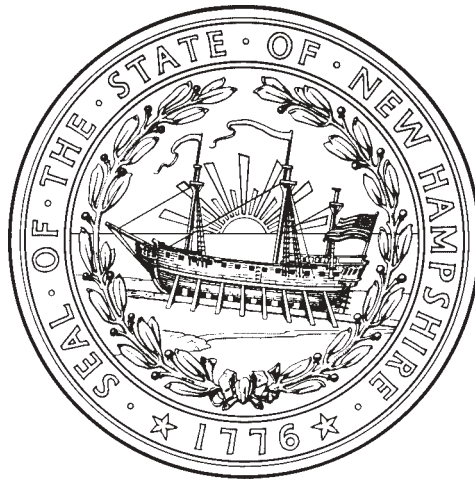


March 22, 2006  
Nos. 8 - 9

# STATE OF NEW HAMPSHIRE

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Legislative

## SENATE JOURNAL

**ADJOURNMENT – MARCH 16, 2006 SESSION**  
**COMMENCEMENT – MARCH 22, 2006 SESSION**

# SENATE JOURNAL 8 *(Cont.)*

*March 16, 2006*

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## **JOURNAL #7 CORRECTION FROM March 9 2006**

**SB 318-FN**, relative to the use of deadly force to protect oneself. Judiciary Committee. Inexpedient to Legislate, Vote 4-2. Senator Foster for the committee.

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

**A roll call was requested by Senator Hassan.**

**Seconded by Senator Barnes.**

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

**The following Senators voted No: Gallus, Kenney, Boyce, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.**

**Yeas: 11 - Nays: 12**

**The committee report of inexpedient to legislate failed.**

**Senator Martel requested the record show he intended to vote yes on the motion inexpedient to legislate. Senator Martel did not request reconsideration on the vote.**

**Senator Bragdon moved ought to pass.**

**Adopted.**

**Ordered to third reading.**

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## **HOUSE MESSAGE**

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

**SB 211-FN**, relative to pharmaceutical marketers.

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

## **HOUSE MESSAGE**

The House of Representatives has adopted the recommendation of the Committee of Conference to which was referred the following entitled Bill:

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

## **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 104-FN**, relative to the tax exemption for water and air pollution control facilities.

## **HOUSE MESSAGE**

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 1113**, adding a definition of “public academy” to the definition of “high school”.

**HB 1116**, relative to service of the notice to quit and writ of summons in landlord tenant actions.

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

**HB 1172-FN**, relative to registration of political committees.

**HB 1188**, relative to notice before entry into a condominium unit.

**HB 1192**, relative to property and casualty insurance.

**HB 1194**, relative to job protection for firefighters, rescue workers, and emergency medical personnel.

**HB 1206**, relative to the assessing standards board.

**HB 1209**, relative to notification requirements for criminal offenders.

**HB 1215**, relative to the winter maintenance of Diamond Pond Road in the towns of Colebrook and Stewartstown.

**HB 1216**, relative to the sale of unpasteurized milk.

**HB 1223-FN**, relative to the use of real estate brokers by the department of transportation.

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

**HB 1260**, relative to informing first-time driver’s license applicants of the controlled drug laws.

**HB 1274**, relative to certain disclosures to the department of health and human services.

**HB 1295**, requiring notification regarding brake shift interlock and key positions by automobile dealers to consumers.

**HB 1298**, establishing a study committee to evaluate disciplinary procedures of the board of medicine.

**HB 1315**, relative to the definition and classification of dams.

**HB 1317**, relative to the control or eradication of exotic aquatic weeds and requiring a review by the department of agriculture, markets, and food, the department of environmental services, the fish and game department, and the department of resources and economic development, evaluating the current permitting process for special permits for aquatic applications of pesticides to control or eradicate exotic aquatic weeds and making recommendations to improve the process.

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

**HB 1343**, relative to the duties of the council on resources and development.

**HB 1426**, granting a right-of-way over state-owned land.

**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 1480**, amending the provisions relative to registration of criminal offenders.

**HB 1487**, relative to marriage licenses.

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

**HB 1506**, requiring children 12 years of age or under to wear personal flotation devices.

**HB 1508**, relative to acceptance of applications by planning boards.

**HB 1517-FN**, relative to membership on the board of medicine and the medical review subcommittee.

**HB 1534**, relative to maintaining construction and demolition debris as a solid waste.

**HB 1536**, relative to bonds required from persons excavating or disturbing certain highways.

**HB 1546**, relative to patient information.

**HB 1555**, establishing a commission to investigate cost drivers in providing health care.

**HB 1565**, relative to evictions in cases involving incidents of domestic violence.

**HB 1566**, relative to the definitions of resident for motor vehicle law purposes and domicile for voting purposes and relative to vehicle registration and driver's license requirements.

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

**HB 1574**, relative to membership on the public employees deferred compensation commission.

**HB 1582**, prohibiting New Hampshire from participating in a national identification card system.

**HB 1603-FN**, relative to administration and enforcement by the division of forests and lands over forest resources and timber harvesting.

**HB 1609-FN**, requiring a pilot project to estimate future water needs and availability.

**HB 1667-FN**, establishing penalties for methamphetamine manufacturing and possession of substances with intent to manufacture methamphetamine.

**HB 1672-FN**, relative to a registry for substantiated cases of abuse, neglect, or exploitation of incapacitated adults and establishing a task force relative to central registries.

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

**HB 1683-FN**, establishing a homestead food license for residential, non-commercial kitchens.

**HB 1711-FN**, relative to the regulation of fuel gas fitters.

**HB 1756**, relative to alternative regulation of small incumbent local exchange carriers.

**HB 1761**, relative to hold over tenants in vacation or recreational rental units.

**HB 1768-FN**, establishing a committee to study the effects of rescinding the charter of the New Hampshire Bar Association, and relative to the regulation of attorneys by the supreme court.

**HJR 25**, encouraging the United States Congress to propose an amendment to the Constitution concerning eminent domain.

**CACR 41**, relating to representative districts. Providing that representative districts shall be apportioned according to specified standards.

### **INTRODUCTION OF HOUSE BILL(S)**

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 1113 CACR 41**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

### **First and Second Reading and Referral**

**HB 1113**, adding a definition of "public academy" to the definition of "high school". (Education)

**HB 1116**, relative to service of the notice to quit and writ of summons in landlord tenant actions. (Judiciary)

**HB 1168**, establishing a commission to determine how to optimize boating safety on water bodies. (Transportation and Interstate Cooperation)

**HB 1172-FN**, relative to registration of political committees. (Internal Affairs)

**HB 1188**, relative to notice before entry into a condominium unit. (Public and Municipal Affairs)

**HB 1192**, relative to property and casualty insurance. (Banks and Insurance)

**HB 1194**, relative to job protection for firefighters, rescue workers, and emergency medical personnel. (Banks and Insurance)

**HB 1206**, relative to the assessing standards board. (Executive Departments and Administration)

**HB 1209**, relative to notification requirements for criminal offenders. (Education)

**HB 1215**, relative to the winter maintenance of Diamond Pond Road in the towns of Colebrook and Stewartstown. (Transportation and Interstate Cooperation)

**HB 1216**, relative to the sale of unpasteurized milk. (Environment and Wildlife)

**HB 1223-FN**, relative to the use of real estate brokers by the department of transportation. (Capital Budget)

**HB 1243-FN**, reducing certain fines for motor vehicle violations. (Finance)

**HB 1260**, relative to informing first-time driver's license applicants of the controlled drug laws. (Transportation and Interstate Cooperation)

**HB 1274**, relative to certain disclosures to the department of health and human services. (Health and Human Services)

**HB 1295**, requiring notification regarding brake shift interlock and key positions by automobile dealers to consumers. (Transportation and Interstate Cooperation)

**HB 1298**, establishing a study committee to evaluate disciplinary procedures of the board of medicine. (Executive Departments and Administration)

**HB 1315**, relative to the definition and classification of dams. (Environment and Wildlife)

**HB 1317**, relative to the control or eradication of exotic aquatic weeds and requiring a review by the department of agriculture, markets, and food, the department of environmental services, the fish and game department, and the department of resources and economic development, evaluating the current permitting process for special permits for aquatic applications of pesticides to control or eradicate exotic aquatic weeds and making recommendations to improve the process. (Environment and Wildlife)

**HB 1324**, relative to the commission to study the state park system. (Environment and Wildlife)

**HB 1343**, relative to the duties of the council on resources and development. (Capital Budget)

**HB 1426**, granting a right-of-way over state-owned land. (Capital Budget)

**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)

**HB 1452-FN**, requiring insurance coverage for the cost of testing for bone marrow donation. (Banks and Insurance)

**HB 1480**, amending the provisions relative to registration of criminal offenders. (Judiciary)

**HB 1487**, relative to marriage licenses. (Public and Municipal Affairs)

**HB 1491**, establishing a committee to study the publicly owned treatment plant needs of New Hampshire. (Energy and Economic Development)

**HB 1506**, requiring children 12 years of age or under to wear personal flotation devices. (Environment and Wildlife)

**HB 1508**, relative to acceptance of applications by planning boards. (Public and Municipal Affairs)

**HB 1517-FN**, relative to membership on the board of medicine and the medical review subcommittee. (Executive Departments and Administration)

**HB 1534**, relative to maintaining construction and demolition debris as a solid waste. (Energy and Economic Development)

**HB 1536**, relative to bonds required from persons excavating or disturbing certain highways. (Transportation and Interstate Cooperation)

**HB 1546**, relative to patient information. (Health and Human Services)

**HB 1555**, establishing a commission to investigate cost drivers in providing health care. (Health and Human Services)

**HB 1565**, relative to evictions in cases involving incidents of domestic violence. (Judiciary)

**HB 1566**, relative to the definitions of resident for motor vehicle law purposes and domicile for voting purposes and relative to vehicle registration and driver's license requirements. (Internal Affairs)

**HB 1568**, establishing a committee to study the siting and construction of commercial wind energy facilities. (Energy and Economic Development)

**HB 1574**, relative to membership on the public employees deferred compensation commission. (Executive Departments and Administration)

**HB 1582**, prohibiting New Hampshire from participating in a national identification card system. (Public and Municipal Affairs)

**HB 1603-FN**, relative to administration and enforcement by the division of forests and lands over forest resources and timber harvesting. (Environment and Wildlife)

**HB 1609-FN**, requiring a pilot project to estimate future water needs and availability. (Energy and Economic Development)

**HB 1667-FN**, establishing penalties for methamphetamine manufacturing and possession of substances with intent to manufacture methamphetamine. (Judiciary)

**HB 1672-FN**, relative to a registry for substantiated cases of abuse, neglect, or exploitation of incapacitated adults and establishing a task force relative to central registries. (Health and Human Services)

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

**HB 1683-FN**, establishing a homestead food license for residential, non-commercial kitchens. (Health and Human Services)

**HB 1711-FN**, relative to the regulation of fuel gas fitters. (Executive Departments and Administration)

**HB 1756**, relative to alternative regulation of small incumbent local exchange carriers. (Energy and Economic Development)

**HB 1761**, relative to hold over tenants in vacation or recreational rental units. (Judiciary)

**HB 1768-FN**, establishing a committee to study the effects of rescinding the charter of the New Hampshire Bar Association, and relative to the regulation of attorneys by the supreme court. (Executive Departments and Administration)

**HJR 25**, encouraging the United States Congress to propose an amendment to the Constitution concerning eminent domain. (Public and Municipal Affairs)

**CACR 41**, relating to representative districts. Providing that representative districts shall be apportioned according to specified standards. (Internal Affairs)

#### HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

**HB 298**, relative to consolidating statutes relating to driving while intoxicated.

**HB 1111**, designating the pumpkin as the New Hampshire state fruit.

**HB 1265**, establishing the council on the relationship between public health and the environment.

**HB 1333**, relative to solid waste reduction goals.

**HB 1335**, relative to the authority of law enforcement officers during a state of emergency.

**HB 1337**, establishing the amusement ride safety advisory board.

**HB 1351**, relative to the rulemaking process.

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

**HB 1357**, relative to the legislative facilities committee.

**HB 1373**, establishing a commission to study ways to encourage the proper recycling and disposal of grease trap wastes and to determine ways to develop additional disposal capacity.

**HB 1377**, relative to certain mandatory minimum sentences.



**HB 1386**, relative to exceptions to the prohibition on carrying and selling knives.

**HB 1394**, relative to determination of value of property in current use.

**HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16.

**HB 1429**, relative to municipal exemptions for hazardous waste cleanup liability.

**HB 1446**, requiring the department of resources and economic development to prepare and submit a management and financial plan to the general court and the public prior to the opening of the Berlin regional ATV park.

**HB 1448**, relative to the applicability of drivers' license revocations for drugs or alcohol involvement.

**HB 1455-FN-A**, relative to the disposal of video display devices.

**HB 1463-FN**, relative to boating and water safety.

**HB 1592-FN**, making certain changes in the insurance laws.

**HB 1595-FN**, relative to certification of electronic systems technicians by the electricians' board.

**HB 1613-FN-L**, relative to polling place arrangement and accessibility.

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

**HB 1624-FN**, relative to boat noise.

**HB 1625**, establishing penalties for guardians ad litem who fail to file reports which are required by the court.

**HB 1630-L**, relative to land use change taxes imposed for certain road construction on rights-of-way.

**HB 1631-FN-L**, relative to property taxation of certain property of the Appalachian Mountain Club.

**HB 1633-FN**, relative to membership, eligibility, and financing of the New Hampshire retirement system.

**HB 1652-FN**, relative to certain insurance claims.

**HB 1696-FN**, relative to the cremation of human remains.

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

**HB 1745-FN**, relative to methamphetamine-related crimes involving children and incapacitated adults.

**HB 1758**, classifying biodiesel as a renewable energy source.

**Adopted.**

#### **INTRODUCTION OF HOUSE BILL(S)**

Senator Clegg offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 298 to 1758**, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

**Adopted.**

#### **First and Second Reading and Referral**

**HB 298**, relative to consolidating statutes relating to driving while intoxicated. (Judiciary)

**HB 1111**, designating the pumpkin as the New Hampshire state fruit. (Banks and Insurance)

**HB 1265**, establishing the council on the relationship between public health and the environment. (Environment and Wildlife)

**HB 1333**, relative to solid waste reduction goals. (Environment and Wildlife)

**HB 1335**, relative to the authority of law enforcement officers during a state of emergency. (Judiciary)

**HB 1337**, establishing the amusement ride safety advisory board. (Executive Departments and Administration)

**HB 1351**, relative to the rulemaking process. (Executive Departments and Administration)

**HB 1356**, relative to on-board diagnostic system inspections. (Transportation and Interstate Cooperation)

**HB 1357**, relative to the legislative facilities committee. (Internal Affairs)

**HB 1373**, establishing a commission to study ways to encourage the proper recycling and disposal of grease trap wastes and to determine ways to develop additional disposal capacity. (Environment and Wildlife)

**HB 1377**, relative to certain mandatory minimum sentences. (Judiciary)

**HB 1386**, relative to exceptions to the prohibition on carrying and selling knives. (Judiciary)

**HB 1394**, relative to determination of value of property in current use. (Public and Municipal Affairs)

**HB 1420-FN**, prohibiting remote control and Internet hunting and relative to exceptions to the prohibitions on the sale of firearms to minors and the furnishing of arms to persons under 16. (Environment and Wildlife)

**HB 1429**, relative to municipal exemptions for hazardous waste cleanup liability. (Public and Municipal Affairs)

**HB 1446**, requiring the department of resources and economic development to prepare and submit a management and financial plan to the general court and the public prior to the opening of the Berlin regional ATV park. (Environment and Wildlife)

**HB 1448**, relative to the applicability of drivers' license revocations for drugs or alcohol involvement. (Transportation and Interstate Cooperation)

**HB 1455-FN-A**, relative to the disposal of video display devices. (Environment and Wildlife)

**HB 1463-FN**, relative to boating and water safety. (Transportation and Interstate Cooperation)

**HB 1592-FN**, making certain changes in the insurance laws. (Banks and Insurance)

**HB 1595-FN**, relative to certification of electronic systems technicians by the electricians' board. (Executive Departments and Administration)

**HB 1613-FN-L**, relative to polling place arrangement and accessibility. (Public and Municipal Affairs)

**HB 1620-FN**, relative to hunting restrictions of certain convicted felons. (Judiciary)

**HB 1624-FN**, relative to boat noise. (Transportation and Interstate Cooperation)

**HB 1625**, establishing penalties for guardians ad litem who fail to file reports which are required by the court. (Judiciary)

**HB 1630-L**, relative to land use change taxes imposed for certain road construction on rights-of-way. (Environment and Wildlife)

**HB 1631-FN-L**, relative to property taxation of certain property of the Appalachian Mountain Club. (Public and Municipal Affairs)

**HB 1633-FN**, relative to membership, eligibility, and financing of the New Hampshire retirement system. (Executive Departments and Administration)

**HB 1652-FN**, relative to certain insurance claims. (Banks and Insurance)

**HB 1696-FN**, relative to the cremation of human remains. (Public and Municipal Affairs)

**HB 1718-FN**, requiring a written disclosure statement be provided to prospective nursing home facility clients. (Health and Human Services)

**HB 1745-FN**, relative to methamphetamine-related crimes involving children and incapacitated adults. (Judiciary)

**HB 1758**, classifying biodiesel as a renewable energy source. (Energy and Economic Development)

**Out of Recess.**

#### **LATE SESSION**

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

**Adopted.**

**Adjournment.**



# SENATE JOURNAL 9

*March 22, 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.

*Gracious Lord of both grandparents and children, as we go about the work You give us to do, whether it is this day heavy lifting or light, may You show us each how to tell time accurately and then how to keep it. Amen*

Senator Eaton led the Pledge of Allegiance.

## INTRODUCTION OF GUESTS COMMITTEE REPORTS SPECIAL ORDER

**SB 390**, relative to membership of the board of tax and land appeals. Public and Municipal Affairs Committee. Ought to Pass, Vote 3-2. Senator Barnes for the committee.

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

**A roll call was requested by Senator Johnson.**

**Seconded by Senator Barnes.**

**The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Roberge, Clegg, Gatsas, Barnes, Martel, Letourneau.**

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

**Yeas: 11 - Nays: 13**

**Motion failed.**

**Senator Burling moved inexpedient to legislate.**

**The motion of inexpedient to legislate is adopted.**

**Senator Bragdon in the Chair.**

**CACR 43**, relating to the cost of education. Providing that the legislature shall determine and define the content, extent, and funding of education. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Boyce for the committee.

**Senate Finance**

**March 20, 2006**

**2006-1457s**

**04/10**

### **Amendment to CACR 43**

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

RELATING TO: public education.

PROVIDING THAT: the legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education.

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

I. That the second part of the constitution be amended by inserting after article 83 the following new article:

[Art.] 83-a. [Content, Extent, Funding, and Delivery of Public Education.] The legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education.

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2006.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2006 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2006 session of the general court shall be approved.

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

"Are you in favor of amending the second part of the constitution by inserting after article 83 the following new article:

[Art.] 83-a. [Content, Extent, Funding, and Delivery of Public Education.] The legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education."

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 2006 General Court" shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

**2006-1457s**

#### AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that the legislature shall have the authority to make reasonable determinations of the content, extent, funding, and delivery of public education.

**The question is on adoption of the committee amendment.**

**A roll call was requested by Senator Gatsas.**

**Seconded by Senator Barnes.**

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

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

**Yeas: 14 - Nays: 10**

**Amendment adopted.**

#### MOTION TO TABLE

**Senator Clegg moved to have CACR 43 laid on the table.**

**Adopted.**

#### LAID ON THE TABLE

**CACR 43**, relating to the cost of education. Providing that the legislature shall determine and define the content, extent, and funding of education.

**Senator Gatsas in the Chair.**

**CACR 44**, relating to limits on the taking of private property. Providing that a person's property shall not be taken by eminent domain if the taking is for private use. Finance Committee. Ought to Pass, Vote 6-2. Senator Green for the committee.

**Senator Burling offered a floor amendment.**

**Sen. Burling, Dist. 5**  
**March 21, 2006**  
**2006-1489s**  
**06/10**

**Floor Amendment to CACR 44**

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

RELATING TO: limits on the taking of private property.

PROVIDING THAT: no person's private real property shall be taken by eminent domain unless it is to be put to public use.

Amend paragraph I of the resolution by replacing it with the following:

I. That the first part of the constitution be amended by inserting after article 12 the following new article:

[Art.] 12-a [Power to Take Property Limited.] No person's private real property shall be taken through the exercise of eminent domain unless that real property is to be put to public use.

Amend paragraph IV of the resolution by replacing it with the following:

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

"Are you in favor of amending the first part of the constitution by inserting a new article 12-a to provide that private property can only be taken as follows:

[Art.] 12-a [Power to Take Property Limited.] No person's private real property shall be taken through the exercise of eminent domain unless that real property is to be put to public use."

**2006-1489s**

**AMENDED ANALYSIS**

This constitutional amendment concurrent resolution prohibits the exercise of eminent domain to take a person's private real property unless it is to be put to public use.

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator D'Allesandro.**

**Seconded by Senator Estabrook.**

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

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

**Yeas: 8 - Nays: 16**

**Floor amendment failed.**

**The question in the committee report of ought to pass.**

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Estabrook.**

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

**The following Senators voted No: Burling, Gottesman, Larsen, D'Allesandro.**

**Yeas: 20 - Nays: 4**

**Adopted by the necessary 3/5 vote.**

**Ordered to third reading.**

**SB 268**, raising the age of required attendance of children in school. Finance Committee. Ought to pass with amendment, Vote 6-2. Senator Green for the committee.

**Senate Finance**  
**March 20, 2006**  
**2006-1459s**  
**04/05**

**Amendment to SB 268**

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

AN ACT raising the age of required attendance of children in school and establishing a 2-year pilot program for increasing vocational education opportunities in the Manchester and Nashua school districts and making an appropriation therefor.

Amend the bill by replacing all after section 4 with the following:

5 Vocational Education Programs; Manchester and Nashua School Districts; Pilot Program. There is hereby established a 2-year pilot program to be conducted in the Manchester and Nashua school districts to identify pupils in those school districts who are interested in vocational education programs and to establish procedures for increasing opportunities for such pupils to participate in vocational education programs. The commissioner of the department of education, or designee, shall work with the superintendents of the Manchester and Nashua school administrative units, the relevant school principals and teachers, and any other individuals who the commissioner and superintendents jointly determine are necessary for accomplishing the purpose of the pilot program.

6 Appropriation. There is hereby appropriated the sum of \$600,000 for the fiscal year ending June 30, 2007 and the sum of \$600,000 for the fiscal year ending June 30, 2008, to the department of education for the purposes of section 5 of this act. The governor shall draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

Repeal. The following are repealed:

I. RSA 193:1, IV, relative to withdrawal from school for children who are at least 16 years of age but under 18 years of age.

II. Section 5 of this act, relative to the pilot project in the Manchester and Nashua school districts.

8 Effective Date.

I. Sections 5, 6, and 8 of this act shall take effect January 1, 2007.

II. Paragraph II of section 7 of this act shall take effect January 1, 2009.

III. The remainder of this act shall take effect July 1, 2008.

**2006-1459s**

**AMENDED ANALYSIS**

This bill raises from 16 to 18 the age for compulsory school attendance and provides a procedure for a pupil who is at least 16 years of age to obtain an attendance waiver from school. The bill also establishes a 2-year pilot program in the Manchester and Nashua school districts to increase opportunities for interested pupils in those school districts to attend vocational education programs and making an appropriation therefor.

**Amendment adopted.**

**Senator Boyce offered a floor amendment.**

**Sen. Boyce, Dist. 4**  
**March 22, 2006**  
**2006-1498s**  
**04/10**

**Floor Amendment to SB 268**

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

AN ACT establishing a 2-year pilot program for increasing vocational education opportunities in the Manchester and Nashua school districts and making an appropriation therefor.

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

1 Vocational Education Programs; Manchester and Nashua School Districts; Pilot Program. There is hereby established a 2-year pilot program to be conducted in the Manchester and Nashua school districts

to identify pupils in those school districts who are interested in vocational education programs and to establish procedures for increasing opportunities for such pupils to participate in vocational education programs. The commissioner of the department of education, or designee, shall work with the superintendents of the Manchester and Nashua school administrative units, the relevant school principals and teachers, and any other individuals who the commissioner and superintendents jointly determine are necessary for accomplishing the purpose of the pilot program.

2 Appropriation. There is hereby appropriated the sum of \$600,000 for the fiscal year ending June 30, 2007 and the sum of \$600,000 for the fiscal year ending June 30, 2008, to the department of education for the purposes of section 1 of this act. The governor shall draw a warrant for such sums out of any money in the treasury not otherwise appropriated.

3 Repeal. Section 1 of this act, relative to the pilot project in the Manchester and Nashua school districts is repealed.

4 Effective Date.

I. Section 3 of this act shall take effect January 1, 2009.

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

**2006-1498s**

#### AMENDED ANALYSIS

This bill establishes a 2-year pilot program in the Manchester and Nashua school districts to increase opportunities for interested pupils in those school districts to attend vocational education programs and makes an appropriation therefor.

