemeanor. Each such act shall constitute a separate offense.

II. Any person convicted of violating RSA 358-S:3 shall be guilty of a felony.

III. The state may bring suit for civil penalties for up to \$10,000, plus court costs and reasonable attorney's fees, for each violation of this chapter.

2 Commission on the Use of Tracking Devices.

I. There is hereby established a commission on the use of tracking devices. The commission shall study the use of radio frequency identification technology in tracking devices and review the implications, positive and negative, of its use for the personal privacy rights of the citizens of New Hampshire.

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

(a) Three members of the house of representatives, including one member from the house commerce committee and one member from the house science, technology, and energy committee, appointed by the speaker of the house of representatives.

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

(c) Two members of the public, appointed by the governor.

(d) The attorney general, or designee.

(e) One member of the New Hampshire High Technology Council, appointed by such council.

(f) One member representing the Retail Merchants Association of New Hampshire, appointed by such association.

(g) One member representing the Business and Industry Association of New Hampshire, appointed by such association.

(h) One member representing the financial services industry, appointed by the New England Financial Services Association.

(i) One member representing consumer or privacy interests, appointed by the governor.

(j) One member representing the university system of New Hampshire, appointed by the governor.

(k) One expert in radio frequency technology, appointed by the speaker of the house of representatives.

(l) One member representing a New Hampshire state agency that is using radio frequency technology, appointed by the president of the senate.

(m) One member representing the New Hampshire Grocers Association, appointed by such association.

(n) One member representing an organization developing standards for use of electronic product code technologies, appointed by the governor.

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

IV. The members of the 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.

V. The commission shall issue a preliminary report of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before January 2, 2007, and shall submit a final report before dissolving on or before May 15, 2007.

3 Effective Date.

I. Section 1 of this act shall take effect July 1, 2007.

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

Amendment adopted.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

April 12, 2006

2006-1788s

03/04

Floor Amendment to HB 203-FN

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

AN ACT establishing a commission on the use of radio frequency technology.

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

1 Commission on the Use of Radio Frequency Technology.

I. There is hereby established a commission on the use of radio frequency technology. The commission shall study the use of radio frequency technology in the private and public sectors, its benefits, and potential privacy implications.

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

(a) Three members of the house of representatives, including one member from the house commerce committee and one member from the house science, technology, and energy committee, appointed by the speaker of the house of representatives.

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

(c) Two members of the public, appointed by the governor.

(d) The attorney general, or designee.

(e) One member of the New Hampshire High Technology Council, appointed by such council.

(f) One member representing the Retail Merchants Association of New Hampshire, appointed by such association.

(g) One member representing the Business and Industry Association of New Hampshire, appointed by such association.

(h) One member representing the financial services industry, appointed by the New England Financial Services Association.

(i) One member representing consumer or privacy interests, appointed by the governor.

(j) One member representing the university system of New Hampshire, appointed by the governor.

(k) One expert in radio frequency technology, appointed by the speaker of the house of representatives.

(l) One member representing a New Hampshire state agency that is using radio frequency technology, appointed by the president of the senate.

(m) One member representing the New Hampshire Grocers Association, appointed by such association.

(n) One member representing an organization developing standards for use of electronic product code technologies, appointed by the governor.

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

IV. The members of the 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.

V. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library annually on or before November 1, 2007, and shall submit a final report before dissolving on or before November 1, 2008.

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

2006-1788s

AMENDED ANALYSIS

This bill establishes a commission on the use of radio frequency technology.

A division vote was requested.

Yeas: 17 - Nays: 6

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

HB 626-FN-L, relative to the right-to-know law. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

April 3, 2006

2006-1610s

09/01

Amendment to HB 626-FN-LOCAL

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

1 Statement of Purpose. The purpose of this act is to clarify how the right-to-know law applies to both governmental records kept in electronic form and electronic communications used to transact governmental business. The general court finds that this act fulfills this purpose in a manner that maintains openness in government, while being in accord with the varied types, sizes, and resources of New Hampshire's public bodies.

2 Chapter Heading Amended. Amend the chapter heading of RSA 91-A to read as follows:

ACCESS TO ~~[PUBLIC]~~ **GOVERNMENTAL** RECORDS AND MEETINGS

3 Definitions Added. RSA 91-A:1-a is repealed and reenacted to read as follows:

91-A:1-a Definitions. In this chapter:

I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

II. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body in furtherance of its official function. The term "governmental records" shall also include the term "public records."

III. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

IV. "Information" means knowledge, opinions, facts or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic or other physical form.

V. "Public body" means any of the following:

(a) The general court including executive sessions of committees; and including any advisory committee established by the general court;

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council;

(c) Any state agency or authority, including any board or commission thereof, the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities;

(d) Any board, commission, agency or authority, of any county, town, municipal corporation, school district, school administrative unit, charter school, or other political subdivision, or any committee, subcommittee or subordinate body thereof, or advisory committee thereto.

VI. "Quorum" means the minimum number of members required to be present when making decisions on behalf of a public body required by law to act only as a group through joint authority. Unless expressly declared otherwise, a majority of the membership of such a body shall constitute a quorum.

4 Meetings; Nonpublic Sessions; Minutes and Records; Exemptions. Amend RSA 91-A:2-5 to read as follows:

91-A:2 Meetings Open to Public.

I. For the purpose of this ~~[section]~~ **chapter**, a "meeting" ~~[shall mean]~~ **means** the convening of a quorum of the membership of a public body, as ~~[provided]~~ **defined** in RSA 91-A:1-a, ~~[to discuss or act]~~ **whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, for the purpose of discussing or acting** upon a matter or matters over which the public body has supervision, control, jurisdiction or advisory power. **A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. However, if any such matters are discussed among a quorum of the body, the discussion shall be disclosed at the next meeting of the body.** "Meeting" shall **also** not include:

~~[(a) Any chance meeting or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business and at which no decisions are made; however, no such chance or social meeting shall be used to circumvent the spirit of this chapter;~~

~~[(b)]~~ **(a)** Strategy or negotiations with respect to collective bargaining;

~~[(c)]~~ **(b)** Consultation with legal counsel; ~~[(d)]~~

~~[(d)]~~ **(c)** A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2[-]; **or**

(d) Circulation of draft documents which, when finalized, are intended only to formalize decisions formerly made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

II. ~~[All public proceedings shall be open to the public, and all persons shall be permitted to attend any meetings of those bodies or agencies.]~~ ***Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public.*** Except for town meetings, school district meetings and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras and videotape equipment, at such meetings. Minutes of all such meetings, including names of members, persons appearing before the ***public*** bodies ~~[or agencies]~~, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection within 144 hours of the ~~[public]~~ meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any ***public*** body ~~[or agency]~~, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places, ***one of which may be the public body's Internet website, if such exists,*** or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the ***public*** body ~~[or agency]~~ who shall ***post a notice of the time and place of such meeting, as soon as practicable, and shall*** employ whatever ***further*** means are ***reasonably*** available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or guidelines or rules of order of any ***public*** body ~~[or agency described in RSA 91-A:1-a]~~ require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter.

91-A:3 Nonpublic Sessions.

I.(a) ***Public*** bodies ~~[or agencies]~~ shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No ***public*** body ~~[or agency]~~ may enter nonpublic session, except pursuant to a motion properly made and seconded.

(b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.

(c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.

II. Only the following matters shall be considered or acted upon in nonpublic session:

(a) The dismissal, promotion or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.

(b) The hiring of any person as a public employee.

(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the ***public*** body ~~[or agency]~~ itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.

(d) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

(e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed against the ***public*** body ~~[or agency]~~ or any subdivision thereof, or against any member thereof because of his membership in such ***public*** body ~~[or agency]~~, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any ***public*** body ~~[board, or agency]~~ for the purposes of this subparagraph.

(f) Consideration of applications by the adult parole board under RSA 651-A.

(g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county correctional facilities by county correctional superintendents or their designees.

(h) Consideration of applications by the business finance authority under RSA 162A:710 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

(i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

(j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.

III. Minutes of ~~[proceedings]~~ **meetings** in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the **public** body ~~[or agency]~~ itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

91-A:4 Minutes and Records Available for Public Inspection.

I. Every citizen during the regular or business hours of all ~~[such]~~ **public** bodies ~~[or agencies]~~, and on the regular business premises of such **public** bodies ~~[or agencies]~~, has the right to inspect all ~~[public]~~ **governmental** records ***in the possession, custody, or control of such public bodies***, including minutes of meetings of the **public** bodies ~~[or agencies]~~, and to **copy and** make memoranda~~;~~ **or** abstracts~~;~~ ~~and photographic or photostatic copies~~ of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. ***In this section, "to copy" means the reproduction of original records by whatever method including, but not limited to, photography, photostatic copying, printing, or electronic or tape recording.***

I-a. Records of any payment made to an employee of any public body ~~[or agency listed in RSA 91-A:1-a, I(a)-(d)]~~, or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.

II. After the completion of a meeting of such **public** bodies ~~[or agencies]~~, every citizen, during the regular or business hours of all such **public** bodies ~~[or agencies]~~, and on the regular business premises of such **public** bodies ~~[or agencies]~~, has the right to inspect all notes, materials, tapes or other sources used for compiling the minutes of such meetings, and to make memoranda, abstracts, ~~[photographic or photostatic copies, or tape record]~~ **or to copy** such notes, materials, tapes or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

III. Each **public** body ~~[or agency]~~ shall keep and maintain all ~~[public]~~ **governmental** records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the ~~[public]~~ **governmental** records pertaining to such **public** body ~~[or agency]~~ shall be kept in an office of the political subdivision in which such **public** body ~~[or agency]~~ is located or, in the case of a state agency, in an office designated by the secretary of state.

III-a. Governmental records created or maintained in electronic form shall remain accessible for the same retention or archival periods as their paper counterparts. Methods that may be used to accomplish this requirement include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.

III-b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted in the normal course of business or after the expiration of any statutorily required retention period.

IV. Each public body ~~[or agency]~~ shall, upon request for any ~~[public]~~ **governmental** record reasonably described, make available for inspection and copying any such ~~[public]~~ **governmental** record within its files when such records are immediately available for such release. If a public body ~~[or agency]~~ is unable to make a ~~[public]~~ **governmental** record available for immediate inspection and copying, it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied. If a **computer**, photocopying machine or other device maintained for use by a **public** body ~~[or agency]~~ is used by the **public** body ~~[or agency]~~ to copy the ~~[public]~~ **governmental** record ~~[or document]~~ requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the **public** body ~~[or agency]~~. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of ~~[public]~~ **governmental** records ~~[or documents]~~, but if such fee is established for the copy, no additional costs or fees shall be charged.