**Floor amendment failed.**

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

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Martel.**

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

**The following Senators voted No: Boyce, Flanders, Eaton, Bragdon, Barnes, Letourneau, Morse.**

**Yeas: 17 - Nays: 7**

**Adopted.**

**Ordered to third reading.**

**SB 374-FN**, relative to the healthy kids corporation. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Morse for the committee.

**Senate Finance**

**March 20, 2006**

**2006-1465s**

**05/04**

#### Amendment to SB 374-FN

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

AN ACT relative to the state children's health insurance program.

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

1 Purpose. The purpose of this act is to ensure the best and highest utilization of the state children's health insurance program resources for the benefit of the children of New Hampshire. It is the intent of the general court that every eligible child be given the opportunity to fully utilize the benefits of this program in order to promote the health and well being of our youngest citizens.

2 Department of Health and Human Services; Healthy Kids Silver Program; Fiscal Committee Approval Required for Expenditures Above Budgeted Amounts. Amend 2005, 117:119 to read as follows:

177:119 Department of Health and Human Services; Healthy Kids Silver Program; Cap. Notwithstanding any other provision of law, for the biennium ~~[beginning July 1, 2005 and continuing thereafter]~~ **ending**

***June 30, 2007***, the department of health and human services shall not increase expenditures in approved budgets for the Healthy Kids Silver Program without prior approval ~~[and additional appropriations from]~~ ***of the fiscal committee of the general court. If the commissioner of the department of health and human services projects that expenditures for the Healthy Kids Silver Program will exceed the department's current appropriation for the Healthy Kids Silver Program, the commissioner may recommend rate reductions in any program and such other program changes elsewhere in the department as deemed necessary to offset the amount of any such deficit. The commissioner shall submit to the fiscal committee of the general court and to the finance committees of the house and the senate any such proposed changes, which shall be subject to the prior approval of the fiscal committee of the general court.***

3 New Paragraph; State Children's Health Insurance Program. Amend RSA 126-A:5 by inserting after paragraph XIII the following new paragraph:

XIV.(a) Notwithstanding any provision of law to the contrary, beginning July 1, 2007, the commissioner shall implement the state children's health insurance program through a contract, which shall be renewed biennially. The commissioner shall have the authority to adopt rules, pursuant to RSA 541-A, to the extent necessary to facilitate the purposes of this paragraph.

(b) The contract shall include the following information, which the commissioner shall submit to the legislature by March 1 of each odd-numbered year for inclusion in the state's biennial operating budget:

(1) The per-member per-month rate for the health and dental insurance to be paid according to the contract; and

(2) Any other costs associated with the contract that will impact the state operating budget.

(c) Notwithstanding any provision of law to the contrary, the commissioner, in consultation with the commissioner of administrative services, may implement a self-insured health plan for children who receive health insurance coverage under the state children's health insurance program.

4 Healthy Kids Corporation. Notwithstanding RSA 126-A:5, XIV, as inserted by section 2 of this act, or any other provision of law to the contrary, the commissioner shall use the healthy kids corporation as the sole source provider of administrative and outreach services for the state children's health insurance program and premium billing and collection services for the Medicaid for Employed Adults with Disabilities (MEAD) program until July 1, 2007. As part of the premium reconciliation process, the commissioner may allow the healthy kids corporation to retain up to the sum of \$100,000 for fiscal year 2006.

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

**2006-1465s**

#### AMENDED ANALYSIS

This bill:

I. Requires fiscal committee approval for expenditures above budgeted amounts for the Health Kids Silver Program.

II. Requires the department of health and human services to implement the state children's health insurance program through a contract.

III. Requires use of the healthy kids corporation as the sole provider of administrative and outreach services for the state children's health insurance program and premium billing and collection services for the Medicaid for Employed Adults with Disabilities program until July 1, 2007.

**The question is on the adoption of the committee amendment.**

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

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

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

**Yeas: 16 - Nays: 8**

**Amendment adopted.**



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

**Adopted.**

**Ordered to third reading.**

**SB 397-FN-A**, establishing a temporary energy tax credit against the business enterprise tax. Finance Committee. Ought to Pass, Vote 5-3. Senator Morse for the committee.

**Senator D'Allesandro offered a floor amendment.**

**Sen. D'Allesandro, Dist. 20**

**March 22, 2006**

**2006-1501s**

**09/01**

**Floor Amendment to SB 397-FN-A**

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

AN ACT relative to an exemption for certain new businesses from the business enterprise tax.

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

1 Business Enterprise Tax; Definition of Business Enterprise; Exemption for Certain New Businesses. Amend RSA 77-E:1, III to read as follows:

III. "Business enterprise" means any profit or nonprofit enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust or other form of organization engaged in or carrying on any business activity within this state, except such enterprises as are expressly made exempt from income taxation under section 501(c)(3) of the United States Internal Revenue Code to the extent such enterprise does not engage in any business activity constituting unrelated business activity as defined by section 513 of the United States Internal Revenue Code. Each business enterprise under this definition shall be subject to the tax imposed under RSA 77-E as a separate entity except that trusts treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, and such owners shall be subject to the tax thereon to the extent any such owners would be considered a business enterprise hereunder notwithstanding the existence of the trust. The use of consolidated returns as defined in the United States Internal Revenue Code or of combined reporting is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as a business enterprise and shall be excluded from taxation at the entity level if it is a qualified investment company as defined in RSA 77-E:1, XIV. ***A business enterprise which has not conducted any business activity in this state on or before July 1, 2005 shall, for 2 consecutive taxable periods after beginning to conduct business activity in this state, be exempt from taxation up to \$500 under this chapter for each taxable period in which the business activity conducted in this state does not realize a profit.***

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

**2006-1501s**

**AMENDED ANALYSIS**

This bill exempts certain new businesses from the business enterprise tax for up to \$500.

**The question is on adoption of the floor amendment.**

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

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

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

**Yeas: 8 - Nays: 16**

**Floor amendment failed.**

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

**Adopted.**

**Ordered to third reading.**

**Senator Barnes is in opposition to SB 397-FN-A.**

**SB 407-FN-A**, relative to enforcement of labor statutes under current federal immigration laws. Finance Committee. Ought to pass with amendment, Vote 6-2. Senator Boyce for the committee.

**Senate Finance**  
**March 20, 2006**  
**2006-1474s**  
**08/09**

**Amendment to SB 407-FN-A**

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

1 Findings and Declaration of Purposes. The general court finds that:

I. The safety and economic well-being of the state depends on adequate protection of New Hampshire's borders under federal immigration law.

II. Under current federal immigration law, those who enter the borders of New Hampshire and the United States illegally and commit crimes therein are not held accountable for those crimes before they are deported.

III. Others who enter the state seeking employment but are undocumented are exploited by unscrupulous employers. These undocumented workers are paid lower wages, are denied benefits, such as health care, that are provided to citizen workers, and do not come forward to report the abuses because of their undocumented status.

IV. The increased costs to state and local government from the exploitation of employees, and increased noncompliance with laws and rules administered by the commissioner of labor harms both documented and undocumented employees.

V. The employer cost savings gained by noncompliance act as an economic incentive to even more non-compliance, particularly at worksites where aliens are employed.

VI. State-enacted laws addressing this issue, including those requiring employee verification, prohibiting the employment of illegal aliens, and other federal immigration law enforcement activity, such as the existing provisions of RSA 275-A:4-a, are consistently nullified and thus rendered unenforceable by courts because of constitutional and federal preemption considerations.

VII. The legislature is concerned about the low level of federal enforcement of federal immigration laws and its effect upon compliance with state laws and related adverse economic impact on our state, and wishes to encourage state law enforcement of such laws to whatever extent is permitted under federal law, including the broadened authority provided to state and local law enforcement officials pursuant to agreements with the United States Attorney General.

VIII. Present levels of enforcement of federal immigration law are an economic incentive for increased violations of state labor law, as well as exploitive working conditions for undocumented aliens.

IX. Enforcement of state labor protection and safety laws at worksites where aliens are employed will discourage such illegal activities, enable the department of labor to enforce laws designed to prevent the exploitation of workers, and mitigate other adverse impacts related to inadequate enforcement of federal immigration laws.

2 Inspections. Amend RSA 273:9 to read as follows:

273:9 Inspections. The commissioner shall, at such times as he *or she* shall deem it necessary, and without notice, visit ***worksites including but not limited to*** the manufacturing, mechanical, and mercantile establishments in the state, so far as practicable, for the purpose of ascertaining whether the laws with reference to employment are complied with, and for the further purpose of ascertaining if reasonable sanitary and hygienic conditions are maintained, calculated to promote the health and welfare of the working people. ***If in the course of such inspections, undocumented aliens as defined in RSA 275-A:4-a are apprehended, the presence of such persons shall be reported to the United States Citizenship and Immigration Services or the Office of the Attorney General, United States Department of Justice, or any successor agencies thereof, established to receive such information.***

3 Employment of Illegal Aliens Prohibited. RSA 275-A:4-a is repealed and reenacted to read as follows:

275-A:4-a Filing of Employer Statement; Alien Employers.

I. All employers shall file a statement with the department of labor declaring whether they employ aliens on premises they own, manage, or otherwise control.

II. Persons required to file under paragraph I shall retain, at the premises where such employment occurs, documentation or other evidence necessary to demonstrate on-premises compliance with the state employee protection laws, including, but not limited to, RSA 275, RSA 275-A, RSA 277, RSA 279, and RSA 281-A.

III. Persons required to file under paragraph I shall be responsible for compliance with this section by all contractors and subcontractors with respect to persons employed directly or indirectly on premises that they own, manage, or control.

IV. For purposes of this section, "person" includes any person, partnership, association, agency, firm, limited liability company, corporation, general contractor, subcontractor, or other entity who employs one or more persons whether in one or more trades, businesses, professions, or occupations and whether in one or more locations.

4 New Section; Severability. Amend RSA 275-A by inserting after section 4-a the following new section:

275-A:4-b Severability. If any provision of this chapter or the application of any provision to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to any other person or circumstance shall not be affected by that invalidation.

5 Penalties. RSA 275-A:5 is repealed and reenacted to read as follows:

275-A:5 Penalties.

I. Any person, partnership, association, agency, firm, limited liability company, corporation, general contractor, subcontractor, or other entity who employs one or more persons who violates any provision of RSA 275-A shall be subject to a civil penalty of up to \$2,500 for each day of noncompliance, to be imposed by the labor commissioner in accordance with the procedures established in RSA 273:11-a. Any person aggrieved by the commissioner's assessment of such penalty may appeal in accordance with RSA 273:11-c.

II. Any employer who has filed a statement with the department of labor as required by RSA 275-A:4-a, I and who, in the judgment of the commissioner of the department of labor, has made a good faith effort to comply with the provisions of this chapter, shall not be liable for the penalties under paragraph I.

6 New Section; Rules. Amend RSA 275-A by inserting after section 5 the following new section:

275-A:6 Rules. The commissioner shall adopt rules, pursuant to RSA 541-A, to facilitate the administration and enforcement of this chapter.

7 New Section; Agreements Authorized. Amend RSA 7 by inserting after section 6-d the following new section:

7:6-e Agreements Authorized. Under the direction of the attorney general, and after proper training, state law enforcement agencies are authorized to enter into agreements with the United States Attorney General as provided by section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and such other law enforcement activities as are permitted to state and local officials by constitutional and federal immigration law.

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

**2006-1474s**

#### AMENDED ANALYSIS

This bill authorizes state law enforcement agencies to enter into agreements with the United States Attorney General regarding state and local law enforcement activities permitted under federal immigration laws.

This bill also establishes registration requirements for employers of aliens and new penalties for employers of illegal aliens.

**Senator Bragdon in the Chair.**

**Senator Gatsas in the Chair.**

**Amendment adopted.**

**Senator Burling offered a floor amendment.**

**Sen. Burling, Dist. 5**  
**Sen. Gottesman, Dist. 12**  
**Sen. Foster, Dist. 13**  
**Sen. Larsen, Dist. 15**  
**Sen. D'Allesandro, Dist. 20**  
**Sen. Estabrook, Dist. 21**  
**Sen. Hassan, Dist. 23**  
**Sen. Fuller Clark, Dist. 24**  
**March 22, 2006**  
**2006-1506s**  
**01/09**

**Floor Amendment to SB 407-FN-A**

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

AN ACT establishing a commission to investigate the impact of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire.

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

1 Findings and Declaration of Purposes. The general court finds that:

I. The safety and economic well-being of the state depends on adequate protection of New Hampshire's borders under federal immigration law.

II. The general court is concerned about the low level of federal enforcement of federal immigration laws and its effect upon compliance with state laws and related adverse economic impact on our state, and wishes to encourage state law enforcement of such laws to whatever extent is permitted under federal law, including the broadened authority provided to state and local law enforcement officials pursuant to agreements with the United States Attorney General.

III. Present levels of enforcement of federal immigration law are an economic incentive for increased violations of state labor law, as well as exploitive working conditions for undocumented aliens.

2 Commission Established. There is established a commission to study the effects of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire.

3 Membership and Compensation.

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

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

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

(c) Five public members appointed by the governor.

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

(e) The commissioner of the department of safety, or designee.

(f) The commissioner of the department of health and human services, or designee.

(g) The commissioner of the department of department of revenue administration, or designee.

(h) The commissioner of the department of department of resources and economic development, or designee.

(i) The commissioner of the department of education, or designee.

(j) The commissioner of the department of corrections, or designee.

(k) Two representatives from the New Hampshire Association of Counties, appointed by the New Hampshire Association of Counties.

(l) One director of a county correctional facility, appointed by the New Hampshire Association of Counties.

(m) One representative of the New Hampshire Association of Police Chiefs, appointed by the New Hampshire Association of Police Chiefs.

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

4 Duties. The commission shall study the impact of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire

5 Chairperson; Quorum. The chairperson of the commission shall be designated by the governor. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section.

6 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2007.

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

**2006-1506s**

#### AMENDED ANALYSIS

This bill establishes a commission to investigate the impact of illegal immigration on economics, public safety, communities, educational institutions, health care institutions, and political institutions in New Hampshire.

**The question is on the adoption of the floor amendment.**

**A roll call was requested by Senator Hassan.**

**Seconded by Senator Burling.**

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

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

**Yeas: 8 - Nays: 16**

**Floor amendment failed.**

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

**A roll call was requested by Senator Larsen.**

**Seconded by Senator Barnes.**

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

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

**Yeas: 16 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**SB 317-FN**, establishing a screening panel to review complaints to occupational and professional regulatory boards and establishing an appeals board to review decisions by occupational and professional regulatory boards. Finance Committee. Ought to pass with amendment, Vote 5-2. Senator Green for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1406s**

**09/10**

#### Amendment to SB 317-FN

Amend RSA 541:5-a, IV as inserted by section 1 of the bill by replacing it with the following:

IV. The screening panel shall have 5 business days to review the complaint and determine whether the complaint has merit, by examining the grounds for dismissal of a complaint under the law applicable to the

particular occupational or professional regulatory board or commission. During this 5-day period, the occupational or professional regulatory board or commission shall suspend its disciplinary proceedings regarding the complaint. The screening panel shall be granted access by the occupational or professional regulatory board or commission to all records pertaining to the complaint. The screening panel shall issue a written determination to the occupational or professional regulatory board or commission as to whether the complaint has merit. If the screening panel concludes that the complaint has no merit, the occupational or professional regulatory board or commission shall dismiss the complaint. If the screening panel concludes that the complaint has merit, the occupational or professional regulatory board or commission shall resume its disciplinary proceedings regarding the complaint.

Amend RSA 541:5-b, III as inserted by section 1 of the bill by replacing it with the following:

III. As an alternative to rehearing by the occupational or professional regulatory board or commission under RSA 541:2 through RSA 541:5 and as an alternative to appeal to the supreme court under this chapter, a decision by an occupational or professional regulatory board or commission may be appealed to the appeals board within 30 days after the decision is issued. The provisions of RSA 541:7 - RSA 541:11, relative to petitions, parties, notice, and fees for copies in appeals to the supreme court, shall also apply to appeals to the appeals board. The appeals board shall conduct a de novo review of the complaint under the same disciplinary and evidentiary standards and procedures applicable under the law to the occupational or professional regulatory board or commission. The chairperson of the appeals board may issue subpoenas requiring the attendance of witnesses and the production of evidence and may administer such oaths and take such testimony as he or she deems necessary. The appeals board shall issue its decision on the appeal in a written order within 30 days of hearing the appeal. Decisions of the appeals board may be appealed to the supreme court under RSA 541:6.

**The question is on the adoption of the committee amendment.**

**A division vote was requested.**

**Yeas: 14 - Nays: 10**

**Amendment adopted.**

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

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

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

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

**Yeas: 14 - Nays: 10**

**Adopted.**

**Ordered to third reading.**

**SB 385-FN**, relative to the membership and administration of the board of trustees of the New Hampshire retirement system, and relative to supplemental allowances. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Green for the committee.

**Senate Finance**

**March 16, 2006**

**2006-1415s**

**10/05**

#### **Amendment to SB 385-FN**

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

AN ACT relative to the membership and administration of the board of trustees of the New Hampshire retirement system, and relative to supplemental benefit amounts granted to retirees and beneficiaries.

Amend the bill by replacing sections 1-3 with the following:

1 Retirement System Board of Trustees; Membership. RSA 100-A:14, I is repealed and reenacted to read as follows:



I. The administration of this system shall be vested in a board of 17 trustees. Board members shall be as follows:

- (a) The state treasurer who shall be an ex officio voting member of the board.
- (b) Four public member trustees who shall be qualified persons with business or public administration experience, appointed by the governor and council. The governor shall designate one of the public member trustees to serve as chairperson of the board of trustees.
- (c) One member of the house of representatives, appointed annually by the speaker of the house of representatives.
- (d) One member of the senate, appointed annually by the president of the senate.
- (e) One retired member of the retirement system who shall be a beneficiary under this chapter, appointed by the governor and council.
- (f) Two employees nominated by the New Hampshire State Employees' Association, who may be employed by state or political subdivision employers, appointed by the governor and council.
- (g) Two permanent policemen nominated by the New Hampshire Police Association, one of whom shall be a county, town, or city law enforcement employee and one of whom shall be a state law enforcement employee, appointed by the governor and council.
- (h) Two permanent firefighters, one of whom shall be nominated by the New Hampshire Permanent Firefighters' Association and one of whom shall be nominated by the Professional Firefighters of New Hampshire, appointed by the governor and council.
- (i) Two teachers, one of whom shall be nominated by the National Education Association - New Hampshire and one of whom shall be nominated by the American Federation of Teachers- New Hampshire, appointed by the governor and council.
- (j) One employee of a political subdivision employer nominated by the New Hampshire Municipal Association, appointed by the governor and council.

2 New Paragraph; Retirement System Board of Trustees. Amend RSA 100-A:14 by inserting after paragraph I the following new paragraph:

I-a.(a) For members designated in subparagraphs I(f) – I(j), the respective organizations shall nominate from their members a panel of 5 persons no later than May 31 of each year, and the panels so named shall be filed with the secretary of state no later than June 10 of each year. From each of the panels the governor and council shall appoint one person. Persons appointed from panels named pursuant to this subparagraph shall be required to maintain active membership in their respective nominating organization during their service on the board of trustees. Failure to maintain active membership shall create a vacancy.

(b) Board members shall serve until a successor is appointed and qualified.

(c) Whenever a vacancy on the board of trustees occurs, the appointing authority shall fill the vacancy by appointing a member, pursuant to the required nomination procedure, who shall serve for the unexpired term. Members appointed to the board for full terms by the governor and council shall serve for a term of 2 years.

3 Applicability; Board of Trustees. Members of the retirement system board of trustees serving immediately prior to the effective date of this act shall serve the remainder of their term and until a successor is appointed and qualified. All subsequent appointments shall comply with the requirements of RSA 100-A:14 as amended by this act. Initial appointments of new members to the board of trustees by the governor and council may be for a term of one year to provide for staggered appointments.

Amend the bill by replacing all after section 5 with the following:

6 New Section; Supplemental Benefit Amount. Amend RSA 100-A by inserting after section 41-c the following new section:

100-A:41-d Supplemental Benefit Amount.

I. Any retired member of the New Hampshire retirement system or any of its predecessor systems, who has been retired for at least 12 months, or any beneficiary of such member who is receiving an allowance, shall upon approval by the fiscal committee of the general court be entitled to receive a supplemental benefit in an amount and at a time determined by the fiscal committee.

II. Not later than May 31 of each year, the fiscal committee of the general court may approve a supplemental benefit amount for the July 1 thereafter upon certification from the actuary of the amount of the benefit which may be granted to each member classification based on the funds available in the special account for each member classification. The actuary shall look at each member classification component of the special account separately and shall certify to the fiscal committee the funds available, and any other information required by the committee. A one-time supplemental benefit amount granted by the fiscal committee of the general court shall not become a permanent addition to the beneficiary's base retirement allowance.

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

**2006-1415s**

#### AMENDED ANALYSIS

This bill makes changes in the membership and administration of the retirement system board of trustees. The bill also allows for one-time supplemental benefits to retired members and beneficiaries.

#### MOTION TO TABLE

**Senator Green moved to have SB 385-FN laid on the table.**

**Adopted.**

#### LAIID ON THE TABLE

**SB 385-FN**, relative to the membership and administration of the board of trustees of the New Hampshire retirement system, and relative to supplemental allowances.

**HB 1370**, transferring certain surplus moneys to the revenue stabilization reserve account. Finance Committee. Ought to Pass, Vote 8-0. Senator D'Allesandro for the committee.

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

**A roll call was requested by Senator Estabrook.**

**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.**

**HJR 23**, a resolution designating a Purple Heart Trail spur to the New Hampshire state veterans cemetery and providing additional signs for the Purple Heart Trail. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 6-0. Senator Letourneau for the committee.

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

**A roll call was requested by Senator Barnes.**

**Seconded by Senator Gottesman.**

**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.**

**SB 403**, relative to verification of identity when a person registers or attempts to vote. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 3-2. Senator Roberge for the committee.

**Public and Municipal Affairs**

**March 15, 2006**

**2006-1390s**

**03/04**

**Amendment to SB 403**

Amend RSA 654:12, V(b) as inserted by section 1 of the bill by replacing it with the following:

***(b) The secretary of state shall cause a letter of identity verification to be mailed by first class mail to each voter identified as a first-time election day registrant in New Hampshire who also did not verify his or her identity with an approved photo identification. The secretary of state shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the person that a person who was unable to present photo identification registered or registered and voted using his or her name and address and instruct the person to contact the attorney general immediately if he or she did not register and vote.***

Amend the bill by deleting section 2 and renumbering the original sections 3-5 to read as 2-4, respectively.

Amend the bill by replacing sections 3-4 with the following:

3 Obtaining a Ballot; Verification of Age. Amend RSA 659:13 to read as follows:

659:13 Obtaining a Ballot. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the ***paper*** checklist ***and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction.*** The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

4 Effective Date.

I. Section 3 of this act shall take effect September 1, 2006.

II. The remainder of this act shall take effect June 1, 2006.

**2006-1390s**

**AMENDED ANALYSIS**

This bill:

I. Requires proof of identity by persons registering to vote and modifies certain procedures for voter registration applications.

II. Requires supervisors of the checklist to include election day changes of address in the centralized voter registration database.

III. Adds the mailing address contained on the checklist to the public information subject to RSA 91-A.

**Amendment adopted.**

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

**A roll call was requested by Senator Estabrook.**

**Seconded by Senator Barnes.**

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

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

**Yeas: 16 - Nays: 8**

**Adopted.**

**Ordered to third reading.**

**SB 285-FN**, equalizing the pay of administrative judges in the judicial branch. Finance Committee. Inexpedient to Legislate, Vote 5-2. Senator Morse for the committee.

**Committee report of inexpedient to legislate is adopted.**

**SB 314-FN-L**, establishing minimum renewable standards for energy portfolios. Finance Committee. Ought to pass with amendment, Vote 7-1. Senator Odell for the committee.

**Senate Finance**

**March 20, 2006**

**2006-1460s**

**06/09**

**Amendment to SB 314-FN-LOCAL**

Amend the bill by deleting section 3 and renumbering the original sections 4-5 to read as 3-4, respectively.

Amend RSA 374-G:2, I as inserted by section 3 of the bill by replacing it with the following:

I. Providers of electricity in this state shall obtain renewable energy certificates from renewable energy resources to meet the minimum renewable standards for its energy portfolio established by this section or make payments as provided in RSA 374-G:6, II, III, and IV.

Amend RSA 374-G:6, II-IV as inserted by section 3 of the bill by replacing them with the following:

II. An electricity provider may discharge any annual class IA or IC portfolio requirements by making a payment into the fund of \$0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with the statute. The revised rate per megawatt-hour shall be published by the commission by January 31 of each year.