V. In the same manner as set forth in RSA 91-A:4, IV, any **public** body ~~[or agency]~~ which maintains ~~[its]~~ **governmental** records in ~~[a computer storage system]~~ **electronic form** may, in lieu of providing original ~~[documents]~~ **records**, ~~[provide a printout of any record reasonably described and which the agency has the capacity to produce]~~ **copy governmental records requested to electronic media using standard or common file formats** in a manner that does not reveal information which is confidential under this chapter or any other law. ***If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1.*** Access to work papers, personnel data and other confidential information under RSA 91-A:5, IV shall not be provided.

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

VII. Nothing in this chapter shall be construed to require a public body to compile, cross-reference or assemble information into a form in which it is not already kept or reported by that body.

91-A:5 Exemptions. The following **governmental** records are exempted from the provisions of this chapter:

- I. Records of grand and petit juries.
- II. Records of parole and pardon boards.
- III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a **public** body ~~[or agency]~~ from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records~~[both hard copies and computer files,]~~ in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including, ***but not limited to***, notes and materials made prior to, during, or after a ~~[public]~~ **governmental** proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of ~~[those entities defined in RSA 91-A:1-a]~~ **the members of a public body**.

5 Remedies. Amend RSA 91-A:8 to read as follows:

91-A:8 Remedies.

I. If any **public** body ~~[or agency]~~ or employee or member thereof, in violation of the provisions of this chapter, refuses to provide a ~~[public]~~ **governmental** record or refuses access to a ~~[public]~~ **governmental** proceeding to a person who reasonably requests the same, such **public** body~~[-agency;]~~ or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter provided that the court finds that such lawsuit was necessary in order to make the information available or the proceeding open to the public. Fees shall not be awarded unless the court finds that the **public** body~~[-agency]~~ or person knew or should have known that the conduct engaged in was a violation of this chapter or where the parties, by agreement, provide that no such fees shall be paid. In any case where fees are awarded under this chapter, upon a finding that an officer, employee, or other official of a public body ~~[or agency]~~ has acted in bad faith in refusing to allow access to a ~~[public]~~ **governmental** proceeding or to provide a ~~[public]~~ **governmental** record, the court may award such fees personally against such officer, employee, or other official.

I-a. The court may award attorneys' fees to a ~~[board, agency]~~ **public body** or employee or member thereof, for having to defend against a person's lawsuit under the provisions of this chapter, when the court makes an affirmative finding that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.

II. The court may invalidate an action of a public body ~~[or agency]~~ taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter.

6 Reference Change. Amend RSA 42:1-a, II (a) and (b) to read as follows:

(a) A public body properly voted to withhold that information from the public by a vote of 2/3, as required by RSA 91-A:3, III, and if divulgence of such information would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body ~~[or agency;]~~ or would render proposed municipal action ineffective; or

(b) The officer knew or reasonably should have known that the information was exempt from disclosure pursuant to RSA 91-A:5, and that its divulgence would constitute an invasion of privacy, or would adversely affect the reputation of some person other than a member of the public body ~~[or agency;]~~ or would render proposed municipal action ineffective.

7 New Section; Communications Outside Meetings. Amend RSA 91-A by inserting after section 2 the following new section:

91-A:2-a Communications Outside Meetings.

I. Any communications outside a meeting, in whatever form, among a quorum of the membership of a public body which bear upon matters over which the body has supervision, control, jurisdiction, or advisory power shall be disclosed at the next meeting of the body before any decision may be made, including a decision not to act. If such communications are in writing, copies or printouts shall be made a part of the public record. Communications among less than a quorum of members need not be disclosed. Communications described in RSA 91-A:2, I(a)-(d) are not subject to the disclosure requirements of this paragraph.

II. Communications outside a meeting, including but not limited to sequential communications among the members of a public body, shall not be used to circumvent the spirit of this chapter.

8 Board of Tax and Land Appeals; Board Meetings; Hearing Procedures. Amend RSA 71-B:7 to read as follows:

71-B:7 **Board Meetings**; Hearing Procedure.

I. The board shall conduct all hearings and vote on final proposed rules and the adoption of rules in meetings held pursuant to RSA 91-A. Adoption of orders, rulings on motions, internal administrative actions, deliberations and other communications involving a quorum of the board shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda and other documents not in their final form, created or used by the board, are exempted from the provisions of RSA 91-A. Decisions and orders in adjudicatory proceedings shall be publicly available, but only after they have been reduced to writing, signed by a quorum of the board, and served upon the parties.

II. Whenever the board shall hold hearings, it shall not be bound by the strict rules of evidence adhered to in the superior courts in this state. The board shall introduce into evidence and may take into consideration in determining any question any information obtained through its own investigation, including information obtained by persons employed under RSA 71-B:14. ~~[In addition to the provisions of RSA 91-A,]~~ The board shall tape record the proceedings of any taxation hearing before it and shall make such tape recording available to the public for inspection and recording from the date of the hearing to a date which is 15 working days after the board has made a final decision on the matter which is the subject of the hearing, or, if an appeal is made from such decision, the date upon which the matter has been finally adjudicated, whichever date is later.

9 New Section; Public Utilities Commission. Amend RSA 363 by inserting after section 17-b the following new section:

363:17-c Meetings of the Commission. The commission shall conduct all hearings and vote on final proposed rules and the adoption of rules in meetings held pursuant to RSA 91-A. Adoption of orders, rulings on motions, internal administrative actions, deliberations and other communications involving a quorum of the commission shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A; provided, however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the commission held pursuant to RSA 91-A.

10 New Paragraph; Public Utilities; Rates and Charges. Amend RSA 378:43 by inserting after paragraph III the following new paragraph:

IV. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the commission are exempt from the provisions of RSA 91-A.

11 Site Evaluation Committee. Amend RSA 162-H:10, II to read as follows:

II. Except for informational hearings, subsequent hearings shall be in the nature of adversary proceedings and may be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation committee. The committee shall give adequate public notice of the time and place of each subsequent session. ***Deliberations and other communications involving a quorum of the site evaluation committee and, if a bulk power supply facility application, the commission, shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A; provided, however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the site evaluation committee or commission, as applicable, held pursuant to RSA 91-A or through publication of a written order setting forth findings of fact and conclusions of law. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the site evaluation committee or the commission are exempt from the provisions of RSA 91-A.***

12 Nuclear Decommissioning Finance Committee. Amend RSA 162-F:21, I to read as follows:

I. Each committee shall hold at least one public hearing to receive information on funding requirements for each fund. The committee shall have the authority to subpoena witnesses and administer oaths and to compel by subpoena duces tecum the production of any accounts, books, contracts, records, documents, memoranda, and papers in order to determine the amount needed for the fund. ***Deliberations and other communications involving a quorum of the nuclear decommissioning finance committee shall be exempt from the meeting, notice, and disclosure provisions of RSA 91-A, provided; however, that all orders and rulings on motions in adjudicative proceedings shall be disclosed in public meetings or hearings of the nuclear decommissioning finance committee held pursuant to RSA 91-A or through publication of a written order pursuant to RSA 162-F:21, III and IV. Work papers, including, but not limited to, all preliminary drafts, notes, memoranda, and other documents not in their final form, created or used by the nuclear decommissioning finance committee are exempt from the provisions of RSA 91-A.***

13 Effective Date. This act shall take effect July 1, 2006.

2006-1610s

AMENDED ANALYSIS

This bill clarifies the manner in which the right-to-know law applies to both governmental records kept in electronic form and electronic communication used to transact governmental business.

This bill also clarifies certain administrative procedures of the board of tax and land appeals and the public utilities commission with respect to RSA 91-A.

Senator Barnes moved to recommit.

Adopted.

HB 626-FN-L is recommitted to the Public and Municipal Affairs Committee.

HB 1162, relative to village districts. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 4-0. Senator Kenney for the committee.

Committee report of inexpedient to legislate is adopted.

HB 1173, relative to designating the clerk in cities the chief elections officer for the city. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Roberge for the committee.

Adopted.

Ordered to third reading.

HB 1231-FN, relative to the penalty for assaulting a firefighter, licensed emergency medical care provider, or law enforcement officer. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

Adopted.

Ordered to third reading.

HB 1313, naming a bridge between the towns of Newfields and Stratham the United States Submarine Veterans of World War II Memorial Bridge. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Hassan for the committee.

Adopted.

Ordered to third reading.

HB 1584, relative to cemetery setbacks and septic systems. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Roberge for the committee.

Adopted.

Ordered to third reading.

HB 1696-FN, relative to the cremation of human remains. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

Public and Municipal Affairs

April 3, 2006

2006-1609s

10/04

Amendment to HB 1696-FN

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

1 New Section; Embalmers and Funeral Directors; Duty of Board. Amend RSA 325 by inserting after section 8 the following new section:

325:8-a Board Duty; Crematory Licensing. The board shall be responsible for the administration and enforcement of RSA 325-A relative to the cremation of human remains.

2 Cremation of Human Remains. RSA 325-A is repealed and reenacted to read as follows:

CHAPTER 325-A

CREMATION OF HUMAN REMAINS

325-A:1 Definitions. In this chapter:

I. "Alternative container" means a container in which human remains are placed in a cremation chamber for cremation.

II. "Authorizing agent" means a person vested with the right to control the disposition of human remains pursuant to RSA 290.

III. "Board" means the state board of registration of funeral directors and embalmers established under RSA 325:2.

IV. "Casket" means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains.

V. "Cremated remains" means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains.

VI. "Cremated remains receipt form" means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains.

VII. "Cremation" means the technical process that uses heat and evaporation to reduce human remains to bone fragments.

VIII. "Cremation chamber" means the enclosed space within which a cremation takes place.

IX. "Crematory" means a building or portion of a building which contains a cremation chamber and holding facility.

X. "Crematory authority" means the legal entity subject to licensure by the board to maintain and operate a crematory and perform cremation.