III. An electricity provider may discharge any annual class IB portfolio requirements by making a payment into the fund of \$0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this chapter. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

IV. An electricity provider may discharge any annual class II portfolio requirements by making a payment into the fund of \$0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this statute. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 352-FN**, relative to the regulation of real estate appraisers. Finance Committee. Ought to Pass, Vote 4-3. Senator D'Allesandro for the committee.

**Adopted.**

**Ordered to third reading.**

**SB 361-FN**, relative to school district contingency funds. Finance Committee. Inexpedient to Legislate, Vote 6-1. Senator Odell for the committee.

**Committee report of inexpedient to legislate is adopted.**

**SB 380-FN-A**, establishing a research and development credit against the business profits tax. Finance Committee. Ought to pass with amendment, Vote 8-0. Senator Odell for the committee.

**Senate Finance**  
**March 20, 2006**  
**2006-1471s**  
**09/10**

**Amendment to SB 380-FN-A**

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

AN ACT establishing a research and development credit against business taxes.

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

1 New Paragraph; Business Profits Tax; Research and Development Tax Credit. Amend RSA 77-A:5 by inserting after paragraph XII the following new paragraph:

XIII.(a) There shall be allowed a research and development tax credit equal to 15 percent of qualified manufacturing research and development expenditures made or incurred during the taxable period. For purposes of this paragraph the term "qualified manufacturing research and development expenditures" shall mean any wages paid or incurred to an employee of the business organization for services rendered by such employee within this state within the meaning of RSA 77-A:3, I(b), provided that:

(1) Such wages may be treated as research and development expenditures under section 174 of the United States Internal Revenue Code; and

(2) Such services are undertaken for the purpose of discovering information which constitutes qualified research and development as defined in section 41 of the United States Internal Revenue Code and which is limited to the development of a new or improved manufacturing process or business component of the business organization.

(3) In no event shall the credit allowed under this paragraph exceed 5 percent of the tax due under this chapter before any credits under RSA 77-A:5 are taken into account or exceed \$100,000 for each taxpayer for each taxable period, or exceed a total amount of \$1,000,000 for credits claimed under this paragraph by all taxpayers in a taxable period; and provided further that the credit allowed under this paragraph shall be limited so that no more than 50 percent of such credit shall be attributable to wages paid to an employee who is not an "eligible employee" as defined in RSA 77-A:1, XXIII. If the total amount for the credits claimed under this paragraph by all taxpayers in a taxable period exceeds \$1,000,000, the commissioner shall prorate the amount of \$1,000,000 among taxpayers claiming the credit.

(b) For purposes of this paragraph, "employee" shall mean "an employee" as defined in section 3401(c) of the United States Internal Revenue Code and who is an "eligible employee" as defined in RSA 77-A:1, XXIII.

2 New Section; Credit Against Business Enterprise Tax. Amend RSA 77-E by inserting after section 3-a the following new section:

77-E:3-b Research and Development Tax Credit. The research and development tax credit allowed under RSA 77-A:5, XIII may be applied to either the tax imposed under RSA 77-A or the tax imposed under this chapter.

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

**2006-1471s**

**AMENDED ANALYSIS**

This bill establishes a research and development tax credit against the business profits tax and the business enterprise tax.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 406-FN-A**, establishing a manufacturer's tax on cigarettes sold in New Hampshire. Finance Committee. Ought to pass with amendment, Vote 5-3. Senator Clegg for the committee.

**Senate Finance**  
**March 20, 2006**  
**2006-1473s**  
**09/10**

**Amendment to SB 406-FN-A**

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

AN ACT establishing a manufacturer's tax on cigarettes sold in New Hampshire; relative to the tax on tobacco products other than cigarettes; establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund; raising the age of required attendance of children in school and making an appropriation therefor; making an appropriation for school building aid; relative to a public health response to arbovirus and making an appropriation therefor; and relative to a medical loan repayment pilot program and making an appropriation therefor.

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

4 New Paragraph; Tobacco Tax; Definitions. Amend RSA 78:1 by inserting after paragraph XX the following new paragraph:

XXI. "Loose tobacco" means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette manufacturers; cavendish; plug and twist tobacco; loose leaf chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco.

5 Tobacco Tax; Tax Imposed on Tobacco Products Other Than Cigarettes. Amend RSA 78:7-c to read as follows:

78:7-c Tax Imposed on Tobacco Products Other Than Cigarettes. A tax upon the retail consumer is hereby imposed on tobacco products other than cigarettes at a rate of 19 percent of the wholesale sales price ***on loose tobacco products and at the rate of 48 cents per ounce on all other smokeless products. Such tax shall be assessed on the net weight as listed by the manufacturer.*** The tax under this section may be rounded to the nearest cent if the commissioner determines that the amount of tax would not thereby be made materially disproportionate. No such tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

6 Committee Established. There is established a committee to study alternatives for funding the operation and maintenance of state-owned dams.

7 Membership and Compensation.

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

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

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

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

8 Duties. The committee shall study the need for the operation and maintenance of state-owned dams, the existing funding sources for the operation and maintenance of state-owned dams including the state's hydro-lease program, established under RSA 481:32, and the state dam maintenance fund, established under RSA 482. The committee shall develop recommendations for the continued operation and maintenance of state-owned dams and options for funding the state dam maintenance fund.

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



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

11 Appropriation. The sum of \$1,000,000 is hereby appropriated to the department of environmental services dam maintenance fund, established under RSA 482:55, for the fiscal year ending June 30, 2007. This sum is in addition to any other funds appropriated to the department of environmental services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

12 School Attendance; Compulsory Attendance by Pupil. Amend RSA 193:1, I to read as follows:

I. A parent of any child at least 6 years of age and under ~~[16]~~ **18** years of age shall cause such child to attend the public school to which the child is assigned in the child's resident district. Such child shall attend full time when such school is in session unless:

(a) The child is attending a public school outside the district to which the child is assigned or an approved private school for the same time;

(b) The child is receiving home education **and is therefore exempt from this requirement;** ~~[or]~~

(c) The relevant school district superintendent has excused a child from attendance because the child is physically or mentally unable to attend school, or has been temporarily excused upon the request of the parent for purposes agreed upon by the school authorities and the parent. Such excused absences shall not be permitted if they cause a serious adverse effect upon the student's educational progress. Students excused for such temporary absences may be claimed as full-time pupils for purposes of calculating state aid under RSA 186-C:18 and equitable education grants under RSA 198:41;

**(d) The pupil has been exempted from attendance pursuant to RSA 193:5;**

**(e) The pupil has successfully completed all requirements for graduation and the school district is prepared to issue a diploma or the pupil has successfully achieved the equivalent of a high school diploma;**

**(f) The pupil has been accepted into an accredited postsecondary education program; or**

**(g) The pupil obtains a waiver from the superintendent, which shall only be granted upon proof that the pupil is 16 years of age or older and has an alternative learning plan for obtaining either a high school diploma or its equivalent.**

**(1) Alternative learning plans shall include age-appropriate academic rigor and the flexibility to incorporate the pupil's interests and manner of learning. These plans may include, but are not limited to, such components or combination of components of extended learning opportunities as independent study, private instruction, performing groups, internships, community service, apprenticeships, and on-line courses.**

**(2) Alternative learning plans shall be developed, and amended if necessary, in consultation with the pupil, a school guidance counselor, the school principal and at least one parent or guardian of the pupil, and submitted to the school district superintendent for approval.**

**(3) If the superintendent does not approve the alternative learning plan, the parent or guardian of the pupil may appeal such decision to the local school board. A parent or guardian may appeal the decision of the local school board to the state board of education consistent with the provisions of RSA 21-N:11, III.**

13 School Attendance; Bylaws as to Nonattendance. Amend RSA 193:16 to read as follows:

193:16 Bylaws as to Nonattendance. Districts may make bylaws, not repugnant to law, concerning habitual truants and children between the ages of 6 and ~~[16]~~ **18** years not attending school ~~[and not having a regular and lawful occupation;]~~ **or who are not participating in an alternative learning plan under RSA 193:1, I(g),** and to compel the attendance of such children at school; failure to comply with such bylaws shall constitute a violation for each offense.

14 Home Education; Definitions. Amend RSA 193-A:1, I to read as follows:

I. "Child" means a child or children at least 6 years of age and under ~~[16]~~ **18** years of age who is a resident of New Hampshire.

15 Truant Officers; Duties. Amend RSA 189:36 to read as follows:

189:36 Duties. Truant officers shall, when directed by the school board, enforce the laws and regulations relating to truants and children between the ages of 8 and [16] **18** years not attending school [~~and without any regular and lawful occupation~~] **or who are not participating in an alternative learning plan under RSA 193:1, I(g)**; and the laws relating to the attendance at school of children between the ages of 8 and 18 years; and shall have authority without a warrant to take and place in school any children found employed contrary to the laws relating to the employment of children, or violating the laws relating to the compulsory attendance at school of children under the age of 18 years, and the laws relating to child labor.

16 Repeal. RSA 193:1, IV, relative to withdrawal from school for children who are at least 16 years of age but under 18 years of age, is repealed.

17 Appropriation. The sum of \$5,000,000 for the biennium ending June 30, 2007 is hereby appropriated to the department of education for the purposes of implementing sections 12-16 of this act. This sum is in addition to any other funds appropriated to the department of education and shall not lapse until June 30, 2009. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

18 School Building Aid; Appropriation. The sum of \$1,000,000 for the fiscal year ending June 30, 2007 is hereby appropriated to the department of education to supplement existing appropriations to the school building aid grant program pursuant to RSA 198:15-a. This sum shall be used to offset any deficit in a school district's building aid grants resulting from changes to school building aid law. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

19 Division of Emergency Management; State of Emergency. Amend RSA 21-P:35, VIII to read as follows:

VIII. "State of emergency" means that condition, situation, or set of circumstances deemed to be so extremely hazardous or dangerous to life or property that it is necessary and essential to invoke, require, or utilize extraordinary measures, actions, and procedures to lessen or mitigate possible harm. **A "state of emergency" shall include an arbovirus public health threat.**

20 New Section; Removal of Standing Water Hazards. Amend RSA 105 by inserting after section 3-a the following new section:

105:3-b Removal of Standing Water Hazards. A local health or law enforcement officer may order removal or covering of standing water hazards on property. If the owner of the property, after notice has been delivered by certified mail or by hand delivery at the property owner's last known address fails to comply within a 72-hour period, such owner may be found guilty of a violation. If an arbovirus public health threat has been declared, local health or law enforcement officers may remove the hazard after one week and the property owner shall bear the expense of the removal of the hazard. In this section, "standing water hazard" means any container left open to rain or snow in a manner that allows water to collect and remain in the container in such a manner as to provide a breeding ground for, or to attract, insects. Containers treated with an adequate prophylactic pesticide treatment to prevent mosquito growth are exempt. "Standing water hazard" shall not include above ground or in ground swimming pools or feed or drinking equipment to include buckets and troughs used for livestock. Agricultural operations found to be in compliance with best management practices with regard to mosquito control by the department of agriculture, markets, and food shall be in compliance with this section.

21 New Sections; Communicable Disease; Mosquito Control Districts; Mosquito Control Fund. Amend RSA 141-C by inserting after section 23 the following new sections:

141-C:24 Mosquito Control Districts; Rulemaking. Contiguous municipalities may establish mosquito control districts for the purposes of applying for moneys from the mosquito control fund established in RSA 141-C:25 and for the purposes of applying for spraying permits. The commissioner, in consultation with the commissioner of the department of agriculture, markets, and food shall adopt rules, pursuant to RSA 541-A, relative to the establishment of such mosquito districts.

141-C:25 Mosquito Control Fund.

I. There is hereby established a mosquito control fund to assist cities, towns, mosquito control districts, and non-profit organizations by providing funding for the purpose of offsetting the cost of mosquito control activities including, but not limited to, the purchase and application of chemical pesticides. For the purposes of this section, "non-profit organization" means an organization which has tax-exempt status under section 501(c)(3) of the

Internal Revenue Code and which represents members who own or which owns itself, property actively used for agricultural or recreational use. The purpose of the fund is to provide financial assistance, when needed, to cities, towns, mosquito control districts, and non-profit organizations engaging in mosquito control and abatement activities in response to a declared threat to the public health.

II. In order to be eligible to receive funding, a city, town, mosquito control district, or non-profit organization shall have in place a comprehensive mosquito control plan approved by the commissioner. This plan shall include at a minimum:

(a) A list of the pesticides (active ingredient) and methods by which these pesticides will be applied to ensure that the application is done in a safe and proper manner.

(b) Safeguards that will be taken to protect the health of the public, wildlife and resources within the state including provisions for the measuring and monitoring of residual pesticides in the water and soil.

(c) A comprehensive public awareness campaign geared toward prevention and designed to educate the public about the health risks associated with mosquitoes.

III.(a) The commissioner, in consultation with the Centers for Disease Control and Prevention, may determine that a threat to the public health exists that warrants expedited mosquito control and abatement activities within a city, town, mosquito control district, or non-profit organization. Such determination of an arbovirus public health threat shall be based on local factors which may include:

(1) Historical and current climatic conditions.

(2) Historical and current mosquito population indices.

(3) Historical and current mosquito, veterinary, and human arboviral disease surveillance.

(4) The commissioner must declare in writing to the governor and the commissioner of the department of agriculture that such a threat to the public health exists.

(b) An expedited approval process shall be established for the implementation of mosquito control and abatement activities, as described in this paragraph, including the application of pesticides. The commissioner of the department of agriculture, markets, and food may authorize expedited mosquito control and abatement activities pursuant to this paragraph.

IV. A city, town, mosquito control district, or non-profit organization shall be eligible to receive funds if the commissioner determines that:

(a) The city, town, mosquito control district, or non-profit organization has a comprehensive mosquito control plan approved by the commissioner in accordance with paragraph II;

(b) The city, town, mosquito control district, or non-profit organization has engaged or plans to engage in mosquito control and abatement activities pursuant to paragraph III;

(c) The commissioner, after consultation with the Centers for Disease Control and Prevention, has determined that mosquito control and abatement activities are appropriate to mitigate the public health threat; and

(d) The commissioner has filed written notice of a threat to public health with the governor and the commissioner of agriculture, markets, and food.

V. A city, town's, mosquito control district's, or non-profit organization's receipt of funds, as well as the amount of funding, shall be at the discretion of the commissioner subject to the following criteria:

(a) The nature and degree of the declared threat to the public health.

(b) The nature and degree of the city, town's, mosquito control district's or non-profit organization's mosquito control and abatement activities in response to the declared threat to the public health.

(c) The degree to which the non-profit organization's mosquito control and abatement activities will benefit the general public.

(d) The city, town, mosquito control district, or non-profit organization showing that the funding assistance from the mosquito control fund is necessary.

(e) The city, town, mosquito control district's, or non-profit organization's showing that the requested funding assistance is no more than 50 percent of the entity's mosquito control and abatement activities pursuant to the declared threat to the public health.

(f) Funding is available.

22 New Paragraph; Rulemaking Added. Amend RSA 141-C:6 by inserting after paragraph XXI the following new paragraph:

XXII. Procedures for administration of and disbursement from the mosquito control fund, established in RSA 141-C:25.

23 Appropriation.

I. There is hereby appropriated the sum of \$1 to the department of health and human services for the biennium ending June 30, 2007, for the purposes of funding the mosquito control fund established by section 21 of this act. This appropriation shall be reduced by the amount of any federal funds received by the department. This appropriation shall be in addition to any other funds appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

II. If the funds under paragraph I are insufficient to meet the necessary expenditures, the department of health and human services may request approval of the legislative fiscal committee to transfer funds from the general fund to the department of health and human services for the purposes of section 21 of this act.

24 New Paragraph; Exemption Added. Amend RSA 430:46, I by inserting after subparagraph (d) the following new subparagraph:

(e) Expedited mosquito control and abatement activities pursuant to a declared threat to the public health under RSA 141-C:25.

25 Task Force Established. There is established a task force to facilitate a coordinated local, regional, and state response to arboviruses in New Hampshire.

26 Membership and Compensation.

I. The members of the task force shall be as follows:

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

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

(c) The state epidemiologist.

(d) The state veterinarian.

(e) The commissioner of the department of health and human services, or designee.

(f) The commissioner of the department of agriculture, markets, and food, or designee.

(g) The commissioner of the department of resources and economic development, or designee.

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

(i) The commissioner of the department of environmental services, or designee.

(j) A representative from county government, appointed by the governor.

(k) An entomologist from the university of New Hampshire, appointed by the governor.

(l) Three locally-elected officials from towns or cities where arbovirus has been detected in animals or humans, at least one of whom shall be a public health officer, appointed by the governor.

(m) Two private citizens, each a landowner, officer, one of whom shall be nominated by the New Hampshire Farm Bureau Federation, appointed by the governor.

(n) Two members at-large, appointed by the commissioner of the department of health and human services.

II. The task force shall serve without compensation and may solicit any information from any person or entity the task force deems relevant to its purpose.

27 Duties. The committee shall:

I. Determine the coordination of and planning for mosquito control efforts, including a method to enable communities throughout the state to form mosquito control districts, or to be able to join together informally to file joint applications to engage in larvaecide or adulticide spraying.

II. Determine who should have certain mosquito control responsibilities according to expertise throughout the state.

III. Review and, if necessary, streamline state governmental processes required to implement mosquito control programs.

IV. Plan and coordinate public education and outreach regarding mosquito-borne illness.

V. Apply for funding from private and public sources for the purposes of responding to arbovirus threats.

VI. Determine a method to enable communities to order the removal of standing water hazards on private property and to levy fines on the property owner if necessary.

VII. Establish a mechanism to work with landowners for determining when a pond, marsh land, or wetland on private property is found to be creating a standing water hazard and a method to permit local communities to receive assistance from the fish and game department and the department of environmental services to determine if the standing water hazard can be removed.

VIII. Establish procedures for determining what, if any, mosquito control efforts will be undertaken in state parks.

IX. Establish a mechanism to protect certified organic farms from being treated with products that would void their certification.

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

29 Report. The task force shall make an interim report on or before November 1, 2006 with a report of its findings and any recommendations for proposed legislation and a final report on or before November 1, 2007 to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

### 30 Pilot Program; Appropriation; Medical School Loans.

I. The commissioner of health and human services shall establish a program to make payments owed on medical school loans for Dartmouth Medical School graduates and physicians who have performed residency training at Dartmouth-Hitchcock Medical Center who enter into agreements to provide medical services for at least 3 years in the North Country and other areas of New Hampshire which are underrepresented by physicians. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the requirements for and monitoring of participants in the program.

II. The sum of \$1,000,000 for the fiscal year ending June 30, 2007 is hereby appropriated to the department of health and human services, for purposes of the pilot program established under paragraph I. This sum is in addition to any other funds appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

31 Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

### 32 Effective Date.

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

II. Sections 4-5, 11, 18-24, and 30 of this act shall take effect July 1, 2006.

III. Sections 12-16 of this act shall take effect July 1, 2008.

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

**2006-1473s**

### AMENDED ANALYSIS

This bill:

I. Establishes a manufacturer's tax on cigarettes sold in New Hampshire.



II. Clarifies and establishes tax rates for loose tobacco products and other smokeless tobacco products.

III. Establishes a committee to study alternatives for funding the operation and maintenance of state owned dams and makes an appropriation to the department of environmental services dam maintenance fund.

IV. Raises from 16 to 18 the age for compulsory school attendance, provides a procedure for a pupil who is at least 16 years of age to obtain an attendance waiver from school, and makes an appropriation to the department of education.

V. Makes a \$1,000,000 appropriation to the department of education to supplement existing appropriations to the school building aid grant program.

VI.(a) Clarifies that a state of emergency includes an arbovirus public health threat.

(b) Establishes a mosquito control fund in the department of health and human services to assist cities, towns, mosquito control districts, and non-profit organizations by providing funding to offset mosquito control activities. The commissioner of the department of health and human services is granted rulemaking authority for the purposes of the bill. The bill also makes an appropriation to the department for the purposes of funding the mosquito control fund.

(c) Allows local health or local law enforcement officers to order removal of standing water hazards.

(d) Establishes a 2-year task force for the purpose of facilitating a coordinated local, regional, and state response to arboviruses in New Hampshire.

VII. Requires the department of health and human services to establish a medical school loan repayment pilot program to encourage Dartmouth Medical School graduates and physicians who have performed residency training at Dartmouth-Hitchcock Medical Center to provide services in the North Country and other areas of the state underrepresented by physicians.

#### **MOTION TO TABLE**

**Senator Clegg moved to have SB 406-FN-A laid on the table.**

**Adopted.**

#### **LAIID ON THE TABLE**

**SB 406-FN-A**, establishing a manufacturer's tax on cigarettes sold in New Hampshire.

**SB 247**, establishing a right to work act which provides for freedom of choice on whether to join a labor union. Banks and Insurance Committee. Ought to pass with amendment, Vote 3-1. Senator Odell for the committee.

#### **Banks and Insurance**

**March 15, 2006**

**2006-1372s**

**06/09**

#### **Amendment to SB 247**

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

AN ACT establishing a committee to study the effect of the costs of health insurance on public employment contracts.

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

1 Committee Established. There is established a committee to study the effect of the costs of health insurance on public employment contracts.

2 Membership and Compensation.

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

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

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

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



3 Duties. The committee shall study the effect of the costs of health insurance on public employment contracts.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before January 1, 2007.

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

**2006-1372s**

#### AMENDED ANALYSIS

This bill establishes a committee to study the effect of the costs of health insurance on public employment contracts.

#### MOTION TO TABLE

**Senator Odell moved to have SB 247 laid on the table.**

**Adopted.**

#### LAID ON THE TABLE

**SB 247**, establishing a right to work act which provides for freedom of choice on whether to join a labor union.

**SB 267**, relative to the definition of employee and clarifying the criteria for exempting workers from employee status. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

#### **Banks and Insurance**

**March 15, 2006**

**2006-1371s**

**06/09**

#### **Amendment to SB 267**

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

1 Procuring Employment; Imposition of Conditions; Definition of Employee Changed. RSA 275:4, II is repealed and reenacted to read as follows:

II. In this subdivision any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)–(k). “Employee” means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person’s assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants’ work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth below, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund. The written agreement shall be in the following form:

State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent

Contractor: \_\_\_\_\_

Federal Employer Tax ID. #

Or Social Security Number: \_\_\_\_\_

Brief Description of

Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided

To: Name and Address Of

Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business/entity to provide services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business/entity.

(c) The time of performance is not dictated to me; or the business/entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business/entity's special requirements or are located on the business/entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business/entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business/entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under NH RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

In accordance with RSA 281-A:2, VI(c): "...If the Commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer..."

STATE OF NEW HAMPSHIRE

COUNTY OF \_\_\_\_\_, 2006

Subscribed and sworn to by \_\_\_\_\_, before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public/Justice of the Peace

My Comm. Exp.:

2 Payment of Wages; Definition of Employee Changed. RSA 275:42, II is repealed and reenacted to read as follows:

II. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)-(k). "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually liable for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth in RSA 275:4, IV, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

3 Whistleblowers' Protection Act; Definition of Employee Changed. RSA 275-E:1, I is repealed and reenacted to read as follows:

I. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)-(k). "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth in RSA 275:4, IV, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

4 Minimum Wage Law; Definition of Employee Changed. RSA 279:1, X is repealed and reenacted to read as follows:

X. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified in subparagraphs (a)-(k). "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or



indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth in RSA 275:4, IV, furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

5 Workers' Compensation; Definition of Employee Changed. RSA 281-A:2, VI(b)(1) is repealed and reenacted to read as follows:

(b)(1)(A) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, who performs services for pay for an employer, is presumed to be an employee. This presumption may be rebutted by proof that an individual is deemed an independent contractor upon consideration of the following criteria:

(i) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.



(ii) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(iii) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(iv) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(v) The person holds himself or herself out to be in business for himself or herself.

(vi) The person has continuing or recurring business liabilities or obligations.

(vii) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(viii) The person incurs in the first instance the main expenses related to the service or work performed.

(ix) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(x) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(xi) The person is not required to work exclusively for the employer.

(B) The factors set forth in subparagraphs (b)(1)(A)(i)-(xi) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs (b)(1)(A)(i)-(xi) that exist in a given case, the more likely the individual will be deemed an independent contractor.