XI. "Crematory operator" means a person who is responsible for the operation of a crematory.

XII. "Delivery receipt form" means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation.

XIII. "Funeral director" means funeral director as defined in RSA 325.

XIV. "Holding facility" means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility.

XV. "Human remains" means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research.

XVI. "Permanent container" means a receptacle made of durable material for the long-term placement of cremated remains.

XVII. "Temporary container" means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container.

325-A:2 Crematory; License Required. A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the board under this chapter. The board shall issue a license to a crematory authority that satisfies the requirements for licensure under the chapter. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under this chapter.

325-A:3 Building and Location Requirements.

I. A crematory shall conform to all building codes and environmental regulations.

II. A crematory may be constructed at any location consistent with applicable zoning and environmental regulations.

325-A:4 License; Application; Requirements; Fee. An applicant for an initial or renewal license as a crematory authority shall file a written application with the board. The application shall be accompanied by the license fee required under RSA 325-A:7 and a certificate confirming that the crematory operator has attended, prior to issuance of the license, a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority and shall set forth the full name and address of the applicant, the address and location of the crematory, the name of the crematory operator, the name and address of the owner of the crematory, and addi-

tional information as required by the board, including affirmative evidence of the applicant's ability to comply with rules adopted under this chapter. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and shall only be used for administrative purposes.

325-A:5 License; Expiration. Except as otherwise provided in this chapter, licenses issued pursuant to this chapter shall expire 5 years after the date of issuance. Licenses shall be issued only for the crematory authority named in the application and shall not be transferable or assignable.

325-A:6 Change in Location, Ownership, or Name.

I. A crematory authority desiring to relocate a crematory shall file a written application with the board at least 30 days prior to the designated date of such relocation. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

II. A crematory authority desiring to change ownership of a crematory shall file a written application with the board at least 30 days prior to the designated date of such change. The application shall be accompanied by a fee as determined by the board in rules adopted under RSA 541-A.

III. A crematory authority desiring to change its name shall file a written application with the board at least 30 days prior to such change. The application shall be accompanied by a fee as determined in rules adopted under RSA 541-A.

325-A:7 Licensure; Fees.

I. The fee for an initial or renewal license as a crematory authority shall include a fee determined in rules adopted under RSA 541-A.

II. If the license application is denied, the license fee shall be returned to the applicant, except that the board may retain an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

III. The board shall collect a fee for reinstatement of a license that has lapsed or has been suspended. The board shall collect a fee for a duplicate original license.

IV. The board shall collect a fee for a certified statement that a crematory authority is licensed in this state and a fee for verification that a crematory authority is licensed in this state.

V. All fees collected by the board under this chapter shall be remitted to the state treasurer for deposit in the general fund of the state.

325-A:8 Inspection; Board; Duties; Authority for Appointments.

I. The board shall at least once every 3 years inspect or provide for the inspection of any crematory operated by a crematory authority licensed under this chapter in such manner and at such times as provided in rules adopted by the board.

II. The board shall issue an inspection report and provide a copy of the report to the crematory authority within 10 working days after the completion of an inspection. The board shall review any findings of non-compliance contained in such report within 20 working days after such inspection.

III. If the board determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of this chapter or rules adopted under this chapter, the board may send a letter to the crematory authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within 10 working days, and a notice that the board may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the board may take further action as provided in this chapter.

IV.(a) The board may appoint technical advisors or other investigators to assist with any investigation or adjudication, and may, with the approval of the attorney general, appoint legal counsel for such purposes.

(b) To the extent the board lacks budgeted funds to conduct a significant investigation or adjudication, it may, with the approval of the attorney general, petition governor and counsel to receive funds not otherwise appropriated in order to retain professional advisors in the proceeding.

(c) If the governor and counsel approves the use of funds not otherwise appropriated, the governor is authorized to issue a warrant for the approved amount out of any moneys in the treasury not otherwise appropriated. The board shall then promptly increase its licensing fees to the extent necessary to repay the amount advanced to the general fund during the next fiscal year by means of a fee surcharge.

325-A:9 Complaints.

I. Any person may submit a complaint to the board and request investigation of an alleged violation of this chapter or rules adopted under this chapter. The board shall review all complaints and determine whether to conduct an investigation relating to such complaints.

II. A complaint submitted to the board under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the board relating to such complaint.

325-A:10 Imminent Danger; Board Powers.

I. If the board determines that a crematory authority is operating a crematory so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such crematory, the board may order the temporary suspension or temporary limitation of the license of the crematory authority and may order the temporary closure of the crematory pending further action by the board. A hearing shall be held by the board no later than 10 days after the date of such order. The board shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the crematory authority.

II. A continuance of the hearing under paragraph I shall be granted by the board upon written request from the crematory authority. Such continuance shall not exceed 30 days.

III. A temporary suspension or temporary limitation order by the board under this section shall take effect when served upon the crematory authority and shall not exceed 90 days. If further action is not taken by the board within such period, the temporary suspension or temporary limitation shall expire.

325-A:11 Deny or Refuse to Renew License; Grounds. The board may deny or refuse to renew a license under this chapter or take disciplinary action against a crematory authority licensed under this chapter as provided in RSA 325-A:12 on any of the following grounds:

I. Violation of this chapter or rules adopted and pursuant to this chapter;

II. Conviction of any crime involving moral turpitude;

III. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

IV. Conviction of a violation pursuant to RSA 325-A:15;

V. Obtaining a license as a crematory authority by false representation or fraud;

VI. Misrepresentation or fraud in the operation of a crematory; or

VII. Failure to allow access by an agent or employee of the board to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the board.