6 Workers' Compensation; Definition of Employee; Reference Changed. Amend RSA 281-A:2, VI(c) to read as follows:

(c) Prima facie evidence that the criteria prescribed in RSA 281-A:2, VI(b)(1)(A)(i)-(ix) have been met may be established by a written agreement furnished by the commissioner and signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs (b)(1)(A)(i)-(v). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs (b)(1)(A)(i)-(xi) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

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

**Amendment failed.**

**Senator Hassan offered a floor amendment.**

**Sen. Hassan, Dist. 23**

**Sen. Clegg, Dist. 14**

**March 22, 2006**

**2006-1505s**

**06/01**

**Floor Amendment to SB 267**

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

1 Procuring Employment; Imposition of Conditions; Definition of Employee Changed. RSA 275:4, II is repealed and reenacted to read as follows:

II. In this subdivision any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

2 New Paragraphs; Independent Contractor. Amend RSA 275:4 by inserting after paragraph II the following new paragraphs:

III. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

IV. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth below, when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

## State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent

Contractor: \_\_\_\_\_

Federal Employer Tax ID. #

Or Social Security Number: \_\_\_\_\_

Brief Description of

Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided

To: Name and Address Of

Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

- (a) I have a federal employer tax identification number or social security number as listed above.
- (b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.
- (c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.
- (d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.
- (e) I am in business for myself.
- (f) The success or failure of my business depends upon the relationship of receipts to expenditures.
- (g) I have continuing or recurring business liabilities or obligations.
- (h) I am responsible for the expenses related to the service or work performed.
- (i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.
- (j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.
- (k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date      Fed ID # or Soc. Sec. #

\_\_\_\_\_  
Date      Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

3 Payment of Wages; Definition of Employee Changed. RSA 275:42, II is repealed and reenacted to read as follows:

II. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually liable for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

4 New Paragraphs; Independent Contractor. Amend RSA 275:42 by inserting after paragraph II the following new paragraphs:

II-a. The factors set forth in subparagraphs II(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs II(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

II-b. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may be established by a written agreement, as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs II(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs II(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent

Contractor: \_\_\_\_\_

Federal Employer Tax ID. #

Or Social Security Number: \_\_\_\_\_

Brief Description of

Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided

To: Name and Address Of

Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

- (a) I have a federal employer tax identification number or social security number as listed above.
- (b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.
- (c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.
- (d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.
- (e) I am in business for myself.
- (f) The success or failure of my business depends upon the relationship of receipts to expenditures.
- (g) I have continuing or recurring business liabilities or obligations.
- (h) I am responsible for the expenses related to the service or work performed.
- (i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.
- (j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

5 Whistleblowers' Protection Act; Definition of Employee Changed. RSA 275-E:1, I is repealed and reenacted to read as follows:

I. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.



- (e) The person holds himself or herself out to be in business for himself or herself.
- (f) The person has continuing or recurring business liabilities or obligations.
- (g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.
- (h) The person incurs in the first instance the main expenses related to the service or work performed.
- (i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.
- (j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.
- (k) The person is not required to work exclusively for the employer.

6 New Paragraphs; Independent Contractor. Amend RSA 275-E:1 by inserting after paragraph I the following new paragraphs:

I-a. The factors set forth in subparagraphs I(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs I(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

I-b. Prima facie evidence that the criteria prescribed in subparagraphs I(a)-(k) have been met may be established by a written agreement, as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs I(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs I(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent

Contractor: \_\_\_\_\_

Federal Employer Tax ID. #

Or Social Security Number: \_\_\_\_\_

Brief Description of

Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided

To: Name and Address Of

Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

- (a) I have a federal employer tax identification number or social security number as listed above.
- (b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.

(c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

7 Minimum Wage Law; Definition of Employee Changed. RSA 279:1, X is repealed and reenacted to read as follows:

X. Any person who performs services for pay for an employer is presumed to be an employee. This presumption may be rebutted as specified below. "Employee" means and includes every person who may be permitted,

required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VII(b) or any person who is deemed an independent contractor upon consideration of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(h) The person incurs in the first instance the main expenses related to the service or work performed.

(i) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(j) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(k) The person is not required to work exclusively for the employer.

8 New Paragraphs; Independent Contractor. Amend RSA 279:1 by inserting after paragraph X the following new paragraphs:

X-a. The factors set forth in subparagraphs X(a)-(k) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs X(a)-(k) that exist in a given case, the more likely the individual will be deemed an independent contractor.

X-b. Prima facie evidence that the criteria prescribed in subparagraphs X(a)-(k) have been met may be established by a written agreement, as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs X(a)-(e). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs X(a)-(k) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor

#### VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent

Contractor: \_\_\_\_\_

Federal Employer Tax ID. #

Or Social Security Number: \_\_\_\_\_

Brief Description of

Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided

To: Name and Address Of

Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.

(c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.

IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date    Fed ID # or Soc. Sec. #

\_\_\_\_\_  
Date    Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

9 Workers' Compensation; Definition of Employee Changed. RSA 281-A:2, VI(b)(1) is repealed and reenacted to read as follows:

(b)(1)(A) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, who performs services for pay for an employer, is presumed to be an employee. This presumption may be rebutted by proof that an individual is deemed an independent contractor upon consideration of the following criteria:

(i) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(ii) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer, and the employer does not direct or supervise the means or manner of performance.

(iii) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to a completion schedule, range of work hours, and the maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(iv) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(v) The person holds himself or herself out to be in business for himself or herself.

(vi) The person has continuing or recurring business liabilities or obligations.

(vii) The success or failure of the person's business depends on the relationship of business receipts to expenditures.

(viii) The person incurs in the first instance the main expenses related to the service or work performed.

(ix) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(x) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer's special requirements or are located on the employer's premises.

(xi) The person is not required to work exclusively for the employer.

(B) The factors set forth in subparagraphs VI(b)(1)(A)(i)-(xi) shall be considered on a case by case basis, weighing all of the incidents of a given relationship and no one factor shall be outcome determinative. The greater the number of criteria in subparagraphs VI(b)(1)(A)(i)-(xi) that exist in a given case, the more likely the individual will be deemed an independent contractor.

10 Workers' Compensation; Definition of Employee; Reference Changed. RSA 281-A:2, VI(c) is repealed and reenacted to read as follows:

(c) Prima facie evidence that the criteria prescribed in RSA 281-A:2, VI(b)(1)(A)(i)-(xi) have been met may be established by a written agreement as set forth below when signed by the employer and the person providing services, on or about the date such person was engaged, which describes the services to be performed and affirms that such services are to be performed in accordance with at least 7 of the criteria, 5 of which shall be subparagraphs VI(b)(1)(A)(i)-(v). Nothing in this paragraph shall require such an agreement to establish that the criteria have been met. Prima facie evidence that the criteria prescribed in subparagraphs VI(b)(1)(A)(i)-(xi) have been met may also be established by a person's representations about his or her self-employed status to the United States Internal Revenue Service or other local, state, or federal agencies. If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer. All funds collected under this paragraph shall be paid over to the state treasury for deposit into the general fund.

State of New Hampshire Department of Labor

VERIFICATION OF INDEPENDENT CONTRACTOR STATUS

To Be Completed By Independent Contractor At Time of Agreement to Provide Services

Name of Independent

Contractor: \_\_\_\_\_

Federal Employer Tax ID. #

Or Social Security Number: \_\_\_\_\_

Brief Description of

Service(s) you are Providing: \_\_\_\_\_

Service(s) Are Being Provided

To: Name and Address Of

Business/Entity \_\_\_\_\_

Check all statements that describe your agreement with the business or entity to whom you are providing services:

(a) I have a federal employer tax identification number or social security number as listed above.

(b) I have control and discretion over the means and manner of performance and I am not directed or supervised by the business or entity.

(c) The time of performance is not dictated to me; or the business or entity and I have reached an agreement as to some or all of the following: completion schedules, range of work hours, maximum number of hours to be worked, and in the case of entertainment, the time such entertainment is to be provided.

(d) I hire and pay assistants, if any, and supervise the details of the assistants' work, if those assistants are my employees.

(e) I am in business for myself.

(f) The success or failure of my business depends upon the relationship of receipts to expenditures.

(g) I have continuing or recurring business liabilities or obligations.

(h) I am responsible for the expenses related to the service or work performed.

(i) I am responsible for the satisfactory completion of the work and may be contractually responsible for failure to complete the work.

(j) I supply the principal tools/equipment used in the work, with the exception of tools/equipment that are unique to the business or entity's special requirements or are located on the business or entity's premises/work site.

(k) I am free to perform services for other businesses/individuals.



IF AT LEAST 7 OF THE LISTED CRITERIA, (5 OF WHICH MUST BE (a)-(e)) ARE CHECKED, PLEASE CONTINUE FILLING OUT THIS FORM.

IF NOT, YOU ARE NOT PROPERLY CLASSIFIED AS AN INDEPENDENT CONTRACTOR.

I certify that I have completed this verification of independent contractor form knowingly and voluntarily and without duress or undue influence. I further certify as follows:

I understand that I am an independent contractor and not an employee of \_\_\_\_\_ (print name of business or entity). I understand that I am responsible to pay applicable state and federal taxes related to the payments I receive for the services provided hereunder.

I understand that as an independent contractor, I may be responsible for purchasing my own workers' compensation insurance policy. As an independent contractor I am not eligible to receive workers' compensation insurance coverage or benefits from \_\_\_\_\_ (print name of business or entity) or their workers' compensation insurance carrier.

I understand that as an independent contractor I am not an "employee" as defined under RSA 275:4, II; RSA 275:42, II; RSA 275-E:1, I; RSA 279:1, X; or RSA 281-A:2, VI(b)(1) and therefore I am not protected by/covered under state laws regarding procuring of employment, imposition of conditions, the payment of wages, minimum wage and overtime, whistleblowers' protection, or workers' compensation.

I hereby swear and acknowledge that the statements and representations made in this verification of independent contractor status are true and accurate and have been made by me knowingly and voluntarily and without duress or undue influence.

\_\_\_\_\_  
Signature of Independent Contractor

\_\_\_\_\_  
Signature of Business/Entity

\_\_\_\_\_  
Print Name of Independent Contractor

\_\_\_\_\_  
Print Name of Business/Entity

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

\_\_\_\_\_  
Date Fed ID # or Soc. Sec. #

In accordance with New Hampshire law: "If the commissioner finds that the employer's use of such written agreement was intended to misrepresent the relationship between the employer and the person providing services, the commissioner may assess a civil penalty of up to \$2,500 on the employer."

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

**Floor amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 273**, relative to reasonable accommodations for employees with disabilities. Banks and Insurance Committee. Ought to Pass, Vote 4-0. Senator Foster for the committee.

**Adopted.**

**Ordered to third reading.**

**Senator Bragdon is in favor of SB 273.**

**SB 331**, relative to certain small loans. Banks and Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

**Banks and Insurance**

**March 15, 2006**

**2006-1376s**

**08/09**

#### **Amendment to SB 331**

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Provisions Applicable to Payday Loan Lenders. Amend RSA 399-A:13 by inserting after paragraph XVIII the following new paragraph:

IX. A lender shall not make a loan to a borrower who currently has outstanding or who has had outstanding within the previous 60-day period a payday or title loan. As part of its application process for such loan, a lender shall obtain a written statement under oath from the borrower certifying the borrower does not currently have outstanding and has not had outstanding a payday loan or title loan within the previous 60-day period.

Amend the bill by replacing section 3 with the following:

3 New Paragraphs; Interest Only on Title Loans. Amend RSA 399-A:14 by inserting after paragraph IV the following new paragraphs:

V. Apply any other charges or fees to title loans other than interest. Title loans shall incur interest only.

VI. Make a loan to a borrower who currently has outstanding or who has had outstanding within the previous 60-day period a payday or title loan. As part of its application process for such loan, a lender shall obtain a written statement under oath from the borrower certifying the borrower does not currently have outstanding and has not had outstanding a payday loan or title loan within the previous 60-day period.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 Title Loan Renewals. Amend RSA 399-A:15 to read as follows:

399-A:15 Title Loan Renewals. A title loan shall be for an original term of no more than one month. A title loan lender may allow such loan to be renewed no more than 11 additional periods each equal the original term, provided however, that at each such renewal the borrower must pay at least 5 percent of the loan's original principal balance, in addition to any finance charge owed, to reduce the principal balance outstanding. If the borrower cannot pay this principal reduction at any renewal, the title loan lender may either: (i) declare the borrower in default, or (ii) allow the loan to be renewed, provided that the lender shall reduce the current principal amount of the loan by 5 percent of the original principal amount for the purposes of calculating interest thereafter. This reduction in principal shall continue to be owed by the borrower, but such amount shall not be entitled to accrue interest thereafter. For the purpose of this section, a renewal is any extension of a title loan for an additional period without any change in the terms of the title loan other than a reduction in principal *and the interest rate as may be required to be reduced by this section. On any renewal, the rate of interest charged shall not exceed an annual percentage rate of 36 percent.* No accrued interest shall be capitalized or added to the principal of the loan at the time of any renewal.

**Amendment adopted.**

**Senator Foster offered a floor amendment.**

**Sen. Foster, Dist. 13**

**March 22, 2006**

**2006-1492s**

**01/09**

#### **Floor Amendment to SB 331**

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

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

**Floor amendment adopted.**

#### **MOTION TO TABLE**

**Senator Flanders moved to have SB 331 laid on the table.**

**Adopted.**

#### **LAIID ON THE TABLE**

**SB 331**, relative to certain small loans.

**SB 338**, relative to insurance coverage for childrens' early intervention therapy services. Banks and Insurance Committee. Interim Study, Vote 4-0. Senator Flanders for the committee.

#### **MOTION TO TABLE**

**Senator Flanders moved to have SB 338 laid on the table.**

**Adopted.**

**LAID ON THE TABLE**

**SB 338**, relative to insurance coverage for childrens' early intervention therapy services.

**SB 369**, relative to portability, availability, and renewability of health coverage. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

**Banks and Insurance**

**March 15, 2006**

**2006-1375s**

**01/09**

**Amendment to SB 369**

Amend RSA 420-G:12, IV as inserted by section 2 of the bill by replacing it with the following:

IV. Each health carrier shall provide, at the time it gives a premium quote to a group, a rating disclosure form that identifies the health coverage plan rate and any adjustments to that rate resulting from the application of rating factors, including age, industry, and group size. The health carrier shall submit the rate disclosure form to the department for approval. Health carriers shall provide their insureds with renewal premium quotes at least 60 days prior to the expiration date of the policy.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 232-FN-A**, making a capital appropriation to the department of health and human services for a dental facility in the town of Tamworth. Capital Budget Committee. Ought to pass with amendment, Vote 4-0. Senator Green for the committee.

**Capital Budget**

**March 15, 2006**

**2006-1401s**

**10/04**

**Amendment to SB 232-FN-A**

Amend the bill by replacing section 2 with the following:

2 Capital Appropriation to the Department of Health and Human Services for Dental Facility; Bonds Authorized.

I. For the purpose of state participation in building a dental facility as part of the TriCounty Community Action Program, there is hereby appropriated to the department of health and human services the sum of \$400,000, which shall be matched with \$780,000 of federal and local funds. Such funds shall be in addition to any other funds appropriated to the department of health and human services.

II. To provide funds for the state appropriation made in paragraph I, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$400,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest on the bonds and notes shall be made from the general fund of the state.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 235**, relative to food safety in restaurants. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 4-2. Senator Kenney for the committee.

**Committee report of inexpedient to legislate is adopted.**

**Senator Bragdon in the Chair.**

**SB 263**, relative to inclusionary zoning and workforce housing. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 5-1. Senator Boyce for the committee.

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

**A division vote was requested.**

**Yeas: 13 – Nays: 9**

**Committee report of inexpedient to legislate is adopted.**

**SB 342**, relative to the treatment of glaucoma by optometrists, and eliminating the joint pharmaceutical formulary and credentialing committee. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

**Senate Executive Departments and Administration**

**March 15, 2006**

**2006-1393s**

**10/05**

**Amendment to SB 342**

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

AN ACT relative to the treatment of glaucoma by optometrists.

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

1 Definition of Pharmaceutical Agent. Amend RSA 327:1, III to read as follows:

III. "Pharmaceutical agent" means the following pharmaceutical products:

(a) Non-legend, over the counter, agents.

(b) Mydriatic and cycloplegic agents which are topically applied.

(c) Miotic agents approved ~~[by the joint pharmaceutical formulary and credentialing committee and included in the formulary]~~ **pursuant to RSA 327:6-a, VI.**

(d) Antibiotics, sulfonamides, and combinations thereof, which are topically applied or orally administered to treat or alleviate the effects of disease or abnormal conditions of the human eye, adnexa, and eyelids, excluding the lacrimal gland, or structures posterior to the iris, approved ~~[by the joint pharmaceutical formulary and credentialing committee and included in the formulary]~~ **pursuant to RSA 327:6-a, VI.**

(e) Anti-allergy medications, including but not limited to antihistamines, decongestants, and mast-cell stabilizers which are topically applied.

(f) Anesthetics and dyes which are topically applied.

(g) Ocular lubricants and hypertonic agents which are topically applied.

(h) Orally administered analgesic agents used for the purpose of alleviating pain caused by a disease or abnormal condition of the human eye or eyelid, excluding the lacrimal gland, or structures posterior to the iris. This may include class III and IV controlled substances approved ~~[by the joint pharmaceutical formulary and credentialing committee]~~ **pursuant to RSA 327:6-a, VI** and included in the formulary.

(i) Other pharmaceutical agents, any solely diagnostic agents, and diagnostic agents combined with pharmaceutical agents as defined in this paragraph and as approved ~~[by the joint pharmaceutical formulary and credentialing committee]~~ **pursuant to RSA 327:6-a, VI.**

(j) Non-steroidal anti-inflammatory agents approved ~~[by the joint pharmaceutical formulary and credentialing committee]~~ **pursuant to RSA 327:6-a, VI** and included in the formulary.

(k) Anti-glaucoma agents which are topically applied provided that an optometrist may dispense or prescribe such agents if the optometrist has met the requirements of RSA 327:6-c.

(l) Corticosteroids which are topically applied, as approved by the ~~[joint pharmaceutical formulary and credentialing committee]~~ **board.**

(m) Antiviral which are ~~[topically applied, provided that prior to dispensing or prescribing, the therapeutic pharmaceutical agent-certified optometrist shall consult with an ophthalmologist with whom he or she has a collaborative relationship. The consultation shall be in a manner to be determined by the ophthalmologist]~~ **approved pursuant to RSA 327:6-a, VI.**

(n) Corticosteroids or antivirals, provided that optometrists with patients on corticosteroids or antivirals who demonstrate no improvement in 10 days shall be referred to an ophthalmologist.

2 New Paragraphs; Pharmaceutical Agents. Amend RSA 327:6-a by inserting after paragraph V the following new paragraphs:

VI. To the extent approval of pharmaceuticals is referenced in RSA 327:1, III, the board shall have the authority to review and approve topically applied pharmaceuticals and the joint pharmaceutical formulary and credentialing committee shall have the authority to review and approve orally administered pharmaceuticals.

VII. The board shall provide the board of pharmacy with a current list of pharmaceutical agents approved pursuant to paragraph VI. The current optometric formulary shall be available from the board and posted on the board's website.

VIII. Upon certification to treat glaucoma patients pursuant to RSA 327:6-c, the board shall issue a license to the optometrist with a "tpa/g" certification. A current list of "tpa/g" certified optometrists with date of certification shall be available from the board and posted on the board's website.

3 Joint Pharmaceutical Formulary and Credentialing Committee. Amend RSA 327:6-b, II to read as follows:

II. The committee shall meet quarterly to:

- (a) Review **and develop** glaucoma reporting forms [~~and develop prescription drug protocols~~];
- (b) Develop a glaucoma [~~reporting~~] **credentialing** form and patient consent form;
- (c) [~~Approve corticosteroids for optometric use~~];
- (d) [~~Determine which combination medications shall be considered one medication for the purposes of treating glaucoma patients~~].

~~(e)] Review suggestions, complaints, and concerns regarding the glaucoma certification process described in RSA 327:6-c, II, and report the results of its review to the board. This subparagraph shall not grant the committee additional authority or powers not stated in this subparagraph;~~

~~(d)~~ Provide minutes of their meetings to the board, the board of medicine, and the pharmacy board; **and**

~~[(f)]~~ **(e)** Determine which optometrists have successfully completed the requirements of RSA 327:6-c and maintain a list of such optometrists[~~and~~

~~(g) Maintain a current list of approved prescription drugs which shall be available from the board].~~

4 Treatment of Glaucoma. Amend RSA 327:6-c to read as follows:

327:6-c Treatment of Glaucoma.

I.(a) Optometrists seeking authorization to treat glaucoma shall complete at least 40 hours of classroom education, approved by the board, incorporating: epidemiology of the glaucomas; genetics of the glaucomas; anatomy, physiology, and mechanics of aqueous inflow and aqueous outflow; optic nerve anatomy and pathophysiology; neurotoxicity and neuroprotectants; receptor biology; pharmacology, clinical use and toxic effects of alpha and beta adrenergic agents, carbonic anhydrase inhibitors, prostanoids and cholinergic agents.

(b) Optometrists shall pass an examination approved by the board that covers the educational components listed in subparagraph (a). Upon passage of such exam, an optometrist shall have prescriptive authority during the clinical management period pursuant to RSA 327:6-a.

(c) The board [~~may~~] **shall** waive the requirements of [~~subparagraphs (a) and (b)~~] **this paragraph and of paragraph II** for optometrists who have **either** graduated after 2002 **or who have proof of 12 months of credentialed privileges to treat glaucoma by the United States Department of Defense, Department of Veteran Affairs, or the National Indian Health Service, verified by the board.**

II.(a) To be authorized to initiate treatment of glaucoma for patients 18 years of age or older, a therapeutic pharmaceutical agent certified optometrist shall complete the educational requirements in paragraph I and provide evidence of written referrals and consultations with an ophthalmologist. For purposes of this section, "glaucoma" means primary open-angle glaucoma; **and** "ophthalmologist" means a physician licensed under RSA 329 with a specialty in ophthalmology[~~and "treatment" means the use of no more than 2 concurrent topical prescription glaucoma medications~~]. The joint pharmaceutical formulary and credentialing committee shall review evidence of glaucoma co-management submitted pursuant to subparagraph (b).



(b) Except as provided in **subparagraph I(c) or** paragraph III, therapeutic pharmaceutical agent certified optometrists are required to provide evidence of successful collaborative treatment and co-management of ~~[40]~~ **25** glaucoma patients, up to ~~[20]~~ **5** of which may be established patients, during a period of not less than 18 months for each patient, to ophthalmologists according to the following criteria:

~~[(i)]~~ **(1)** A new or existing glaucoma patient is examined and diagnosed by the optometrist;

~~[(ii)]~~ **(2)** The optometrist develops a proposed treatment plan and forwards the plan with examination documentation to an ophthalmologist for consultation;

~~[(iii)]~~ **(3)** The ophthalmologist, examines the patient and reviews the optometrist's examination documentation and proposed treatment plan;

~~[(iv)]~~ **(4)** The ophthalmologist, optometrist, and patient mutually agree to and document a treatment plan;

~~[(v)]~~ **(5)** The optometrist shall ~~[refer the patient within 30 days to]~~ **consult with** the co-managing ophthalmologist when any of the following occurs: the patient's target pressure is not reached within 90 days; ~~[the patient requires more than 2 prescription glaucoma medications;]~~ the patient is experiencing **documented** progression of optic nerve damage ~~[or];~~ **the patient develops documented and repeated progression of** visual field loss; or the patient develops angle-closure or other secondary glaucoma; and

~~[(vi)]~~ **(6)** For each **successfully co-managed** glaucoma patient the optometrist **and co-managing ophthalmologist** shall complete a glaucoma credentialing reporting form and submit the form to the joint pharmaceutical formulary and credentialing committee upon completion of the 18 months of treatment.

III. The ~~[following categories of optometrists may petition the]~~ joint pharmaceutical formulary and credentialing committee ~~[to]~~ **may** waive or reduce the ~~[consultation requirement from 40 to 20 patients:~~

~~(a) Optometrists who have graduated after 2002;~~

~~(b) Optometrists with proof of 12 months of credentialed privileges to treat glaucoma by the U.S. Department of Defense, U.S. Department of Veteran Affairs, or the National Indian Health Service;~~

~~(c) requirements of RSA 327:6-c, I and II for the following categories of optometrists:~~

~~(a)~~ Optometrists with a license and proof of practice for 12 months **treating glaucoma patients** in another state that currently authorizes the treatment of glaucoma by optometrists; or

~~[(d)]~~ **(b)** Optometrists who have ~~[completed]~~ **proof of successful completion of** a 12-month accredited optometric residency program or its equivalent.

IV. ~~[(a)]~~ Upon certification to treat glaucoma patients~~[-];~~

**(a)** For a period of 24 months, optometrists shall ~~[refer]~~ **consult with an ophthalmologist within 30 days for** each new glaucoma patient ~~[within 30 days to an ophthalmologist]~~ for confirmation of diagnosis and review of treatment plan. ~~[After the 24-month period, optometrists shall consult with an ophthalmologist upon diagnosis of a new glaucoma patient.]~~

**(b)** An optometrist shall ~~[refer a glaucoma patient]~~ **consult with an ophthalmologist** within 30 days when any of the following occurs:

~~[- (i) The patient's target pressure is not reached within 90 days;~~

~~(ii) The patient requires more than 2 prescription glaucoma medications;~~

~~[(iii)]~~ **(1)** The patient is experiencing **documented** progression of optic nerve damage or **the patient develops documented and repeated progression of** visual field loss **on maximum tolerated medical therapy,** or

~~[(iv)]~~ **(2)** The patient develops angle-closure or other secondary glaucoma.

~~[(b) Upon certification to treat glaucoma patients, the board shall issue a license awarding the optometrist with a "tpa/g" certification.]~~

5 Disciplinary Proceedings; Misconduct. Amend RSA 327:20, (g) and (h) to read as follows:

(g) Willful or repeated violation of the provisions of this chapter; ~~[or]~~

(h) Suspension or revocation of a license, similar to one issued under this chapter, in another jurisdiction and not reinstated; **or**



*(i) The use of any pharmaceutical agent by an optometrist not authorized under RSA 327:6-a or the use of any pharmaceutical agent other than those agents described in RSA 327:1 or those previously approved by the joint pharmaceutical formulary and credentialing committee.*

6 Repeal. RSA 327:6-b, III, relative to violations relating to the use of pharmaceutical agents, is repealed.

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

**2006-1393s**

#### AMENDED ANALYSIS

This bill revises the requirements for optometrists treating glaucoma patients.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**HB 718-FN-A**, relative to group life insurance for New Hampshire citizens serving in the military reserves or national guard and making an appropriation therefor. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

**Adopted.**

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

**HB 1114**, relative to regulation by the board of licensure of interpreters for the deaf and hard of hearing. Executive Departments and Administration Committee. Ought to Pass, Vote 3-0. Senator Fuller Clark for the committee.

**Adopted.**

**Ordered to third reading.**

**SB 298-FN**, relative to motor vehicle fines. Finance Committee. Ought to pass with amendment, Vote 8-0. Senator Clegg for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1380s**

**03/01**

#### Amendment to SB 298-FN

Amend the bill by replacing section 29 with the following:

29 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.**

**SB 304**, relative to negotiating provider payments by the commissioner of the department of health and human services. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Green for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1402s**

**01/09**

#### Amendment to SB 304

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

AN ACT relative to provider payments negotiated by the commissioner of the department of health and human services.

Amend RSA 126-A:3, VIII as inserted by section 1 of the bill by replacing it with the following:

VIII. Notwithstanding any provision of law to the contrary, the department is not obligated to pay rates to providers higher than originally negotiated if the line appropriation is not fully spent. The department shall spend moneys budgeted for those persons needing services and shall not establish a waiting list to create a lapse to the general fund. No rules shall be adopted, pursuant to RSA 541-A, which are inconsistent with the provisions of this paragraph. The commissioner shall report quarterly to the fiscal committee of the general court, the governor, the speaker of the house of representatives, and the president of the senate concerning the status of appropriations for payments to providers and the rates negotiated and established by the department.

**2006-1402s**

#### AMENDED ANALYSIS

This bill clarifies how rates negotiated by the department of health and human services are spent and requires the commissioner of health and human services to make a quarterly report to the fiscal committee, the governor, and the general court relative to such negotiated rates.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 306-FN-A**, establishing a quality early learning opportunity initiative and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 4-1. Senator Clegg for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1400s**

**09/03**

#### Amendment to SB 306-FN-A

Amend the bill by replacing section 3 with the following:

3 Appropriation. The sum of \$500,000 for the fiscal year ending June 30, 2007 is hereby appropriated to the department of health and human services for the purposes of section 2 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

**2006-1400s**

#### AMENDED ANALYSIS

This bill establishes a one-year quality early learning opportunity initiative in the department of health and human services and makes an appropriation from the general fund for such initiative.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 339**, changing certain job titles and responsibilities in the department of transportation. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator Morse for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1409s**

**05/09**

#### Amendment to SB 339

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 7:

4 Reappointment of Director of Administration and Director of Public Works. Pursuant to sections 1-3 of this act, the current director of administration shall become the director of policy, an unclassified position

at labor grade GG, for the remainder of his current term as director of administration, and the current director of public works shall become the director of administration, an unclassified position at labor grade HH, for the remainder of his current term as director of public works.

5 Appropriation; Department of Transportation; Consultants. The department of transportation may hire up to 3 financial consultants, each of whom shall be paid from highway funds not otherwise appropriated an amount not to exceed \$70,000 per year, from class 46, for a period of not more than 2 years, to work with the department on such matters as may be recommended by the chief financial officer of the department of transportation.

6 Department of Revenue Administration; Salaries. Amend RSA 94:1-a, I(b), as follows:

I. By inserting:

(a) In Grade EE:

EE Department of revenue administration tax policy analyst

(b) In Grade GG:

GG Department of revenue administration assistant director, audit division

II. By deleting in Grade FF:

FF Department of revenue administration assistant director, audit division

**2006-1409s**

#### AMENDED ANALYSIS

This bill:

I. Establishes, within the department of transportation, the position of director of policy, removes the position of director of public works, and expands the duties of the director of administration so that the current director of administration may become the director of policy and the current director of public works may become the director of administration.

II. Permits the department of transportation to hire up to 3 financial consultants for a 2-year period.

III. Establishes, within the department of revenue administration, the position of tax policy analyst and changes the labor grade of the assistant director of the audit division.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 346-FN**, relative to septage management activities. Finance Committee. Inexpedient to Legislate, Vote 7-1. Senator Morse for the committee.

**Committee report of inexpedient to legislate is adopted.**

**SB 354-FN**, requiring security officers of the New Hampshire hospital security force to be fully certified as police officers and including such security officers in group II of the New Hampshire retirement system. Finance Committee. Ought to Pass, Vote 6-2. Senator Clegg for the committee.

**Adopted.**

**Ordered to third reading.**

**SB 364-FN-A**, relative to funding of the fish and game search and rescue fund and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator D'Allesandro for the committee.

**Senate Finance**

**March 15, 2006**

**2006-1408s**

**08/09**

#### **Amendment to SB 364-FN-A**

Amend RSA 206:42, II as inserted by section 1 of the bill by replacing it with the following:

***II. The state treasurer shall deposit annually from the general fund into the special search and rescue fund an amount equal to the moneys collected pursuant to paragraph I during any fiscal year up to and including a total of \$100,000 annually. The governor is authorized to draw a warrant for such amount out of any money in the treasury not otherwise appropriated.***

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds. Finance Committee. Ought to pass with amendment, Vote 8-0. Senator Clegg for the committee.

**Senate Finance**

**March 16, 2006**

**2006-1414s**

**05/03**

#### **Amendment to SB 367-FN**

Amend RSA 167:60-a, II as inserted by section 1 of the bill by replacing it with the following:

II. In conducting the review under paragraph I, the department may impose the following administrative penalty upon any Medicaid provider who, after notice of overpayments and identification of claims resulting in the overpayments, has violated the requirements of the Medicaid rules because the provider lacks proof or records that the goods or services were provided for covered goods or services: a penalty of up to 100 percent of Medicaid payments for goods or services, if the provider fails to demonstrate that the disputed goods or services were medically necessary, were covered goods or services, and were actually provided to eligible recipients.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Appropriation; Supplemental Pharmacy Assistance. Amend 2006, 2:2 to read as follows:

2:2 Appropriation; Supplemental Pharmacy Assistance. Up to the sum of \$500,000 for the [~~fiscal year~~] **bien-nium** ending June 30, [~~2006~~] **2007** is hereby appropriated to the department of health and human services, for the purpose of providing supplemental pharmacy assistance. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. If the commissioner determines additional funds are needed to provide the supplemental pharmacy assistance the commissioner, with the approval of the legislative fiscal committee, may expend other funds appropriated to the department for this purpose.

**2006-1414s**

#### **AMENDED ANALYSIS**

This bill:

I. Permits the department of health and human services to impose an administrative penalty on Medicaid providers for overpayments.

II. Extends the appropriation to the department of health and human services for supplemental pharmacy assistance during the period of transition to the new federal pharmacy benefit under Part D of the Medicare program.

This bill is a request of the department of health and human services.

**Amendment adopted.**

**Senator D'Allesandro moved that SB 367-FN be made a special order for the end of the day.**

**Adopted without objection.**

**SB 367-FN is made a special order for the end of the day.**

**SB 373-FN-A**, relative to a public health response to arbovirus. Finance Committee. Ought to Pass, Vote 7-1. Senator D'Allesandro for the committee.

**Adopted.**

**Ordered to third reading.**

**SB 384-FN-A-L**, establishing an exemption from the real estate transfer tax for certain transfers of family farm and forest land. Finance Committee. Inexpedient to Legislate, Vote 7-1. Senator Morse for the committee.

**Motion failed.**

**Senator Morse moved ought to pass.**

**Senator Johnson offered a floor amendment.**

**Sen. Johnson, Dist. 2**

**March 21, 2006**

**2006-1490s**

**09/04**

**Floor Amendment to SB 384-FN-A-LOCAL**

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

AN ACT establishing a temporary one-time exemption from the real estate transfer tax for certain transfer of family farm or open space land.

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

**1 One-Time Exemption From Real Estate Transfer Tax.**

I. A transfer of one or more parcels of land that consist of farm land or open space land as defined in RSA 79-A:2 that is open to public recreational use under RSA 79-A:4, II, from a family holder to one or more family entities shall be exempt from the real estate transfer tax imposed under RSA 78-B. Application for exemption shall be made to the commissioner of the department of revenue administration prior to a transfer of real estate and shall be made on such form as the commissioner shall determine. The application shall be approved if the commissioner finds that:

(a) The transferor of the parcel is a family holder. A "family holder" shall consist of a person or family group consisting of an individual or a husband and wife, and may include any parent, grandparent, child, grandchild, or sibling of such individual or husband or wife, the spouse of such parent, grandparent, child, grandchild, or sibling, or any trust established by an eligible member for estate planning purposes and which is controlled solely by one or more of such eligible members of the family holder;

(b) The transferee of the parcel is one or more family entities. A "family entity" shall consist of a limited liability entity formed under New Hampshire law;

(c) Each holder's share of ownership and/or beneficial interests in such family entity or entities immediately after the transfer is the same as such holder's share of ownership of the family holder in the transferred parcel or parcels immediately before the transfer; and

(d) At least 80 percent of the assets of the family entity or entities immediately after the transfer consist exclusively of land that is in current use under RSA 79-A:4, II. The remainder of the assets of the family entity shall be ancillary to, and supportive of, a farm or open space land and its operation.

II. Each parcel of property is limited to one exempt transaction under this act.

**2 Repeal.** Section 1 of this act, relative to a one-time real estate transfer tax exemption, is repealed.

**3 Effective Date.**

I. Section 2 of this act shall take effect December 31, 2009.

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

**2006-1490s**

**AMENDED ANALYSIS**

This bill establishes a temporary one-time exemption from the real estate transfer tax for certain transfers of family farm or open space land.

**Floor amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 391-FN**, relative to insurance third party administrators. Finance Committee. Ought to Pass, Vote 8-0. Senator D'Allesandro for the committee.

**Adopted.**

**Ordered to third reading.**

**SB 402-FN-A**, relative to payment of unreimbursed storm-related damages incurred by the town of Hanover and affected surrounding towns and making an appropriation therefor. Finance Committee. Inexpedient to Legislate, Vote 6-2. Senator Morse for the committee.

**MOTION TO TABLE**

**Senator Morse moved to have SB 402-FN-A laid on the table.**

**Adopted.**

**LAIID ON THE TABLE**

**SB 402-FN-A**, relative to payment of unreimbursed storm-related damages incurred by the town of Hanover and affected surrounding towns and making an appropriation therefor.

**HB 1226-FN**, relative to the New Hampshire Humanities Council. Finance Committee. Ought to Pass, Vote 7-0. Senator Morse for the committee.

**Adopted.**

**Ordered to third reading.**

**SB 395**, relative to the number of children in a licensed foster home. Health and Human Services Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

**Health and Human Services**

**March 15, 2006**

**2006-1374s**

**08/09**

**Amendment to SB 395**

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

1 New Subparagraph; Exception. Amend RSA 170-E:25, II(a) to read as follows:

(a) **(1)** "Foster family home" means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for child care who are related to the residents.

**(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.**

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 349**, relative to placement and removal of political advertising. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.

**Internal Affairs**

**March 15, 2006**

**2006-1413s**

**03/05**

**Amendment to HB 349**

Amend the bill by replacing section 1 with the following:



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

664:17 Placement and Removal of Political Advertising. No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. ~~[The earliest date on which political advertising may be placed or affixed shall be the last Friday in July prior to a state primary. All political advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary.]~~ ***Signs shall not be placed on or affixed to utility poles or highway signs. Political advertising may be placed within state-owned rights-of-way as long as the advertising does not obstruct the safe flow of traffic and the advertising is placed with the consent of the owner of the land over which the right-of-way passes.*** No ***unauthorized*** person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to ***public property*** or any private property except the owner of the property or a law enforcement officer removing improper advertising[; provided, however, that, before a law enforcement officer removes any advertisement, he shall notify the candidate that it is improper, and allow the candidate 24 hours to remove the advertisement himself]. ***Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel. Political advertising removed prior to election day by state, city, or town maintenance or law enforcement personnel shall be kept for one week at a place designated by the state, city, or town so that the candidate may retrieve the items.***

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**HB 713-FN**, relative to a process for the request and disclosure of social security numbers. Internal Affairs Committee. Interim Study, Vote 4-0. Senator Boyce for the committee.

#### **SPECIAL ORDER**

Senator Boyce moved that **HB 713-FN**, relative to a process for the request and disclosure of social security numbers, be made a special order for April 6, 2006.

**Adopted.**

**HB 713-FN is made a special order for April 6, 2006.**

**HB 1122**, relative to special elections. Internal Affairs Committee. Ought to Pass, Vote 5-0. Senator Flanders for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 1147**, relative to the conduct of recounts. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Hassan for the committee.

**Internal Affairs**

**March 15, 2006**

**2006-1412s**

**03/05**

#### **Amendment to HB 1147**

Amend the bill by replacing section 5 with the following:

5 Town Elections; Board of Recount. Amend RSA 669:32 to read as follows:

669:32 Board of Recount. At the time and place so appointed and notified, the clerk shall publicly break the seal of and open the package in which the ballots of said election are kept; and, thereupon, said ballots shall be recounted by the clerk, the moderator, and the selectmen of said town who shall constitute the board of recount. ***When counting the ballots, the board of recount or their assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots.*** Any member of the board of recount who is one of the candidates for the office being recounted shall dis-

qualify himself *or herself* from the board of recount for all official duties of said board. The moderator shall appoint an assistant who shall take the same oath as, serve in the same capacity as, and have all the powers of the recount official whom he *or she* has replaced.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**SB 230**, relative to the scope of liability of a medical director responsible for utilization review under the managed care law. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Clegg for the committee.

**Senate Judiciary**  
**March 15, 2006**  
**2006-1368s**  
**01/09**

#### **Amendment to SB 230**

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

AN ACT relative to the qualifications and liability of the medical director responsible for utilization review under the managed care law.

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

1 Utilization Review; Qualifications of Medical Director; Duties. Amend RSA 420-J:6, V to read as follows:

V.(a) Each health carrier that conducts utilization review shall employ a medical director who shall have responsibility for all utilization review techniques and methods and their administration and implementation. ***The medical director shall:***

***(1) Be licensed to practice medicine under RSA 329;***

***(2) Possess the education, training, and expertise to evaluate the medical condition of the insured; and***

***(3) Review the available medical documentation, notes of the attending physician, and test results and other relevant medical records of the insured.***

***(b)*** Nothing in this section shall be construed to preclude a medical director from consulting with or relying on the advice of a physician licensed in this state or any other state. ~~Nothing in this section shall be construed as creating any civil liability to the medical director for the medical director's alleged negligent performance of the aforementioned responsibilities for utilization review.~~

***(c) Any decision not to authorize coverage and the reason for the decision, including whether the coverage is included in the policy, shall be transmitted in writing in a timely manner to the insured, the provider of health care who recommended the service, and the primary care physician of the insured, if any. Any denial on a medical necessity basis shall be based on the review under subparagraph (a)(3) and include an explanation and specific reference with citation to the scientific basis or clinical judgment for the determination, applying the terms of the plan or the policy to the claimant's medical circumstances.***

2 Accident and Health Insurance; Minimum Standards for Claim Review. Amend RSA 415-A:4-a, I(c)(4) to read as follows:

(4) If the claim denial is based on a medical necessity or experimental treatment or other similar exclusion or limit ***such denial shall only follow a complete review by the medical director of the available medical documentation, notes of the attending physician, and test results and other relevant medical records of the insured and then based upon that review,*** an explanation ~~of~~ ***and specific reference with citation to the scientific or clinical judgment for the determination, applying the terms of the plan or the policy to the claimant's medical circumstances;***

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

**2006-1368s****AMENDED ANALYSIS**

This bill clarifies the qualifications and duties of a medical director and subjects him or her to civil liability for the negligent performance of his or her duties.

**Amendment adopted.****Senator Clegg offered a floor amendment.****Sen. Clegg, Dist. 14****March 21, 2006****2006-1483s****01/09****Floor Amendment to SB 230**

Amend RSA 420-J:6, V(b) as inserted by section 1 of the bill by replacing it with the following:

**(b)** Nothing in this section shall be construed to preclude a medical director from consulting with or relying on the advice of a physician licensed in this state or any other state. Nothing in this section shall be construed as creating any civil liability to the medical director for the medical director's alleged negligent performance of the aforementioned responsibilities for utilization review.

**2006-1483s****AMENDED ANALYSIS**

This bill clarifies the qualifications and duties of a medical director.

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

**SB 321**, relative to delinquency proceedings for juveniles committing felony cruelty to animals. Judiciary Committee. Inexpedient to Legislate, Vote 3-0. Senator Foster for the committee.

**Committee report of inexpedient to legislate is adopted.**

**SB 324**, requiring notification concerning certain offenders against children. Judiciary Committee. Ought to Pass, Vote 3-0. Senator Letourneau for the committee.

**Adopted.****Ordered to third reading.**

**SB 394**, establishing the Trust Modernization and Competitiveness Act. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Foster for the committee.

**Senate Judiciary****March 15, 2006****2006-1377s****08/09****Amendment to SB 394**

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

1 Purpose. The legislature finds that:

I. The market for trust and trust services across the nation is a rapidly growing sector of the nation's economy.

II. New Hampshire is uniquely positioned to provide the most attractive legal and financial environment for individuals and families seeking to establish and locate their trusts and investment assets.

III. This act will serve to establish New Hampshire as the best and most attractive legal environment in the nation for trusts and trust services, and this environment will attract to our state good-paying jobs for trust and investment management, the legal and accounting professions, and support an infrastructure required to service this growing sector of the nation's economy.

IV. This act shall be known as the Trust Modernization and Competitiveness Act.

2 Nondepository Trust Companies; Examination. Amend RSA 383:9-d to read as follows:

383:9-d Examination of Highly Rated Institutions; ***Nondepository Trust Companies.***

***I.*** The bank commissioner may, at his or her discretion, waive one 18-month examination requirement under RSA 383:9 every 6 years for institutions which have consistently been given high ratings in past examinations. The commissioner may also substitute for an 18-month examination once every 6 years a report of a federal institution examining agency whose reports regularly include a report on New Hampshire institutions. Within any 6-year period in which 4 18-month examinations are required under RSA 383:9, the commissioner may for highly rated institutions:

[F:] ***(a)*** Waive one examination; [and]

[H:] ***(b)*** Substitute for one examination a report of a federal bank examining agency whose reports regularly include a report on New Hampshire banks; and

[H:] ***(c)*** Perform 2 examinations as required by 383:9.

***II. The commissioner may, at his or her sole discretion, upon the written request of a highly-rated nondepository trust company, satisfy the examination requirement of RSA 383:9, including modifications under paragraph I, for such trust company through an off-premises examination of:***

***(a) An audit report satisfying the requirements of RSA 384:43, I and II if it is prepared in accordance with RSA 384:43, III(a) and (b), and, with respect to a trust institution, including a fiduciary audit conforming to applicable generally accepted auditing standards; and***

***(b) Such other records and information of the institution as may be required by the commissioner.***

3 Powers and Inconsistent Charter Provisions. Amend RSA 384 by inserting after section 1-a the following new section:

384:1-b Powers and Inconsistent Charter Provisions. Unless otherwise determined by the bank commissioner, each savings bank, trust company, cooperative bank and other banking company chartered by the state of New Hampshire shall have all the powers, rights, benefits, privileges and procedures conferred upon each of such types of banks by the general statutes and rules adopted thereunder, subject to all the duties and restrictions contained in such general statutes and rules. The provisions of such general statutes and rules shall prevail over any inconsistent charter provisions of such banks.

4 Trust Companies; Banks Authorized to Invest Trust Funds in Affiliated Investments. Amend RSA 384:65 to read as follows:

384:65 Banks Authorized to Invest Trust Funds in Affiliated Investments.

***I.*** Notwithstanding the provisions of any other law to the contrary, ***and in addition to any authority granted by RSA 564-B***, any bank, as defined in RSA 384:57, II, authorized to exercise trust powers in this state, is authorized while acting as a fiduciary to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market:

***(a)*** Bonds or other securities underwritten or distributed by such bank or an affiliate thereof or by a syndicate which includes such bank or affiliate, provided that such bank discloses in any written communication or account statement reflecting the purchase of such bonds or securities the nature of the interest of such bank or affiliate in the underwriting or distribution of such bonds and securities and whether such bank or affiliate received any fee in connection with such purchase; and

***(b)*** Securities of any investment company ~~[registered]~~ ***as defined*** under the federal Investment Company Act of 1940 for which such bank or affiliate acts as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, or custodian, provided that such bank discloses in any written communication or account statement reflecting the purchase of such securities the nature of the relationship and whether such bank or affiliate received any fee for providing such services.

***II.*** The authority granted in paragraph I of this section may be exercised only if:

***(a)*** The investment is not expressly prohibited by the instrument, judgment, decree, or order establishing the fiduciary relationship;

(b) The bank discloses in writing to the person or persons to whom it sends account statements its intent to exercise the authority granted in paragraph I prior to the first exercise of such authority; and

(c) The bank procures in writing the consent of its cofiduciaries **with discretionary investment powers**, if any, to the investment.

III. A bank, acting as a fiduciary pursuant to RSA 384:65, I, may:

(a) Invest in the securities of an investment company or investment trust, to which such fiduciary or its affiliate provides services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, and such investment is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor standard pursuant to article 9 of RSA 564-B.

(b) Be compensated by the investment company or investment trust for providing services in a capacity other than as trustee, such as advisor, distributor, transfer agent, registrar, sponsor, manager, shareholder servicing agent, administrator, or custodian, if the fiduciary at least annually notifies ~~the~~ **each** person ~~or persons~~ to whom it ~~sends~~ **is required to send** account statements **under RSA 564-B:8-813** of the rate and method by which the compensation was determined.

IV. Nothing in this section shall affect the degree of prudence which is required of fiduciaries under the laws of this state. Any bonds or securities purchased under authority of this section shall have sufficient liquidity and investment quality to satisfy the principles of fiduciary investment and the terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

V. Notwithstanding paragraphs I-IV, no bank authorized to exercise trust powers in this state which is acting as a fiduciary shall purchase for the fiduciary estate any fixed income or equity security issued by such bank or an affiliate thereof, unless the bank is expressly authorized to do so by the terms of the instrument creating the trust, a court order, the written consent of the grantor of the trust, or the written consent of the **qualified** beneficiaries of the trust, **as defined in RSA 564-B:1-103**.

5 Trust Companies; Bond Requirement. RSA 390:14 is repealed and reenacted to read as follows:

390:14 Bonds. Unless required by the order of a court with proper jurisdiction, no corporation or limited liability company authorized to act as trustee or executor in this state shall be required to give bond of an indemnity company licensed to do business in this state.

6 Repeal. RSA 390:16, relative to making loans from funds held in trust, is repealed.

7 New Section; Trust Companies; Definitions. Amend RSA 392 by inserting after section 1 the following new section:

392:1-a Definitions. For the purposes of title XXXV and RSA 359-C, as applicable:

I. "Confidential information," with respect to a trust company, includes the names of stockholders, members, or other owners; ownership information; capital contributions; addresses; business affiliations; findings of the commissioner or the board of trust company incorporation through any examination or investigation of the commissioner or the board of trust company incorporation; any information required to be reported or filed with the commissioner or the board, any information that qualifies as any person's "nonpublic personal financial information" under Chapter V of the Gramm-Leach-Bliley Act of 1999 and the regulations implementing it; any information or agreement relating to any merger, consolidation, or transfer; any agreements or information relating to any relationship with a contracting trustee; and any other nonpublic information that, in the judgment of the commissioner, could be useful in connection with an act of bribery, extortion, identity theft, or terrorism.

II. "Depository trust company" means a trust company that is organized under this chapter and is not prohibited by its charter from accepting deposits.

III. "Family fiduciary services company" means a nondepository trust company that is organized under this chapter to engage in business with one or more family members and does not transact business with the general public, as defined in RSA 392:39a, I(c) and is prohibited by its charter from making loans.

IV. "Nondepository trust company" means a trust company organized under this chapter but is prohibited by its charter from accepting deposits.

V. "Organizational instrument" means, with respect to a trust company, the articles of agreement for a corporation or the certificate of formation for a limited liability company.