325-A:12 Disciplinary Actions.

I. The board may impose any one or more of the following types of disciplinary action against a crematory authority licensed under this chapter:

(a) A fine not to exceed \$20,000 per violation;

(b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the board finds necessary and proper;

(c) Placement of the license on probation for a period not to exceed 2 years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed 2 years during which the crematory may not operate; and

(e) Revocation and permanent termination of the license.

II. Any fine imposed and unpaid under this chapter shall constitute a debt to the state of New Hampshire which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the state in the superior court of the county in which the crematory is located. The board shall, within 30 days after receipt, remit any such fines to the state treasurer for deposit in the general fund.

325-A:13 Appeal. Any party to a decision of the board under this chapter may appeal such decision. The appeal shall be in accordance with RSA 541.

325-A:14 License Reinstatement or Relicensure.

I. If the license of a crematory authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the board and payment of the applicable fee as provided in RSA 325-A:7.

II. If the license of a crematory authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the board determines an inspection is warranted.

III. If the license of a crematory authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in RSA 325-A:7.

IV. If the license of a crematory authority has been suspended, such license may be reinstated by the board prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the board may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the board shall grant full reinstatement of the license, modify the suspension, or deny the petition for reinstatement. The board's decision shall become final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules of the board.

V. If the license of a crematory authority has been revoked, such crematory authority shall not be eligible for relicensure until 5 years after the date of such revocation. A reapplication for an initial license may be made by the crematory authority at the end of such 5-year period.

325-A:15 Acts Prohibited; Penalty.

I. Maintaining or operating a crematory in violation of this chapter or any rules of the board is a public nuisance and may be abated as a nuisance as provided by law.

II. It shall be a felony to establish, operate, or maintain a crematory subject to this chapter without being licensed as a crematory authority under this chapter, to hold oneself out to the public as a crematory authority without being licensed, or to perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the board or a cremation permit.

III. Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a felony.

IV. A violation of any other provision of this chapter is a misdemeanor.

325-A:16 Injunctions. The board may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under this chapter. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory without obtaining a license as a crematory authority under this chapter, without alleging any further or more particular facts concerning the same.

325-A:17 Right to Authorize Cremation. The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to RSA 290.

325-A:18 Medical Examiner's Certificate. The body of a deceased person shall not be cremated within 48 hours after his or her decease unless he or she died of a contagious or infectious disease, and, if the death occurred within the state, the body shall not be received or cremated by the crematory authority until the crematory authority has received the certificate of burial permit required by law before burial, and a certificate from a medical examiner or deputy medical examiner that he or she has viewed the body and made personal inquiry into the cause and manner of death, and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. For said certificate, the medical examiner shall receive a fee of \$35, payable by the crematory authority. If the death occurs without the state, the reception and cremation of the body of a deceased person shall be governed by rules adopted by the board after consultation with the chief medical examiner.

325-A:19 Crematory Authority.

I. A crematory authority upon receiving human remains shall sign a delivery receipt form and shall hold the human remains, prior to cremation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the crematory or his or her representative and the funeral director or his or her representative, or the next-of-kin or designated agent as provided in RSA 290.

II. If a crematory authority is unable to cremate the human remains immediately upon taking receipt thereof, the crematory authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to comply with all applicable public health laws, provide for the health and safety of persons employed at such facility, and prevent any unauthorized access to such facility.

III. A crematory authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

IV. If human remains received by the crematory authority are not embalmed, such remains shall be held no longer than 24 hours from the time of death unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

325-A:20 Crematory Operation; Limitations.

I. No person shall be permitted in a crematory, unless authorized by the crematory authority, while any human remains are in the crematory awaiting cremation, being cremated, or being removed from the cremation chamber.

II. The human remains of more than one person shall not be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be so cremated.

325-A:21 Crematory Authority; Requirements.

I. A crematory authority shall not accept human remains for cremation without a proper label placed on the exterior of the alternative container or casket indicating the name of the deceased and the name and location of the funeral establishment, or the name of the next-of-kin or designated agent as provided in RSA 290.

II. No crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority shall refuse to accept human remains for cremation if the human remains are not in a casket.

III. No crematory authority shall accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding facility to be placed in an alternative container or casket. Human remains delivered to a crematory in an alternative container shall not be removed from the alternative container, and the alternative container shall be cremated with the human remains. A crematory authority may refuse a noncombustible casket or any other container that is not an alternative container or a casket or container that is not labeled as required under paragraph I.

IV. An alternative container shall:

- (a) Be composed of readily combustible materials suitable for cremation;
- (b) Be able to be closed to provide for complete encasement of the human remains;
- (c) Be resistant to leakage or spillage;

- (d) Be rigid enough for easy handling; and
- (e) Provide protection for the health and safety of persons handling such container.

325-A:22 Cremation Authorization Form.