VI. "Trust company" means a depository trust company or a nondepository trust company.

8 Trust Companies; Number of Organizers. Amend RSA 392:2 to read as follows:

392:2 ~~[Incorporators]~~ **Organizers.** Except as provided in this paragraph, ~~[10]~~ **3** persons may subscribe to ~~[articles of agreement]~~ **an organizational instrument** in writing for the purpose of forming a trust company and may, upon compliance with the provisions of this chapter, become a ~~[corporation]~~ **trust company** with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a trust company, as set forth in the general laws now or hereafter in force relating to such ~~[corporations]~~ **trust companies**. If a trust company is being organized by a bank holding company or a financial holding company as defined by the federal Bank Holding Company Act of 1956, as amended, or by a savings and loan holding company as defined by the federal Savings and Loan Holding Company Act, as amended, or by any other type of company that will directly or indirectly hold all of the shares **or interests** of the trust company~~['s capital stock]~~, or in connection with a reorganization of a trust company into a holding company structure, then only the holding company or, if applicable, the subsidiary of the holding company that will hold all of the shares **or interests** of the trust company~~['s capital stock]~~, is required to subscribe to the ~~[articles of agreement]~~ **organizational instrument**.

9 Trust Companies; Limited Liability Company Powers. Amend RSA 392:2-a to read as follows:

392:2-a Limited Liability Company. Notwithstanding RSA 304-C:7, I or any other provision of law to the contrary, a trust company subject to the regulation of the bank commissioner may be organized as a limited liability company **with all the powers and privileges and subject to all the duties, restrictions, and liabilities of a corporate trust company**. A trust company organized as a limited liability company shall ~~[be subject to the provisions of]~~ **have all the powers and privileges and, except as otherwise provided in this section, be subject to all the duties, restrictions, and liabilities of** state ~~[law]~~ **laws** applicable to ~~[such type of entity]~~ **a limited liability company**~~[- provided, however, any filing required to be made with the secretary of state shall be made instead with the bank commissioner]~~. Any reference to a corporation in the statutes governing trust companies shall also include a limited liability company. A trust company organized as a limited liability company shall be subject to all of the same laws and regulations that relate to a trust company organized as a corporation. All managers and employees of a trust company organized as a limited liability company shall be subject to the same duties and liabilities as pertain to directors, trustees, and employees of a trust company organized as a corporation. Any reference to corporations, directors, officers, stockholders or other like terms used to describe corporations in the statutes governing trust companies shall be construed to apply in the same manner to limited liability companies, managers, employees, members or other like terms used to describe limited liability companies unless the context otherwise requires. The organizational ~~[instruments]~~ **instrument** of a trust company chartered as a limited liability company ~~[shall satisfy the requirements of the Federal Deposit Insurance Corporation in order to be deemed "incorporated" for purposes of federal deposit insurance]~~ **shall provide that its existence shall be perpetual, that the company shall be managed by managers and that no member of the company shall be individually liable for the debts of the company, other than to the extent of the member's investment therein**.

10 Nondepository Trust Companies. RSA 392:3 is repealed and reenacted to read as follows:

392:3 Organizational Instrument

I. Said organizational instrument shall set forth that the organizers thereto associate themselves with the intention of forming a trust company, and shall specifically state:

(a) The name by which the corporation shall be known.

(b) The purpose for which it is formed, including, for a nondepository trust company, an exclusion from taking deposits.

(c) The name of the registered agent and the address of the registered office.

(d) The amount of its capital and the number of shares or interests into which the same is to be divided.

(e) Any other provisions consistent with the requirements of RSA 293-A if the trust company is in corporate form or RSA 304-C if the trust company is in limited liability form.

II. The provisions of RSA 293-A:5.01, 5.02, 5.03 and 5.04 shall apply to a trust company if it is in corporate form and the provisions of RSA 304-C:5 and 6 shall apply to it if it is in limited liability form. A copy of all notices required to be sent to the secretary of state shall also be sent to the commissioner.



11 Trust Companies; Organizer's Business Address. RSA 392:4 is repealed and reenacted to read as follows:

392:4 Signing Organizational Instrument. Each organizer shall subscribe to the organizational instrument the organizer's name, business post office address, and the number of shares of stock or interests which the organizer agrees to take.

12 Trust Companies; Application for Charter. RSA 392:5 is repealed and reenacted to read as follows:

392:5 Petition.

I. A petition setting forth said agreement of association or its terms, signed by the organizers to the agreement and requesting that the board of trust company incorporation grant a charter shall be filed with the bank commissioner in the form prescribed by the commissioner. The commissioner shall designate in such form the questions, requests for information and certifications applicable only to deposit taking or lending institutions that need not be responded to by organizers of a nondepository trust company. An examination fee of \$ 5,000 shall be paid when the petition is filed. Sums collected under this section shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the bank commissioner.

II. Upon receipt of a petition deemed to be complete by the commissioner, the commissioner shall promptly conduct an examination of all relevant facts connected with the formation of the proposed trust company. The commissioner may examine the following factors:

(a) The proposed market or markets to be served.

(b) Whether the proposed organizational and capital structure and the amount of initial capital appear adequate in relation to the proposed business and market or markets.

(c) Whether the anticipated volume and nature of business indicate a reasonable probability of success and profitability based on the market or markets proposed to be served.

(d) Whether the proposed officers and directors or managers, as a group, have sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed trust company will be free from improper or unlawful influence and otherwise will operate in compliance with law, and that success of the proposed trust company is reasonably probable.

(e) Whether the proposed name of the proposed trust company is likely to mislead the public as to its character or purpose or is the same as a name already adopted by an existing bank, savings association, or trust institution in this state, or so similar thereto as to be likely to mislead the public.

(f) Any other factor, as the commissioner may determine.

III. The failure of a petitioner to furnish required information, data, other material, or the required fee within 30 days after a request may be considered an abandonment of the petition.

13 Trust Companies; Investigation by Bank Commissioner. Amend RSA 392:5-a to read as follows:

392:5-a Investigations. For the purpose of any investigation under this chapter, the board **or the commissioner** shall have the power to subpoena witnesses and administer oaths in any adjudicative proceedings, and to compel, by subpoena duces tecum, the production of all books, records, files, and other documents and materials relevant to its investigation.

14 Trust Companies; Notice. RSA 392:6 is repealed and reenacted to read as follows:

392:6 Notice. Upon a determination by the commissioner that the petition is complete, he or she shall approve the form of a notice to be published in a newspaper of general circulation acceptable to the commissioner. The notice shall be published not later than 30 days after the date of approval. The notice shall state a date before which objections may be filed, which date shall not be later than 30 days after the publication of said notice. Any interested person may, within the time specified, file with the commissioner a statement of objection to the granting of such petition.

15 Trust Companies; Hearings. RSA 392:6-a is repealed and reenacted to read as follows:

392:6-a Hearing. The board may order within its discretion a public hearing on the petition. The board may approve or deny the petition with or without a public hearing. Any required public hearing shall be held at the time and place fixed by the board and a notice shall be published in accordance with the provisions of RSA 392:6. The board may prescribe reasonable procedural rules to govern the proceedings, including rules for maintaining the confidentiality of the portions of the petition, the commissioner's investigation, and the

proceedings of the board that include confidential information or are determined by the board or the commissioner or otherwise determined by law to be confidential or to exempt a certain class of petitions from any public hearing requirement. The board shall keep a permanent verbatim record of all such evidence.

16 Repeal. RSA 392:7, relative to form of notice, is repealed.

17 Trust Companies; Decisions. RSA 392:8 is repealed and reenacted to read as follows:

392:8 Decision.

I. In deciding whether or not to grant the petition, the board shall consider the factors set forth in RSA 392:5, II. Upon reaching its decision, the board shall make a record thereof. If the petition is denied, it shall be dismissed and no new petition concerning the same company may be filed within one year thereafter.

II. If in any case the board shall be of the opinion that the petition does not satisfy the factors in RSA 392:5, II by the exercise proposed by the trust company of all the powers and privileges which are included in the petition, but that the same would be satisfied by the exercise of a part thereof, it shall so notify the petitioners; and in such case the petitioners may have leave to withdraw, and may at once file another petition setting forth new organizational documents, upon which the same procedure shall be had as upon the original petition.

18 Repeal. RSA 392:9, relative to new agreement, is repealed.

19 Trust Companies; Decisions. Amend RSA 392 by inserting after section 9 the following new section:

392:9-a Confidentiality.

I. All confidential information received in connection with any petition or application of or concerning a family fiduciary services company shall be confidential communications, shall not be subject to subpoena and shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public advantage will be served by the publication of the information. The commissioner may, at his or her discretion on request or otherwise, determine that confidential information received in connection with any petition or application of or concerning a public trust company should not be publicly available, in which case such information shall be confidential communications, shall not be subject to subpoena, and shall not be disclosed unless, in the judgment of the commissioner, the ends of justice and the public advantage will be served by the disclosure of the information.

II. The commissioner shall give 10-days prior written notice of intent to disclose confidential information to the affected trust company. Any trust company which receives a notice may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of RSA 383. If a trust company requests a hearing, the commissioner may not reveal confidential information prior to the conclusion of the hearing and a ruling. Prior to dissemination of any confidential information, the commissioner shall require a written agreement not to reveal the confidential information by the party receiving the confidential information. In no event shall the commissioner disclose confidential information to the general public, any competitor, or any potential competitor of a trust company.

III. Nothing in this chapter is intended to preclude a law enforcement officer from gaining access to otherwise confidential records by subpoena, court order, search warrant, or other lawful means. Notwithstanding any other provision of this chapter, the commissioner shall have the ability to share information with other state or federal regulators with whom the department has an information sharing agreement. Nothing in this chapter is intended to preclude any agency of the state of New Hampshire from gaining access to otherwise confidential records in accordance with any applicable law, including in connection with an investigation or review of the secretary of state conducted in accordance with RSA 421-B.

20 Trust Companies; First Meeting. RSA 392:10 is repealed and reenacted to read as follows:

392:10 First Meeting. The first meeting of the organizers shall be called by a notice signed either by that organizer who is designated in the organizational instrument for the purpose, or by a majority of organizers, and such notice shall state the time, place and purpose of the meeting.

21 Repeal. The following are repealed:

I. RSA 392:11, relative to notice of meeting of trust company.

II. RSA 392:12, relative to waiver of notice.

22 Trust Companies; Subscribers Powers. Amend RSA 392:13 to read as follows:

392:13 [~~Subscribers~~<sup>2</sup>] **Organizers**' Powers. The [~~subscribers to the agreement of association~~] **organizers of a trust company in organization** shall hold the franchise until the organization has been completed.

23 Trust Companies; Organization. RSA 392:14 is repealed and reenacted to read as follows:

392:14 Organization. The organizers shall adopt bylaws which may be incorporated in an operating agreement if the company is a limited liability company, and shall also elect, or cause to be elected, such directors or managers and officers as may be required by the organizational instrument or bylaws. All directors, managers, and officers so elected shall be sworn to the faithful performance of their duties. A temporary clerk or secretary shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

24 Trust Companies; Certificate. Amend RSA 392:15 to read as follows:

392:15 Certificate. A majority of the directors **or managers** who are elected at such first meeting shall sign and make oath to a certificate setting forth:

I. A true copy of the [~~agreement of association~~] **organizational instrument**, the names **and business post office address** of the [~~subscribers~~] **organizers** thereto, and the name[, ~~residence~~] and **business** post office address of the **directors, managers, and** officers of the [~~corporation~~] **trust company**.

II. The date of the first meeting and the successive adjournments thereof, if any.

III. A copy of the records.

25 Trust Companies; Approval of. Amend RSA 392:16 to read as follows:

392:16 Approval of. Such certificate shall be submitted to [~~said board of incorporation~~] **the commissioner**, who shall examine the same, and who may require such amendment thereof or such additional information as [~~they~~] **he or she** may consider necessary. If [~~they~~] **he or she** [~~find~~] **finds** that the [~~public convenience and advantage will be promoted by the establishment of such corporation~~] **certificate is consistent with the decision of the board pursuant to RSA 392:8** and that the proceedings in other respects conform to the provisions of this chapter, [~~they~~] **he or she** shall so certify and indorse [~~their~~] **his or her** approval upon said certificate **and the organizational instrument**.

26 Trust Companies; Record of. Amend RSA 392:17 to read as follows:

392:17 Record of. Thereupon [~~said certificate~~] **the organizational instrument of the trust company** shall be filed in the office of the secretary of state, who, upon payment of a fee equal to the fee charged by the secretary of state to business corporations under RSA 293-A, shall cause the same, with the indorsement thereon, to be recorded.

27 RSA 392:18 is repealed and reenacted to read as follows:

392:18 Certificate of Organization. The secretary shall thereupon issue a certificate of organization in the following form:

#### STATE OF NEW HAMPSHIRE

Be it known, that whereas (the names of the organizers of the trust company) have associated themselves with the intention of forming a trust company under the name of (the name of the trust company), for the purpose (the purpose declared in the organizational instrument), with capital of (the amount fixed in the organizational instrument), and have complied with the provisions of the statutes of this state as duly approved by the board of trust company incorporation and recorded in this office: Now, therefore, I (the name of the secretary), secretary of state, do hereby certify that said (the names of the organizers of the trust company), their associates and successors, are legally organized and established as, and are hereby made, an existing trust company under the name of (name of trust company), with the powers, rights and privileges, and subject to the limitations, duties, and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the state hereunto affixed, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ (the date of the filing of the organizational instrument).

The secretary of state shall sign the certificate of organization and cause the seal of the state to be thereto affixed, and such certificate shall have the force and effect of a special charter.

28 Trust Companies; Certificate or Record as Evidence. Amend RSA 392:19 to read as follows:

392:19 Certificate or Record as Evidence. The secretary of state shall also cause a record of the certificate of [~~incorporation~~] **organization** to be made, and such certificate, or such record or a certified copy thereof, shall be conclusive evidence of the existence of such [~~corporation~~] **trust company**.

29 Trust Companies; When Organized; Beginning Business. RSA 392:20 is repealed and reenacted to read as follows:

392:20 When Organized; Beginning Business. Within 90 days after a favorable decision pursuant to RSA 392:8, petitioners shall file with the secretary of state the organizational instrument required pursuant to RSA 392:15. The existence of such trust company shall begin upon the filing of the organizational instrument with the secretary of state. Any trust company organized under this chapter shall begin business within 2 years from the date of its organization; otherwise its charter shall be void, unless the board of trust company incorporation, for good cause shown, shall grant one extension for not more than one year.

30 Trust Companies; List of Owners. Amend RSA 392:22 to read as follows:

392:22 List of ~~[Stockholders]~~ *Owners*. When ~~[the whole capital stock has been issued]~~ *all of the initial investment in the capital of the trust company has been paid*, a complete list of the ~~[stockholders]~~ *investors*, with the name~~[-residence]~~ and post office address of each, and the number of shares *or interests* held by each, shall be filed with the bank commissioner, which list shall be verified by the president and clerk *or secretary* of the ~~[corporation]~~ *trust company*.

31 Trust Companies; Authorizing Business. Amend RSA 392:23 to read as follows:

392:23 Authorizing Business. Upon receipt of such list, the commissioner shall cause an examination to be made; and if, upon such examination, it appears that ~~[the whole capital stock and surplus fund have]~~ *the required capital has been paid [in] to the trust company* in cash, and that all requirements of law have been complied with, the commissioner shall issue a certificate authorizing such ~~[corporation]~~ *trust company* to begin the transaction of business. The cost of such examination shall be paid by the ~~[corporation]~~ *trust company* and shall be limited to a per diem charge for overall compensation costs, including the benefits portion thereof, and expenses as determined by the commissioner, provided, however, that no such ~~[institution]~~ *trust company* shall be charged or pay for less than one full day. Sums collected under this section shall be payable and credited in accordance with the procedure established under RSA 383:11, I.

32 Trust Companies; Unauthorized Acts. RSA 392:24 is repealed and reenacted to read as follows:

392:24 Unauthorized Acts. The transaction of a banking or trust business by such trust company prior to the issuance of a certificate of authority to engage in business issued by the commissioner as required by RSA 392:23 shall make the organization void; and in such case the organizers shall be liable as partners for the contracts, debts, and engagements of the company.

33 Trust Companies; Minimum Capital Requirement. RSA 392:25 is repealed and reenacted to read as follows:

392:25 Minimum Capital Requirements; Investment of Capital.

I. The initial capital required to organize a trust company shall be not less than \$500,000. The board of trust company incorporation may require, in the exercise of its discretion based on safety and soundness factors, as set forth in paragraph IV, additional capital at such levels as it determines is necessary to protect against the risks inherent in the business of the trust company. Once organized, a nondepository trust company shall maintain a minimum level of capital required by the commissioner to operate in a safe and sound manner based upon his or her examination of the company, provided that the level of capital shall not be less than \$500,000.

II. In addition to the minimum capital requirements, a trust company being organized as a nondepository trust company shall pledge to the commissioner securities or a surety bond for the benefit of the commissioner to defray the costs of a liquidation of the trust company by the commissioner in the event it should fail. The amount of the securities or the surety bond shall be determined by the commissioner in an amount that the he or she deems appropriate to defray such costs, but in no event shall exceed \$1,000,000. In the event of a receivership of a nondepository trust company, the commissioner may, without regard to any priorities, preferences, or adverse claims, reduce the pledged securities or the surety bond to cash and, as soon as practicable, utilize the cash to defray the costs associated with the receivership. If the nondepository trust company chooses to pledge securities to satisfy this provision, the securities shall be held at a depository institution or a Federal Reserve Bank approved by the commissioner. The commissioner may specify the types of securities that may be pledged. Any fees associated with holding such securities shall be the responsibility of the nondepository trust company. If the nondepository trust company chooses to purchase a surety bond to satisfy this provision, the surety bond shall be issued by a bonding company, approved by the commissioner, that is authorized to do business in this state and that has a rating in one of



the 3 highest grades as determined by a national rating service. The surety bond shall be in a form approved by the commissioner. The nondepository trust company may not obtain a surety bond from any entity in which the trust company has a financial interest. The commissioner may require any trust company to increase its capital funds from time to time as may be necessary to comply with reasonable banking and trust standards, as applicable, not inconsistent with law.

III. Nondepository trust companies organized prior to January 1, 2007, shall be required to increase and maintain their level of capital to \$500,000. Any nondepository trust company that has less than \$500,000 in capital on January 1, 2007, shall comply with the minimum capital requirement by January 1, 2010. At a minimum, such nondepository trust company shall increase and maintain its existing capital level by at least \$50,000 per year until January 1, 2010. In addition, a nondepository trust company shall pledge to the commissioner securities or a surety bond for the benefit of the commissioner in the same manner as specified in paragraph II to defray the costs associated with a receivership.

IV. The safety and soundness factors to be considered by the board in the exercise of the board's discretion include:

(1) The nature and type of business proposed to be conducted including, without limitation, whether the company will accept deposits or make loans.

(2) The nature and liquidity of assets proposed to be held in its own account.

(3) The amount of fiduciary assets projected to be under management.

(4) The type of fiduciary assets proposed to be held and the proposed depository of the assets.

(5) The complexity of fiduciary duties and degree of discretion proposed to be undertaken.

(6) The competence and experience of proposed management.

(7) The extent and adequacy of proposed internal controls.

(8) The proposed presence or absence of annual unqualified audits by an independent certified public accountant.

(9) The reasonableness of business plans for retaining or acquiring additional equity capital.

(10) The existence and adequacy of insurance proposed to be obtained by the trust company for the purpose of protecting its clients, beneficiaries, and grantors.

V. Based on the factors in paragraph IV, the commissioner may require any trust company to increase its capital funds from time to time as may be necessary for its safe and sound operation.

VI. Notwithstanding any other provisions of law to the contrary, a nondepository trust company may invest its funds for its own account in any type or character of equity securities or debt securities subject to the limitations provided by this section, which investments shall otherwise comply with the prudent investor standard described in RSA 564-B:9-902.

VII. Subject to paragraphs VIII and IX, the total investment in equity and investment securities of any one issuer, obligor, or maker held by a nondepository trust company for its own account shall not exceed an amount equal to 15 percent of the nondepository trust company's equity capital. The commissioner may authorize investments in excess of this limitation if the commissioner concludes that the safe and sound operation of a nondepository trust company would not be adversely affected by a proposed investment exceeding this limitation.

VIII. In calculating compliance with the investment limits set forth in paragraph V, a nondepository trust company shall not be required to combine:

(a) The nondepository trust company's pro rata share of the securities of an issuer in the portfolio of a collective investment vehicle with the nondepository trust company's pro rata share of the securities of that issuer held by another collective investment vehicle in which the nondepository trust company has invested; or

(b) The nondepository trust company's own direct investment in the securities of an issuer with the nondepository trust company's pro rata share of the securities of that issuer held by collective investment vehicles in which the nondepository trust company has invested under the provisions of this section.

IX. Notwithstanding paragraph VII, a nondepository trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(a) Bonds and other general obligations of a state, an agency, or political subdivision of a state, the United States, or an agency or instrumentality of the United States.

(b) A debt security that this state, an agency or political subdivision of this state, the United States, or an agency or instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee.

(c) Securities that are offered and sold under 15 U.S.C. section 77d(5).

(d) Mortgage-related securities as defined in 15 U.S.C. section 78c(a).

(e) Investment securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Agricultural Mortgage Association, or the Federal Farm Credit Banks Funding Corporation; and

(f) Investment securities issued or guaranteed by the North American Development Bank.

X. The commissioner may allow a nondepository trust company to make other investments of its corporate funds not specified in this chapter by rules, orders, or declaratory rulings.

34 Trust Companies; Par Value. RSA 392:26, relative to change in par value, is repealed.

35 Trust Companies; Petition. RSA 392:27 is repealed and reenacted to read as follows:

392:27 Petition. Any trust company organized under this chapter or chartered prior to the passage thereof may file with said board of incorporation a petition setting forth an amendment to its organizational instrument, within the provisions of this chapter, and praying for approval of the amended organizational instrument based on the considerations set forth in RSA 392:5, II.

36 Trust Companies; Procedure; Effect. Amend RSA 392:28 to read as follows:

392:28 Procedure; Effect. If the decision is favorable to the petition a copy of the said ~~[amended certificate or charter]~~ **organizational instrument**, certified by the clerk **or secretary** of the ~~[corporation]~~ **trust company**, with the approval of said board indorsed thereon, shall be filed in the office of the secretary of state, accompanied by a fee equal to the fee charged by the secretary of state to business corporations under RSA 293-A, and thereupon the secretary of state shall cause the same, with the endorsement thereon, to be recorded as provided in RSA 392:17, and shall issue a certificate of such amended ~~[incorporation]~~ **organizational instrument**, which shall conform as nearly as may be to the form prescribed in RSA 392:18 and shall have the same force and effect, and thereafter such ~~[corporation]~~ **trust company** shall have all the powers and privileges provided for by such amended certificate or charter and shall be subject to all the provisions of this chapter.

37 Trust Companies; Fees for Recording. Amend RSA 392:29 to read as follows:

392:29 Fees for Recording. The fee for recording with the secretary of state any amended ~~[certificate]~~ **organizational instrument**, which does not embody an increase of the authorized capital stock, shall be \$35.

38 Trust Companies; Election. Amend RSA 392:30 to read as follows:

392:30 Election. The ~~[officers]~~ **management** of ~~[such corporation]~~ **a trust company** shall ~~[be]~~ **include** a president, a clerk **or secretary**, a board of not less than 5 directors **or managers**, a treasurer, and such other officers as may be prescribed in its ~~[bylaws]~~ **organizational instrument or other organizational documents** and the laws of the state. Such officers, except the treasurer, shall be chosen annually.

39 Trust Companies; Treasurer. Amend RSA 392:31 is repealed and reenacted to read as follows:

392:31 Treasurer. The treasurer shall be elected by the board of directors or managers and shall hold office during their pleasure.

40 Trust Companies; In General. RSA 392:33 is repealed and reenacted to read as follows:

392:33 In General.

I. A trust company may be authorized and empowered to receive on deposit, storage or otherwise, money, securities, jewelry, documents, evidences of debt, and other personal property of a similar character, for safe-keeping, upon such terms or conditions as may be agreed upon, which said deposits may be made by corporations and persons acting individually or in any fiduciary capacity; to collect and disburse the income and principal of said property when due; to negotiate, purchase, and sell stocks, bonds, and other evidences of debt; to do a general banking business; and to conduct a savings bank business, provided a non-depository trust company may not accept deposits.



II. In addition to the foregoing, and not limited to, a trust company may act as a fiduciary within or outside this state or in similar capacities generally performed by corporate trustees, and in so acting to possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer real or personal property of other persons, and exercise the powers of a business corporation or limited liability company organized under New Hampshire law and any incidental powers that are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted banking and fiduciary customs and usages, a power conferred in this chapter or RSA 390.

III. Notwithstanding any other provision of law to the contrary, a trust company shall be authorized to make any type of secured or unsecured loan to any person, including without limitation any business or governmental entity. With respect to secured loans, a trust company shall adopt prudent policies establishing loan-to-value ratios suitable for the type of property securing the loans. With respect to all loans, a trust company shall adopt prudent policies establishing the creditworthiness of borrowers.

41 Trust Companies; Pledge of Assets. Amend RSA 392:34 to read as follows:

392:34 Pledge of Assets. Such ~~[corporation]~~ **trust company** may be authorized, by vote of its board of directors **or managers**, to pledge the assets of its commercial department to the United States when such action is necessary or desirable to secure deposits in said department by the United States government in connection with war loan deposit accounts or other similar accounts.

42 Trust Companies; Transfer Agent. Amend RSA 392:35 to read as follows:

392:35 Transfer Agent, Acting As. Such ~~[corporation]~~ **trust company** may be authorized and empowered to act as agent for the purpose of issuing, registering, or countersigning certificates of stock, bonds, or other evidence of indebtedness of any corporation, association, municipal corporation, county or state government, on such terms as may be agreed upon.

43 Trust Companies; Real Estate. Amend RSA 392:37 to read as follows:

392:37 Real Estate. Every such ~~[corporation]~~ **trust company** may acquire and hold real estate for its own use, in whole or in part, but its investment in such real estate, exclusive of any real estate which may be taken in good faith for debt or held as collateral security, shall not exceed an amount equal to 50 percent of the sum of its capital and surplus, except with the approval of the commissioner.

44 Trust Companies; Prohibited Loans and Purchases. Amend RSA 392:38 to read as follows:

392:38 Prohibited Loans and Purchases. No such ~~[corporation]~~ **trust company** shall make a loan or discount on the security of the shares ~~[of its own capital stock]~~ **or interests**, nor be the purchaser or holder of such shares **or interests** unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock **or interests** so purchased or acquired shall within 6 months after its purchase be sold or disposed of at public or private sale, unless such time is extended by the commissioner.

45 Trust Companies; Redemptions. Amend RSA 392:38-a to read as follows:

392:38-a Redemption of Shares **or Interests**. Notwithstanding the provisions of RSA 392:38, any such ~~[corporation]~~ **trust company** which then has more than 500 holders of the shares **or interests** of its own capital stock shall be entitled, with the express written approval of the bank commissioner, to redeem any and all of such shares **or interests** from holders thereof who own in the aggregate 10 shares or less of such stock. Such redemption shall be pursuant to a tender offer, the form of which shall have been approved by the bank commissioner, and all shares **or interests** so redeemed shall be retired within 60 days of the expiration of the tender offer, thereby reducing the authorized capital stock of the ~~[corporation]~~ **trust company**. Within said 60 day period the ~~[corporation]~~ **trust company** shall file with the board of trust company incorporation, as required under RSA 392:27, an appropriate amendment reciting the change in outstanding shares **or interests**.

46 New Subdivision; Family Fiduciary Services Companies. Amend RSA 392:39 by inserting after section 392:39 the following new subdivision:

#### Family Fiduciary Services Companies

392:39-a Definitions; Exemption From Certain Laws.

I. For purposes of this subdivision:

(a) "Designated relative" means the individual required to be named in the application under RSA 392:39-b, I(e) requesting an exemption from certain provisions of this chapter pursuant to RSA 392:39-a, III.

(b)(1) "Family member" means the designated relative and:

(A) Any individual within the fifth degree of lineal kinship to the designated relative;

(B) Any individual within the ninth degree of collateral kinship to the designated relative;

(C) The spouse of the designated relative and of any individual qualifying as a family member under subparagraphs (a) and (b);

(D) A company controlled by one or more family members, who shall possess, directly or indirectly, the power to direct or cause the direction of the management and policies of such company, whether through the ownership of voting securities, by contract, or otherwise;

(E) A trust established by a family member or by an individual who is not a family member if non-charitable beneficiaries who are family members represent a majority of interest in the trust;

(F) The estate of a family member; or

(G) A charitable foundation or other charitable entity created by a family member.

(2) For purposes of this subparagraph, a legally adopted individual shall be treated as a natural child of the adoptive parents.

(3) For purposes of this subparagraph, lineal kinship shall mean a family member who is in the direct line of ascent or descent from the designated relative. Collateral kinship shall mean a relationship that is not lineal, but stems from a common ancestor. Degrees are calculated by adding the number of steps from the designated relative through each person to the family member either directly in the case of lineal kinship or through the common ancestor in the case of collateral kinship.

(4) For purposes of this subparagraph, no company, trust, charitable foundation, or other charitable entity shall qualify as a family member if the commissioner determines such entity was organized or operated for the purpose of evading the limitations of RSA 392:39-a, I.

(c) "Transact business with the general public" means engaging in any sales, solicitations, arrangements, agreements, or transactions to provide trust business services, whether or not for a fee, commission, or other type of remuneration, to more than 15 natural persons who are not family members. In order for a person to be eligible to receive such trust business services, the person shall be:

(1) An employee of the family fiduciary services company or of a trust or company that is a family member; and

(2) Engaged principally in providing services to the family fiduciary services company or its fiduciary accounts.

II. A family fiduciary services company engaging in trust business in this state shall comply with all provisions of this chapter applicable to a nondepository trust company, unless expressly exempted from this chapter by the commissioner pursuant to this section.

III. A family fiduciary services company or proposed family fiduciary services company may request in writing that it be exempted from specified provisions of title 35, including without limitation RSA 383:9, RSA 383:13-a, RSA 384:3, RSA 384:4, RSA 384:7, RSA 384:7-b, RSA 384:43, RSA 390:8, RSA 390:14, RSA 392:6-a, and RSA 392:30. The commissioner may grant or deny the exemption request in whole or in part. The commissioner also may issue rules, orders, or declaratory rulings granting exemptions to all family fiduciary services companies, or to family fiduciary services companies that meet specified conditions.

IV. The commissioner may examine or investigate the family fiduciary services company or proposed family fiduciary services company in connection with the application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve or deny the application for exemption no later than the 61st day after the date the commissioner considers the application complete and accepted for filing. The commissioner may require the submission of additional information in order to make an informed decision to approve or reject the proposed exemption.

V. Any exemption granted under the provisions of this section may be made subject to conditions or limitations imposed by the commissioner consistent with this subdivision, and those conditions or limitations shall be included in an order.

VI. If an application under this section is approved by the commissioner, the petition of the organizers for a charter for the proposed trust company shall be exempt from the notice, objection, and hearing

provisions of RSA 392:6 and RSA 392:6-a, and any petition by a family fiduciary services company under RSA 392:27 shall be decided by the commissioner and exempt from any notice or hearing requirement, except as otherwise ordered in the particular case by the board.

VII. Rules, orders, or declaratory rulings of the commissioner may provide for other circumstances that justify exemption from specific provisions of this chapter or RSA 383, RSA 384, RSA 390 or RSA 392-A, specifying the provisions that are subject to the exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exemptions.

392:39-b Requirements to Apply for and Maintain Status as a Family Fiduciary Services Company.

I. A family fiduciary services company or a proposed family fiduciary services company requesting an exemption from the provisions of this chapter pursuant to RSA 392:39-a shall file an application with the commissioner, in the form required by the commissioner, containing, preceded, or accompanied by:

- (a) An application fee of \$1,500;
- (b) A statement under oath of the reasons for requesting the exemption;
- (c) A statement under oath showing that the family fiduciary services company is not currently transacting business with the general public and that the company will not transact business with the general public without the approval of the commissioner;
- (d) A listing of the specific provisions of this chapter or RSA 383, RSA 384, RSA 390 or RSA 392-A from which exemption is requested; and
- (e) The name of the designated relative whose relationship to other individuals determines whether the individuals are family members under RSA 392:39-a, I(b). The designated relative must be living and 18 years of age or older at the time the application is made.

II. The commissioner may make further inquiry and investigation as the commissioner deems appropriate. Notwithstanding any other law to the contrary, information bearing on actual or proposed accounts of the family fiduciary services company or proposed family fiduciary services company applying for the exemption or the identity or residence address of the designated relative or any other family member is confidential and not subject to public disclosure.

III. To maintain its status as a family fiduciary services company and to maintain any exemptions from the provisions of this title granted by the commissioner, a family fiduciary services company shall file with the commissioner an annual certification that it is in compliance with the provisions of this subdivision and the conditions and limitations of all exemptions granted. This annual certification shall be filed in the form required by the commissioner and accompanied by a fee of \$100. The annual certification shall be filed on or before December 31 of each year. The commissioner may examine or investigate the family fiduciary services company periodically as necessary to verify the certification.

IV. In any transaction involving a family fiduciary services company for which an application is required under RSA 383, RSA 388, RSA 389 or RSA 389-A, any exemption from the provisions of this chapter granted to the family fiduciary services company shall automatically terminate upon the consummation of the transaction unless the commissioner approves the continuation of the exemption.

V. The commissioner may revoke any exemption from the provisions of this chapter granted to a family fiduciary services company in the following circumstances:

- (a) An officer or director of the family fiduciary services company makes a false statement under oath on any document required to be filed by this chapter or by any rules or orders of the commissioner;
- (b) The family fiduciary services company fails to submit to an examination by the commissioner as required by law;
- (c) An officer or director of the family fiduciary services company withholds requested information from the commissioner;
- (d) The family fiduciary services company violates any provision of this subdivision or fails to meet any condition on which the exemption is based; or
- (e) The family fiduciary services company refuses to comply with any rule or order of the commissioner.

VI. If the commissioner determines from examination or other credible evidence that a family fiduciary services company has violated any of the requirements of RSA 392:39-a through RSA 392:39-c or fails to meet

any condition or limitation on which an exemption from the provisions of this chapter is based, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the family fiduciary services company that the family fiduciary services company's exemptions from the provisions of this chapter will be revoked unless the family fiduciary services company corrects the violation or failure or shows cause why any exemptions should not be revoked. The notification shall state grounds for the revocation with reasonable certainty and shall advise of an opportunity for a hearing. The notice shall state the date upon which the revocation shall become effective absent a correction or showing of cause why the exemption should not be revoked, which shall not be before the 30th day after the date the notification is mailed or delivered, except as provided in paragraph VII. The revocation shall take effect for the family fiduciary services company on the date stated in the notice if the family fiduciary services company does not request a hearing in writing before the effective date. After the revocation takes effect, the family fiduciary services company shall be subject to all of the requirements and provisions of this chapter applicable to a nondepository trust company.

VII. If the commissioner determines from examination or other credible evidence that a family fiduciary services company appears to be engaging or attempting to engage in acts intended, designed, or likely to deceive or defraud the public, the commissioner may shorten or eliminate the 30-day notice period specified in paragraph VI, but shall promptly afford a subsequent hearing upon request to rescind the action taken.

VIII. If the family fiduciary services company does not comply with all of the provisions of this chapter or correct any failure to meet any condition or limitation on which an exemption is based within the notice period specified in paragraph VI, the commissioner may institute any action or remedy prescribed by this chapter or any applicable rule.

#### 392:39-c Conversion to Nondepository Public Trust Company Transacting Business With the General Public.

I. Before transacting business with the general public, a family fiduciary services company shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the family fiduciary services company and an acknowledgment that any exemption granted or otherwise applicable to the family fiduciary services company pursuant to RSA 392:39-a shall cease to apply once the commissioner terminates family fiduciary services company status. The family fiduciary services company shall furnish a copy of the resolution adopted by its board of directors authorizing the family fiduciary services company to commence transacting business with the general public, and shall pay the filing fee, if any, prescribed by rule of the commissioner.

II. The family fiduciary services company may commence transacting business with the general public on the 31st day after the date the commissioner receives the notice, unless the commissioner:

(a) Establishes an earlier or later date;

(b) Notifies the family fiduciary services company that the notice raises issues that require additional information or additional time for analysis; or

(c) Disapproves the termination of family fiduciary services company status.

III. If the commissioner gives a notification described in subparagraph II(b), the family fiduciary services company status may be terminated only on approval by the commissioner.

IV. The commissioner may deny approval of the proposed termination of family fiduciary services company status if the commissioner finds that the family fiduciary services company lacks sufficient resources to undertake the proposed conversion without adversely affecting its safety or soundness or if the commissioner determines that the family fiduciary services company could not within a reasonable period be in compliance with any provision of this chapter from which it previously had been exempted pursuant to RSA 392:39-a. Such determination shall be based on the factors set forth in RSA 392:5, II to the extent applicable.

#### 47 Uniform Transfer on Death; Definitions. Amend RSA 563-C:2, V to read as follows:

V. "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker, **a bank defined in RSA 384-B:1, I, or a national bank or federal savings bank authorized to conduct business in this state** maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

#### 48 New Paragraphs; Uniform Trust Code; Definitions. Amend RSA 564-B:1-103 by inserting after paragraph (21) the following new paragraphs:

(22) "Ascertainable standard" means a standard to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended.



(23) "Directed trust" means a trust where either through the terms of the trust, an agreement of the qualified beneficiaries, or a court order, one or more persons is given the authority to direct, consent to, or disapprove a fiduciary's actual or proposed investment decision, distribution decision, or any other noninvestment decision of the fiduciary.

(24) "Excluded fiduciary" means any fiduciary excluded from exercising certain powers under the trust instrument which powers may be exercised by the settlor, trust advisor, trust protector, or other persons designated by the instrument.

(25) "Investment company" means an investment company as defined under the federal Investment Company Act of 1940.

(26) "Trust advisor" means the settlor of a trust instrument or other parties whose appointment is provided in the trust instrument and whose powers are defined in RSA 564-B:7-713.

(27) "Trust protector" means any disinterested party whose appointment is provided for in the trust instrument and whose powers are defined in RSA 564-B:7-711.

49 Uniform Trust Code; Default and Mandatory Rules. Amend RSA 564-B:1-105(b) to read as follows:

(b) The terms of a trust prevail over any provision of this chapter except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under RSA 564-B:4-410, ***RSA 564-B:4-411 (but only if, in addition to the requirements of such section, the court determines that continuance of the trust is not necessary to achieve any material purpose of the trust), and RSA 564-B:4-412*** through RSA 564-B:4-416;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article 5;

(6) the power of the court under RSA 564-B:7-702 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under RSA 564-B:7-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

~~(8) [the duty under RSA 564-B:8-813 (c) and (d) to provide specified information to certain qualified beneficiaries and others who are treated as qualified beneficiaries of certain irrevocable trusts;]~~

~~[(9)]~~ the effect of an exculpatory term under RSA 564-B:10-1008;

~~[(10)]~~ **(9)** the rights under RSA 564-B:10-1010 through RSA 564-B:10-1013 of a person other than a trustee or beneficiary;

~~[(11)]~~ **(10)** statutory periods of limitation for commencing a judicial proceeding;

~~[(12)]~~ **(11)** the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

~~[(13)]~~ **(12)** the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in RSA 564-B:2-203 and RSA 564-B:2-204.

50 New Paragraph; Uniform Trust Code; Authority of Director of Charitable Trusts. Amend RSA 564-B:1-110 by inserting after paragraph (c) the following new paragraph:

(d) No provision of this section shall limit the authority of the director of charitable trusts to supervise and control charitable organizations.

51 Uniform Trust Code; Nonjudicial Settlement Agreements. Amend RSA 564-B:1-111 to read as follows:

564-B:1-111 Nonjudicial Settlement Agreements.

(a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by a court.

(b) Except as otherwise provided in subsection (c) **and (f)**, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) **Except as provided in RSA 564-B:4-411(a) with respect to the termination or modification of a trust**, a nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by a court under this chapter or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) the interpretation or construction of the terms of the trust;
- (2) the approval of a trustee's report or accounting;
- (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) transfer of a trust's principal place of administration; ~~and~~
- (6) liability of a trustee for an action relating to the trust~~[-]; and~~
- (7) the termination or modification of a trust.**

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

**(f) A nonjudicial settlement agreement may not be used to terminate or modify a trust under circumstances that would require a court to terminate or modify the trust under RSA 564-B:4-411.**

52 Uniform Trust Code; Enforcement by Director of Charitable Trusts. Amend RSA 564-B:4-405(c) to read as follows:

(c) The settlor of a charitable trust **or the director of charitable trusts**, among others, may maintain a proceeding to enforce the trust. In any such proceeding **where the director of charitable trusts is not a party**, the director of charitable trusts shall be joined as a necessary party.

53 Uniform Trust Code; Noncharitable Trust Without Ascertainable Beneficiary. Amend RSA 564-B:4-409(1) and (2) to read as follows:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. ~~[The trust may not be enforced for more than 21 years.]~~

(2) A trust authorized by this section may be enforced by a **trust advisor, trust protector**, person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

54 Uniform Trust Code; Modification or Termination of Noncharitable Irrevocable Trust by Consent. Amend RSA 564-B:4-411 to read as follows:

564-B:4-411 Modification or Termination of Noncharitable Irrevocable Trust by Consent.

(a) A noncharitable irrevocable trust may be **modified or** terminated upon consent of all of the **qualified** beneficiaries ~~[if the]~~ **provided that during the lifetime of the settlor** the court ~~[concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust]~~ **must consent, in its sole discretion, to the modification or termination of the trust considering such factors and circumstances that the court, in its sole discretion, deems relevant.**

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

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



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

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

55 Uniform Trust Code; Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively. Amend RSA 564-B:4-412(a) to read as follows:

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

56 Uniform Trust Code; Discretionary Trusts. Amend RSA 564-B:5-504(b) to read as follows:

(b) Except as otherwise provided in subsection (c) [~~and (d)~~], whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

57 Uniform Trust Code; Cotrustees. RSA 564-B:5-504(e) is repealed and reenacted to read as follows:

(e) A creditor or assignee of a beneficiary may not compel a distribution to the beneficiary solely because the beneficiary is a trustee if the beneficiary-trustee does not have the discretion to make or participate in making distributions to himself or herself, if the beneficiary-trustee's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard, or if the beneficiary-trustee's discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or another person holding an adverse interest. Under such circumstances, the creditor or assignee may compel a distribution only to the extent the creditor or assignee otherwise may compel a distribution were the beneficiary not acting as trustee or cotrustee.

58 New Paragraph; Uniform Trust Code; Creditor's Claim Against Settlor. Amend RSA 564-B:5-505 by inserting after paragraph (b) the following new paragraph:

(c) Nothing in this section shall limit the application of the Qualified Dispositions in Trust Act set forth in RSA 564-D.

59 New Paragraph; Uniform Trust Code; Cotrustees. Amend RSA 564-B:7-703 by inserting after paragraph (h) the following new paragraph:

(i) A trustee shall keep each cotrustee and any other fiduciary designated in the trust instrument reasonably informed about the administration of the trust to the extent such trustee has knowledge that the other cotrustee or other fiduciary designated in the trust instrument does not have of its actions as trustee or regarding other material information (or the availability of such information) related to the administration of the trust that would be reasonably necessary for the other cotrustee or other fiduciary designated in the trust instrument to perform its duties as a trustee or other fiduciary of the trust.

60 Uniform Trust Code; Vacancy in Trusteeship; Appointment of Successor. Amend RSA 564-B:7-704(c)(2) to read as follows:

(2) by a person appointed by [~~unanimous~~] ***the*** agreement of ***a majority of interest of*** the qualified beneficiaries; or

61 Uniform Trust Code; Compensation of Trustee. Amend RSA 564-B:7-708 to read as follows:

564-B:7-708 Compensation of Trustee.

(a) If the terms of a trust do not specify the trustee's, ***trust advisor's, or trust protector's*** compensation, [~~a trustee~~] ***each such fiduciary*** is entitled to compensation that is reasonable under the circumstances, ***including the exclusion of certain powers of an excluded fiduciary.***

(b) If the terms of a trust specify the trustee's, ***trust advisor's, or trust protector's*** compensation, [~~the trustee~~] ***each such fiduciary*** is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) the duties of the trustee, ***trust advisor, or trust protector*** are substantially different from those contemplated when the trust was created; or

(2) the compensation specified by the terms of the trust would be unreasonably low or high.

62 Uniform Trust Code; Reimbursement of Expenses. Amend RSA 564-B:7-709 to read as follows:

564-B:7-709 Reimbursement of Expenses.

(a) A trustee, ***trust advisor, or trust protector*** is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) expenses that were properly incurred in the administration of the trust; and

(2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee, ***trust advisor, or trust protector*** of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

63 Uniform Trust Code; New Sections; Powers of Trust Protectors, Trust Advisors, Directed Trusts. Amend RSA 564-B by inserting after section 7-710 the following new sections:

564-B:7-711 Trust Protector. The powers and discretions of a trust protector shall be provided in the trust instrument and may, in the best interests of the trust, be exercised or not exercised in the sole and absolute discretion of the trust protector and shall be binding on all other persons. The powers and discretions may include, but are not limited to the following:

(a) To modify or amend the trust instrument to achieve favorable tax status or because of changes in the Internal Revenue Code, state law, or the rulings and regulations implementing such changes.

(b) To amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust.

(c) To appoint a successor trust protector.

(d) To review and approve the accountings of a trustee.

(e) To change the governing law or principal place of administration of the trust.

(f) To remove and replace any trust advisor for the reasons stated in the trust instrument.

(g) To remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a replacement.

(h) To interpret terms of the trust instrument at the request of the trustee.

(i) To advise the trustee or cotrustee on matters concerning any beneficiary.

(j) To direct, consent, or disapprove a trustee's or cotrustee's action or inaction in making distributions to beneficiaries.

(k) To increase or decrease any interest of the beneficiaries to the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted by the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest to any person or class of persons not specifically provided for under the trust instrument or to the trust protector, the trust protector's estate, or for the benefit of the creditors of the trust protector.

564-B:7-712 Trust Protector as a Fiduciary. Except as otherwise provided by the trust instrument, trust protectors are fiduciaries and the provisions of this chapter applicable to trustees shall be applicable to the trust protectors, but only to the extent of the powers, duties and discretions granted to them under the terms of the trust instrument.

564-B:7-713 Trust Advisor. The powers and discretions of a trust advisor shall be provided in the trust instrument and may, in the best interests of the trust, be exercised or not exercised in the sole and absolute discretion of the trust advisor and shall be binding on all other persons. Such powers and discretions may include, but are not limited to the following:

(a) To perform a specific duty or function that would normally be performed by the trustee, cotrustee, or trust protector.

- (b) To advise the trustee or cotrustee on matters concerning any beneficiary.
- (c) To direct, consent to, or disapprove of a trustee's or cotrustee's action or inaction relating to investments of trust assets.
- (d) To direct the acquisition, disposition, or retention of any trust investment.
- (e) To direct, consent to, or disapprove a trustee's or cotrustee's action or inaction in making distributions to beneficiaries.

564-B:7-714 Trust Advisor as a Fiduciary. Except as otherwise provided by the trust instrument, trust advisors are fiduciaries and the provisions of this chapter applicable to trustees shall be applicable to the trust advisors but only to the extent of the powers, duties, and discretions granted to them under the terms of the trust instrument.

564-B:7-715 Trust Advisor and Trust Protector Subject to Court Jurisdiction. By accepting appointment to serve as a trust advisor or trust protector of a trust that is subject to the laws of this state, the trust advisor or the trust protector submits to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding if issues relate to a decision, action, or inaction of the trust advisor or trust protector.

564-B:7-716 No Duty to Review Actions of Trust Advisor or Trust Protector. Unless the trust instrument appointing, designating, or providing for a method for appointing a trust protector or trust advisor states otherwise, an excluded fiduciary is relieved of any duty or responsibility to review the actions of a duly named and appointed trust protector or trust advisor including, without limitation, any duty or responsibility to perform investment reviews and make recommendations with respect to any investments to the extent the trust advisor or trust protector had authority to direct the acquisition, disposition, or retention of any such investment.

564-B:7-717 Power of Trust Advisor and Trust Protector to Act After Death or Incapacity of Grantor. Unless the trust instrument states otherwise, the power and authority of a trust advisor or trust protector shall not lapse at the death or incapacity of the grantor.

564-B:7-718 Fiduciary's Liability for Action or Inaction of Trust Advisor and Trust Protector. Unless the trust instrument appointing, designating, or providing for a method for appointing a trust protector or trust advisor states otherwise, the excluded fiduciary is not liable for any loss resulting from any action or inaction of the trust advisor or trust protector and any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor or trust protector if that excluded fiduciary timely sought but failed to obtain that authorization.

#### 564-B:7-719 Directed Trusts.

(a) If a trust instrument provides that a fiduciary is to follow the direction of a trust protector or trust advisor and the fiduciary acts in accordance with such direction, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:7-716 and RSA 564-B:7-718.

(b) Where one or more persons are given authority by a trust instrument or court order to either appoint a trust protector or to direct, consent to, or disapprove of a fiduciary's actual or proposed distribution decisions or other noninvestment decisions of the fiduciary, the persons or the persons appointed by them shall be considered to be trust protectors under RSA 564-B:1-103(27).

(c) Where one or more persons are given authority by a trust instrument or court order to either appoint a trust advisor or to direct, consent to, or disapprove of a fiduciary's actual or proposed investment decisions, the persons or the persons appointed by them shall be considered to be trust advisors under RSA 564-B:1-103(26).