I. A crematory authority shall not cremate human remains until it has received a cremation authorization form as provided in paragraph II, a completed and executed permit for transit or cremation as provided by the board or the appropriate cremation permit from the state from which the human remains were delivered, indicating that the human remains are to be cremated, and a delivery receipt form.

II. A cremation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

- (a) The name of the deceased;
- (b) Date and place of death;
- (c) The identity of the funeral director involved in the preparation of the human remains for cremation, if any;
- (d) Notification that the death did or did not occur from a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health;
- (e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;
- (f) Authorization by the authorizing agent for the crematory authority to cremate the human remains;
- (g) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;
- (h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;
- (i) The name of the person authorized to claim the cremated remains from the crematory authority; and
- (j) The intended disposition of the cremated remains.

III. A crematory authority shall retain, for at least 7 years after the cremation, in printed or electronic format with suitable backup, copies of the cremation authorization form, permit for transit or cremation as provided by the board or cremation permit, cremated remains receipt form, delivery receipt form, and any other records required under this chapter.

325-A:23 Signature.

I. Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated and the authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

II. A crematory authority may cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent and a completed and executed permit for transit or cremation or cremation permit as required by law.

325-A:24 Potentially Hazardous Conditions.

I. No human remains shall be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such

authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room, or at a medical facility by appropriate medical personnel, or at the crematory by an assistant deputy medical examiner of the department of justice.

II. No human remains shall be cremated with the knowledge that the human remains contain jewelry or other valuables unless authorized by the authorizing agent. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If the authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

325-A:25 Disputes.

I. If a crematory authority or funeral establishment is aware of any dispute concerning the cremation of human remains, or has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.

II. If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

325-A:26 Cremated Remains; How Treated.

I. In so far as is possible, upon completion of the cremation, all of the recoverable residue of the cremation shall be removed from the cremation chamber and any foreign matter or anything other than bone fragments shall be removed from such residue and shall be disposed of by the crematory authority. The remaining bone fragments shall be processed by pulverization so as to reduce the fragments to unidentifiable particles. This paragraph shall not apply when the commingling of human remains during cremation is otherwise authorized by law. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation is not a violation of this paragraph.

II. The cremated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

III. If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

IV. If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

325-A:27 Cremated Remains; Final Disposition.

I. For purposes of this chapter, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of 60 days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the

authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after the effective date of this chapter.

II. Cremated remains shall be delivered or released by the crematory authority to the representative specified by the authorizing agent on the cremation authorization form. The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If the cremated remains are shipped, a form used by the shipper may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

325-A:28 Rulemaking. The board shall adopt rules, pursuant to RSA 541-A relative to:

I. Procedures for licensure of crematory authorities.

II. Establishing all required fees.

III. The content of all forms.

IV. Conditions under which human remains of persons whose death was caused by a disease declared by the board to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a crematory for the purpose of cremation. The board shall consult with the chief medical examiner on rules adopted under this paragraph.

V. Minimum sanitation standards for all crematories.

VI. Inspection procedures for crematories as required under RSA 325-A:8.

325-A:29 Crematory Authority; Bylaws. A crematory authority may enact reasonable bylaws not inconsistent with this chapter for the management and operation of a crematory operated by such authority. Nothing in this section shall prevent a crematory authority from enacting bylaws which contain more stringent requirements than those provided in the act.

325-A:30 Chapter Construed.

I. This chapter shall be construed and interpreted as a comprehensive cremation law, and the provisions of this chapter shall take precedence over any existing laws or rules that govern human remains that do not specifically address cremation.

II. Nothing in this chapter shall be construed to prohibit the disposal of human remains through a reductive process utilizing alkaline hydrolysis.

3 References Changed. Amend RSA 5-C:68 to read as follows:

5-C:68 Burial Permit Procedures. When a body is to be stored, the burial permit shall be completed by the cemetery sexton where the body is entombed and sent to the clerk of the town or city where the storage vault is located. When the body is to be moved from entombment for final disposition, the funeral director, next of kin, or designated agent shall obtain the permit from the clerk of the town or city to use as the permit for final disposition. When the body is to be cremated, at least 48 hours shall elapse before cremation can take place in accordance with RSA [325-A:3] **325-A** and a separate cremation certificate shall be obtained from the medical examiner and submitted to the crematory with the burial permit pursuant to RSA [325-A:3] **325-A**. No separate permit shall be required when transporting a body by common carrier or remains to his or her final disposition.

4 Reference Deleted. Amend RSA 5-C:71, I to read as follows:

I. When the body of a deceased person is to be disposed of by cremation, the funeral director, next of kin, or designated agent in charge of the final disposition arrangements shall present a copy of the death certificate and the burial permit or emergency burial permit with the body to a medical examiner or deputy medical examiner in order to obtain the medical examiner's certificate [required by RSA 325-A:3].

5 Applicability. Crematory authorities, as defined in section 2 of this act, operating crematories on the effective date of this act, which apply for licensure within 60 days after the effective date of this act, shall be presumed to meet requirements for initial licensure under RSA 325-A as inserted by section 2 of this act.

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

2006-1609s**AMENDED ANALYSIS**

This bill requires the board of funeral directors and embalmers to license and regulate facilities engaged in the cremation of human remains.

Amendment adopted.**Senator Eaton offered a floor amendment.****Sen. Eaton, Dist. 10****Sen. Burling, Dist. 5****April 13, 2006****2006-1825s****10/05****Floor Amendment to HB 1696-FN**

Amend RSA 325-A:18 as inserted by section 2 of the bill by replacing it with the following:

325-A:18 Medical Examiner's Certificate. The body of a deceased person shall not be cremated within 48 hours after his or her decease unless he or she died of a contagious or infectious disease, and, if the death occurred within the state, the body shall not be cremated by the crematory authority until the crematory authority has received the certificate of burial permit required by law before burial, and a certificate from a medical examiner or deputy medical examiner that he or she has viewed the body and made personal inquiry into the cause and manner of death, and is of the opinion that no further examination or judicial inquiry concerning the same is necessary. For said certificate, the medical examiner shall receive a fee of \$35, payable by the crematory authority. If the death occurs without the state, the reception and cremation of the body of a deceased person shall be governed by rules adopted by the board after consultation with the chief medical examiner.

Floor amendment adopted.**The question is on the adoption of the bill as amended.****Adopted.****Referred to the Finance Committee (Rule #26).**

HB 1168, establishing a commission to determine how to optimize boating safety on water bodies. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation**April 5, 2006****2006-1650s****03/04****Amendment to HB 1168**

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

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

(a) Two members of the house of representatives, appointed by the speaker of the house of representatives, one of whom shall be a member of the resources, recreation and development committee and one of whom shall be a member of the transportation committee.

(b) Two members of the senate, appointed by the president of the senate, one of whom shall be a member of the transportation and interstate cooperation committee.

(c) Two members appointed by the New Hampshire Marine Trades Association.

(d) The commissioner of environmental services, or designee.

(e) The commissioner of resources and economic development, or designee.

(f) The commissioner of safety, or designee.

(g) The executive director of the fish and game department, or designee.

- (h) One member appointed by the public water access advisory board.
- (i) One member appointed by the New Hampshire Lakes Association.
- (j) The director of the New Hampshire Rivers Council, or designee.
- (k) One member appointed by the United States Power Squadron.
- (l) One member appointed by the New Hampshire Recreational Boaters Association.
- (m) One member appointed by the New Hampshire Bass Federation.

MOTION TO TABLE

Senator Letourneau moved to have HB 1168 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 1168, establishing a commission to determine how to optimize boating safety on water bodies.

HB 1356, relative to on-board diagnostic system inspections. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 4-0. Senator Letourneau for the committee.

Adopted.

Ordered to third reading.

Senator Flanders (Rule #42) on HB 1356.

Senators Gallus and Gatsas are in opposition to HB 1356.

HB 317-FN, relative to mooring fees. Ways and Means Committee. Ought to Pass, Vote 4-0. Senator Boyce for the committee.

Adopted.

Ordered to third reading.

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 115, allowing pharmacists to establish collaborative practice agreements with medical practitioners.

HB 203-FN, relative to the regulation of tracking devices and establishing a commission on the use of tracking devices.

HB 221, relative to eligibility for absentee ballots.

HB 317-FN, relative to mooring fees.

HB 345, requiring photo identification to obtain a ballot.

HB 624-FN, relative to penalties in certain health and health-related professions.

HB 690-FN, relative to aid to the needy blind and relative to undue hardship for public assistance.

HB 1135, making a technical correction to the Uniform Interstate Family Support Act.

HB 1173, relative to designating the clerk in cities the chief elections officer for the city.

HB 1189, relative to audits by the legislative budget assistant.

HB 1227-FN, relative to late fees and reinstatement fees paid by business entities.

HB 1231-FN, relative to the penalty for assaulting a firefighter, licensed emergency medical care provider, or law enforcement officer.

HB 1238-FN, relative to centralized voter registration database information.

HB 1243-FN, reducing certain fines for motor vehicle violations.

HB 1313, naming a bridge between the towns of Newfields and Stratham the United States Submarine Veterans of World War II Memorial Bridge.

HB 1324, relative to the commission to study the state park system.

HB 1356, relative to on-board diagnostic system inspections.

HB 1361, relative to the penalty for shoplifting.

HB 1433, establishing a committee to study secured landfills and establishing a moratorium on the incineration of construction and demolition waste.

HB 1452-FN, requiring insurance coverage for the cost of testing for bone marrow donation.

HB 1465-FN, relative to food stamp overpayments.

HB 1584, relative to cemetery setbacks and septic systems.

HB 1660-FN, regulating identity theft.

HB 1662-FN, establishing the crime of peonage.

HB 1671-FN, relative to the regulation of dentists and dental hygienists by the board of dental examiners.

HB 1679-FN-L, relative to the property tax exemption for university system property.

HB 1688, prohibiting the use of gasoline-powered watercraft on Head's Pond in Hooksett.

HB 1692-FN, establishing the New Hampshire sexual predators act.

HB 1718-FN, requiring a written disclosure statement be provided to prospective nursing home facility clients.

HB 1722-FN, relative to the New Hampshire council on developmental disabilities.

HCR 22, relative to the right to pursue a livelihood in natural resources industries.

HJR 21, urging the university of New Hampshire to restore intercollegiate baseball and softball.

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, processing enrolled bill reports and amendments.

Adopted.

In recess to the Call of the Chair.