(d) If a court order provides that a fiduciary is to follow the direction of a trust protector or trust advisor and the fiduciary acts in accordance with the direction, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:7-716 and RSA 564-B:7-718.

(e) Unless expressly prohibited by the trust instrument, the qualified beneficiaries of a trust may unanimously agree to designate in writing a trust advisor with the power to direct the fiduciary's investment decisions, provided the trust does not have a serving trust advisor with the power. If the written designation is furnished to the fiduciary and the fiduciary acts in accordance with the direction from the designated

trust advisor, the fiduciary shall be treated as an excluded fiduciary under the provisions of RSA 564-B:7-716 and RSA 564-B:7-718. The designation of a trust advisor with power to direct the fiduciary's investment decisions may be revoked by unanimous written consent of the qualified beneficiaries and once the revocation has been delivered to the excluded fiduciary, the fiduciary is relieved of any responsibility to act upon any outstanding or future directions from such trust advisor.

(f) For purposes of this section, "investment decision" means, with respect to any property, the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership thereof or rights therein.

564-B:7-720 Vacancy; Directed Trusts.

(a) Except as otherwise provided in the trust instrument, if the terms of the trust appoint a trust advisor and no trust advisor is acting in such capacity, then the trustee upon obtaining knowledge of such vacancy shall have the authority and the duty to exercise any fiduciary power that was vested in the trust advisor by the terms of the trust that would otherwise be held by the trustee if no trust advisor was appointed until such time that a trust advisor is appointed pursuant to the terms of the trust, a court upon the petition of any interested person or the provisions of RSA 564-B:7-719(e).

(b) Except as otherwise provided in the trust instrument, if the terms of the trust appoint a trust protector and no trust protector is acting in such capacity, then after the trustee obtains knowledge of such vacancy, the trustee shall petition the court to fill the vacancy in the office of trust protector if the trustee determines that the terms of the trust clearly require the vacancy to be filled or upon the written request of any interested person unless it is clear to the trustee that the terms of the trust do not require the vacancy to be filled.

(c) Notwithstanding the provisions of subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor and conferred upon the trustee by subsection (a) for the 60 day period immediately following the date the trustee obtains knowledge of such vacancy.

64 Uniform Trust Code; Duty of Loyalty. RSA 564-B:8-802(f)-(h) are repealed and reenacted to read as follows:

(f) The following transactions, if fair to the beneficiaries, are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction otherwise complies with the prudent investor rule of article 9:

(1) an investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee;

(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;

(3) any loan from the trustee or its affiliate;

(4) an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the trustee, or any of its affiliates;

(5) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;

(6) payment of reasonable compensation to the trustee, or any of its affiliates;

(7) a transaction between a trust and another trust, decedent's estate, guardianship or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(8) a deposit of trust money in a financial institution operated by the trustee or an affiliate;

(9) a delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee, provided that notice of any compensation paid pursuant to the delegation over and above the trustee's fee is provided in the manner set forth in subsection (f)(11);

(10) an advance by the trustee of money for the protection of the trust; or

(11) the payment of compensation, in addition to the trustee's fees charged to the trust, to the trustee, its affiliate, or associated entity for any transaction or for the provision of services described in this subsection; provided, however, that with respect to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment management services or any services described in this subsection (f), the trustee shall at least

annually notify the persons that would be entitled under RSA 564-B:8-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined if such compensation is paid directly by the trust and is in addition to the trustee's fee.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

65 Uniform Trust Code; Delegation by Trustee. Amend the introductory paragraph of RSA 564-B:8-807(a) to read as follows:

(a) A trustee may delegate duties, powers and investment and management functions ***to any person, even if such person is associated with the trustee***, that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

66 Uniform Trust Code; Powers to Direct. Amend RSA 564-B:8-808(c) to read as follows:

(c) The terms of a trust may confer upon a trustee or other person, ***as provided in article 7 of this chapter***, a power to direct the modification or termination of the trust.

67 New Paragraphs; Uniform Trust Code; Duty to Inform and Report. Amend RSA 564-B:8-813 by inserting after paragraph (i) the following new paragraphs:

(j) If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

(k) A trust advisor, trust protector, or other fiduciary designated in the trust instrument shall keep each excluded fiduciary reasonably informed about (1) the administration of the trust with respect to any specific duty or function being performed by such trust advisor, such trust protector, or such other fiduciary designated in the trust instrument to the extent that such duty or function would normally be performed by the excluded fiduciary or the provision of which to the excluded fiduciary is reasonably necessary for it to perform its duties and (2) any other material fact that the excluded fiduciary would be required to disclose to the qualified beneficiaries under subsection (b) assuming that the trust instrument did not relieve the excluded fiduciary from providing such information to qualified beneficiaries; provided, that nothing in this section requires the excluded fiduciary to disclose such information to the beneficiaries of the trust to the extent the trust instrument provides otherwise. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated in the trust instrument as provided in this subsection shall affect the limitation on the liability of the excluded fiduciary provided by RSA 564-B:7-716 and RSA 564-B:7-718.

68 Uniform Trust Code; Discretionary Powers; Tax Savings. Amend RSA 564-B:8-814(b)(1) to read as follows:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard ~~[relating to the trustee's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended];~~ and

69 Uniform Trust Code; Diversification. RSA 564-B:9-903 is repealed and reenacted to read as follows:

564-B:9-903 Diversification. A trustee shall diversify the investments of the trust unless, under the circumstances, the trustee reasonably believes that it is in the best interest of the beneficiaries and furthers the purposes of the trust not to diversify.

70 New Chapter; Uniform Principal and Income Act. Amend RSA by inserting after chapter 564-B the following new chapter:

## CHAPTER 564-C

### UNIFORM PRINCIPAL AND INCOME ACT

#### Article 1

#### Definitions and Fiduciary Duties

564-C:1-101 Short Title. This chapter may be cited as the Uniform Principal and Income Act.



564-C:1-102 Definitions. In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period. During any period in which the trust is being administered as a unitrust, either pursuant to the powers conferred by RSA 564-A:3-c or pursuant to the terms of the will or the trust, "net income" means the unitrust amount, if the unitrust amount is no less than 2 percent and no more than 8 percent of the fair market value of the trust assets whether determined annually or averaged on a multiple year basis.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as then amended and in effect.

564-C:1-103 Fiduciary Duties; General Principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of articles 2 and 3, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an allocation contrary to the provisions of this chapter;



(3) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under RSA 564-C:1-104(a), the power to convert into a unitrust or reconvert or change the unitrust payout percentage pursuant to RSA 564-A:3-c or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, this chapter or other applicable law, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will express an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion by a fiduciary in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

#### 564-C:1-104 Trustee's Power to Adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in RSA 564-C:1-103(a), that the trustee is unable to comply with RSA 564-C:1-103(b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee may consider factors to the extent they are relevant to the trust and its beneficiaries, including, but not limited to, the following factors:

- (1) the nature, purpose, and expected duration of the trust;
- (2) the intent of the settlor;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;
- (9) the anticipated tax consequences of an adjustment; and
- (10) the investment return under current economic conditions from other portfolios meeting similar fiduciary requirements.

(c) A trustee may not make an adjustment between principal and income:

- (1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) if the trustee is a beneficiary of the trust; or

(8) if the trust is being administered as a unitrust pursuant to the trustee's exercise of the power to convert to a unitrust provided in RSA 564-A:3-c or pursuant to the terms of the will or the terms of the trust.

(d) If subsection (c)(5), (6), (7), or (8) applies to a trustee and there is more than one trustee, the other cotrustee (if there is only one) or a majority of the other cotrustees (if there is more than one) to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or (c)(8) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g) Nothing in this section or chapter is intended to create or imply a duty to make an adjustment, and a fiduciary is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

(h) A trustee may give notice of a proposed action regarding a matter governed by this section as provided in this subsection. For purposes of this subsection, a proposed action includes a course of action and a determination not to take action.

(1) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given. Notice may be given to any other beneficiary. Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(2) The notice of proposed action must state that it is given pursuant to this paragraph and must state the following:

(A) the name and mailing address of the trustee;

(B) the name and telephone number of a person who may be contacted for additional information;

(C) a description of the action proposed to be taken and an explanation of the reasons for the action;

(D) the time within which objections to the proposed action can be made, which must be at least 30 days from the mailing of the notice of proposed action;

(E) the date on or after which the proposed action may be taken or is effective;

(F) a statement that the recipient may petition for a judicial determination of the proposed action; and

(G) a form on which consent or objection to the proposed action may be indicated.

(3) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(4) If a trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period, the trustee is not liable for an action regarding a matter governed by this chapter to a beneficiary if:

(A) the beneficiary is an adult (or is a minor with a duly appointed guardian or conservator of the estate) and the notice is mailed to the adult beneficiary, guardian or conservator at the address determined by the trustee after reasonable diligence;

(B) the beneficiary is an adult (or is a minor with a duly appointed guardian or conservator of the estate) and the adult beneficiary, guardian or conservator receives actual notice;

(C) the beneficiary is not an adult and has no duly appointed guardian or conservator of the estate and an adult having a substantially identical interest and having no conflicting interest receives actual notice;

(D) the beneficiary (or the guardian or conservator of the estate of a minor beneficiary) consents in writing to the proposed action either before or after the action is taken; or

(E) the beneficiary is not an adult and has no duly appointed guardian or conservator of the estate and an adult having a substantially identical interest and having no conflicting interest consents in writing to the proposed action either before or after the action is taken.

(5) If the trustee receives a written objection within the applicable time period, either the trustee or a beneficiary may petition the court to have the proposed action performed as proposed, performed with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proof as to whether the trustee's proposed action should not be performed. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the court to have the action performed and has the burden of proof as to whether it should be performed.

(6) Nothing in this subsection limits the right of a trustee or beneficiary to petition the court pursuant to RSA 564-C:1-105 for instructions as to any action, failure to act, or determination not to act regarding a matter governed by this section in the absence of notice as provided in this subsection. In any such proceeding, any beneficiary filing such a petition or objecting to a petition of the trustee has the burden of proof as to any action taken, any failure to act, or determination not to act, by the trustee.

(i) Following the exercise of the power conferred by subsection (a) to adjust from principal to income, the trustee shall consider in the following order:

(1) the amount so adjusted as paid from ordinary income for federal income tax purposes to the extent not allocable to net accounting income;

(2) the amount so adjusted, after calculating the trust's capital gain net income described in section 1222(9) of the Internal Revenue Code, as paid from net short-term capital gain described in section 1222(5) of the Internal Revenue Code, and then from net long-term capital gain described in section 1222(7) of the Internal Revenue Code; and

(3) any remaining amount so adjusted as coming from the principal of the trust.

#### 564-C:1-105 Judicial Control of Discretionary Power.

(a) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) applies include:

(1) a decision under RSA 564-C:1-104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by RSA 564-C:1-104(a).

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused as equity requires, according to the following guidelines:

(1) to the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court may order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court may place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) to the extent that the court is unable, after applying subsection (c)(1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both the court finds that the fiduciary did not exercise its discretion in good faith and with honest judgment.

(d) A fiduciary may petition the court having jurisdiction over a trust or estate for a determination by the court whether a proposed exercise or nonexercise of discretion of a discretionary power conferred by this chapter will result in an abuse of discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

(e) A fiduciary shall be reimbursed for any and all costs, including without limitation all attorneys' fees and costs of defense, and all liabilities that the fiduciary may incur in connection with any claim or action relating in any way to the fiduciary's exercise of its discretion under this chapter, except to the extent that the beneficiary establishes that the fiduciary did not exercise its discretion in good faith and with honest judgment. All attorneys' fees and costs shall be advanced to the fiduciary as incurred and shall only be collected from the fiduciary after it has been determined that the fiduciary did not exercise its discretion in good faith and with honest judgment.

## Article 2

### Decedent's Estate or Terminating Income Interest

564-C:2-201 Determination and Distribution of Net Income. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in articles 3 through 5 which apply to trustees and the rules in subsection (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in articles 3 through 5 which apply to trustees and by:

(A) including in net income all income from property used to discharge liabilities;

(B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by subsection (3) in the manner described in RSA 564-C:2-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in subsection (1) because of a payment described in RSA 564-C:5-501 or RSA 564-C:5-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

#### 564-C:2-202 Distribution to Residuary and Remainder Beneficiaries.

(a) Each beneficiary described in RSA 564-C:2-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

### Article 3

#### Apportionment at Beginning and End Of Income Interest

##### 564-C:3-301 When Right to Income Begins and Ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:



(1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

#### 564-C:3-302 Apportionment of Receipts and Disbursements when Decedent Dies or Income Interest Begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which RSA 564-C:2-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which RSA 564-C:4-401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

#### 564-C:3-303 Apportionment when Income Interest Ends.

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) Except as provided in subsection (c), when a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust.

(c) If immediately before the income interest ends the beneficiary described in subsection (b) has an unqualified power to revoke more than 5 percent of the trust, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(d) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

### Article 4

#### Allocation of Receipts During Administration of Trust

##### Part 1

##### Receipts from Entities

#### 564-C:4-401 Character of Receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which RSA 564-C:4-402 applies, a business or activity to which RSA 564-C:4-403 applies, or an asset-backed security to which RSA 564-C:4-415 applies.



(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) property other than money;

(2) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) money received in total or partial liquidation of the entity; and

(4) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) For purposes of subsection (c)(3), money is received in partial liquidation:

(1)(A) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(B) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year end financial statements immediately preceding the initial receipt.

(2) money is not received in partial liquidation, nor may it be taken into account under subsection (d)(1)(B), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(e) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

564-C:4-402 Distribution from Trust or Estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, RSA 564 C:4 401 or RSA 564-C:4-415 applies to a receipt from the trust.

564-C:4-403 Business and Other Activities Conducted by Trustee.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) retail, manufacturing, service, and other traditional business activities;

(2) farming;

(3) raising and selling livestock and other animals;

(4) management of rental properties;

(5) extraction of minerals and other natural resources;

(6) timber operations; and

(7) activities to which RSA 564-C:4-414 applies.

## Part 2

## Receipts not Normally Apportioned

564-C:4-404 Principal Receipts. A trustee shall allocate to principal:

(1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Subject to any contrary rules set forth in articles 4 or 5 of this chapter, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in RSA 564-C:5-502(a)(7) or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) Other receipts as provided in part 3.

564-C:4-405 Rental Property. To the extent that a trustee accounts for receipts from rental property pursuant to this section and not as provided in RSA 564 C:4 403, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

564-C:4-406 Obligation to Pay Money.

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity, must be allocated to principal. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which RSA 564-C:4-409, 410, 411, 412, 414, or 415 applies.

564-C:4-407 Insurance Policies and Similar Contracts.

(a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to RSA 564-C:4-403, loss of profits from a business.

(c) This section does not apply to a contract to which RSA 564-C:4-409 applies.

## Part 3

## Receipts Normally Apportioned

564-C:4-408 Insubstantial Allocations Not Required.

(a) If a trustee determines that an allocation between principal and income required by RSA 564-C:4-409, 410, 411, 412, or 415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in RSA 564-C:1-104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in RSA 564-C:1-104(d) and may be released for the reasons and in the manner described in RSA 564-C:1-104(e).

(b) An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) the value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(3) nothing in this section imposes a duty on the trustee to make an allocation under this section, and the trustee is not liable for failing to make an allocation under this section regardless of whether or not the trustee has made allocations under this section in the past.

#### 564-C:4-409 Deferred Compensation, Annuities, and Similar Payments.

(a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which RSA 564-C:4-410 applies.

#### 564-C:4-410 Liquidating Asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to RSA 564-C:4-409, resources subject to RSA 564-C:4-411, timber subject to RSA 564-C:4-412, an activity subject to RSA 564-C:4-414, an asset subject to RSA 564-C:4-415, or any asset for which the trustee establishes a reserve for depreciation under RSA 564-C:5-503.

(b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.

#### 564-C:4-411 Minerals, Water, and Other Natural Resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) if received as a nominal bonus, nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) if received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) if an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income.

(4) if an amount is received from a working interest or any other interest not provided for in subsection (1), (2), or (3), 90 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this chapter, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this chapter, the trustee shall allocate receipts from the interest as provided in this chapter.

#### 564-C:4-412 Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subsections (a)(1) and (2); or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subsections (a)(1), (2), or (3).

(b) In determining net receipts to be allocated pursuant to subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timber land on the effective date of this chapter, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in timber land after the effective date of this chapter, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

#### 564-C:4-413 Property Not Productive of Income.

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under RSA 564-C:1-104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee within a reasonable time from being notified by the spouse to make property productive of income, convert property within a reasonable time or exercise the power conferred by RSA 564-C:1-104(a). The trustee may decide which action or combination of actions set forth above to take without regard to the specific action or actions requested by the spouse, if any.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

#### 564-C:4-414 Derivatives and Options.

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under RSA 564-C:4-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

#### 564-C:4-415 Asset-Backed Securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which RSA 564-C:4-401 or RSA 564 C:4-409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

### Article 5

#### Allocation of Disbursements During Administration of Trust

564-C:5-501 Disbursements from Income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which RSA 564-C:2-201(2)(B) or (C) applies:

(a) Except as otherwise ordered by court,  $\frac{1}{2}$  of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(b) Except as otherwise ordered by court,  $\frac{1}{2}$  of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(c) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(d) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

#### 564-C:5-502 Disbursements from Principal.

(a) A trustee shall make the following disbursements from principal:

(1) the remaining  $\frac{1}{2}$  of the disbursements described in RSA 564 C:5-501(1) and (2) except as otherwise ordered by court;

(2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) payments on the principal of a trust debt;

(4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) premiums paid on a policy of insurance not described in RSA 564 C:5 501(4) of which the trust is the owner and beneficiary;



(6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

#### 564-C:5-503 Transfers from Income to Principal for Depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate; or

(3) under this section if the trustee is accounting under RSA 564-C:4-403 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

#### 564-C:5-504 Transfers from Income to Reimburse Principal.

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) disbursements described in RSA 564-C:5-502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

#### 564-C:5-505 Income Taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(A) receipts from the entity are allocated to principal; and

(B) the trust's share of the entity's taxable income exceeds the total receipts described in subsections (c)(1) and (2)(A).

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

#### 564-C:5-506 Adjustments between Principal and Income Because of Taxes.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

### Article 6

#### Miscellaneous Provisions

564-C:6-601 Severability Clause. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

#### 564-C:6-602 Application of Chapter to Trusts and Estates.

(a) The effective date of this chapter shall be January 1, 2007.

(b) Except as otherwise provided in this chapter, on the effective date of this chapter, the chapter shall apply:

(1) to every inter vivos trust created on or after the effective date of this chapter except as otherwise expressly provided in the terms of the trust or in this chapter;

(2) to any inter vivos trust created before the effective date of this chapter upon the election of the trustee to apply this chapter made in writing and delivered to the beneficiaries then entitled to receive income and principal from the trust;

(3) To any estate existing or testamentary trust after the effective date of this chapter upon the approval by a court of competent jurisdiction, in the court's sole and absolute discretion, upon either (A) a petition filed by an interested person or (B) the court on its own motion.

(c) Nothing in this section imposes a duty on the trustee or any other fiduciary to make an election under this section, and the trustee or any other fiduciary is not liable for failing to make an election under this section.

(d) Nothing in this chapter shall be construed to affect or change the form of accounting required under the rules of the probate court.

71 Board of Trust Company Incorporation; Membership. Amend RSA 392:1 to read as follows:

392:1 Incorporation Board. The bank commissioner, the state treasurer, or a deputy treasurer, *the secretary of state, or a designee from the office of the secretary of state*, and the attorney general, or a designee from the office of the attorney general, shall constitute a board for the incorporation of trust companies and other corporations of a similar character, shall be known as the board of trust company incorporation, and shall receive no compensation for services on this board. The deputy bank commissioner shall serve as clerk of the board. Provided, that if on May 31, 1985 there shall be pending any matter before the board as constituted prior to May 31, 1985, the board as so constituted shall remain in existence with respect to such matter and shall retain jurisdiction thereof until final decision shall have been rendered thereon.

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

**2006-1377s**

#### AMENDED ANALYSIS

This bill makes various changes to the law regarding trusts and trust companies in New Hampshire.

The bill makes revisions to the Uniform Trust Code and adopts the Uniform Principal and Income Act.

**Amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**HB 385**, establishing a committee to study the adequacy of current substance abuse treatment available in the state prison system. Public and Municipal Affairs Committee. Ought to Pass, Vote 6-0. Senator Barnes for the committee.

#### MOTION TO TABLE

**Senator Barnes moved to have HB 385 laid on the table.**

**Adopted.**

#### LAI D ON THE TABLE

**HB 385**, establishing a committee to study the adequacy of current substance abuse treatment available in the state prison system.

**HB 410**, relative to the confidentiality of documents submitted with an application for a property tax credit, exemption, or deferral. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Kenney for the committee.

**Adopted.**

**Ordered to third reading.**

**SB 341**, extending by one year the advisory-only period for OBD II testing. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 6-0. Senator Letourneau for the committee.

**Adopted.**

**Ordered to third reading.**

**Senators Barnes, Gatsas and Green are in opposition to SB 341.**

**HB 1152**, naming a certain bridge over the Merrimack River. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Martel for the committee.

**Adopted.**

**Ordered to third reading.**

**HB 1279**, establishing a committee to study state medicaid reimbursement. Ways and Means Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

**Senate Ways and Means**  
**March 15, 2006**  
**2006-1391s**  
**05/10**

**Amendment to HB 1279**

Amend paragraph II as inserted by section 2 of the bill by inserting after subparagraph (f) the following new subparagraph:

(g) A representative of the New Hampshire Association of Counties, appointed by the association.

**MOTION TO TABLE**

**Senator Clegg moved to have HB 1279 laid on the table.**

**Adopted.**

**LAIID ON THE TABLE**

**HB 1279**, establishing a committee to study state medicaid reimbursement.

**HB 1418-FN**, relative to road toll refunds. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

**Adopted.**

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

**SPECIAL ORDER**

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds.

**Senator Clegg offered a floor amendment.**

**Sen. Clegg, Dist. 14**  
**March 22, 2006**  
**2006-1518s**  
**03/09**

**Floor Amendment to SB 367-FN**

Amend RSA 167:60-a, II as inserted by section 1 of the bill by replacing it with the following:

II. In conducting the review under paragraph I, the department may impose the following administrative penalty upon any Medicaid provider who, after notice of overpayments and identification of claims resulting in the overpayments, has violated the requirements of the Medicaid rules because the provider lacks proof or records that the goods or services were provided for covered goods or services: a penalty of up to 100 percent of Medicaid payments for goods or services, if the provider fails to demonstrate that the disputed goods or services were medically necessary, were covered goods or services, and were actually provided to eligible recipients.

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

2 Appropriation; Supplemental Pharmacy Assistance. Amend 2006, 2:2 to read as follows:

2:2 Appropriation; Supplemental Pharmacy Assistance. Up to the sum of \$500,000 for the [fiscal-year] **bien-nium** ending June 30, [2006] **2007** is hereby appropriated to the department of health and human services, for the purpose of providing supplemental pharmacy assistance. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. If the commissioner determines additional funds are needed to provide the supplemental pharmacy assistance the commissioner, with the approval of the legislative fiscal committee, may expend other funds appropriated to the department for this purpose.

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

**2006-1518s**

**AMENDED ANALYSIS**

This bill:

I. Permits the department of health and human services to impose an administrative penalty on Medicaid providers for overpayments.

II. Extends the appropriation to the department of health and human services for supplemental pharmacy assistance during the period of transition to the new federal pharmacy benefit under Part D of the Medicare program.

This bill is a request of the department of health and human services.

**Floor amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**MOTION TO REMOVE FROM THE TABLE**

**Senator Johnson moved to have SB 107-FN removed from the table.**

**Adopted.**

**SB 107-FN**, relative to the sale of tobacco products.

**The question is on the adoption of the committee amendment (0496).**

**Amendment failed.**

**Senator Johnson offered a floor amendment.**

**Sen. Johnson, Dist. 2**

**March 22, 2006**

**2006-1508s**

**09/01**

**Floor Amendment to SB 107-FN**

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

AN ACT relative to the tax on tobacco products other than cigarettes.

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

1 New Paragraph; Tobacco Tax; Definitions. Amend RSA 78:1 by inserting after paragraph XX the following new paragraph:

XXI. "Loose tobacco" means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette manufacturers; cavendish; plug and twist tobacco; loose leaf chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco.

2 Tobacco Tax; Tax Imposed on Tobacco Products Other Than Cigarettes. Amend RSA 78:7-c to read as follows:

78:7-c Tax Imposed on Tobacco Products Other Than Cigarettes. A tax upon the retail consumer is hereby imposed on tobacco products other than cigarettes at a rate of 19 percent of the wholesale sales price *on loose tobacco products and at the rate of 48 cents per ounce, or fractional part thereof, on all other smokeless products. Such tax shall be assessed on the net weight as listed by the manufacturer; provided, however, that for any product with a listed net weight of less than one ounce, the tax for such product shall be 48 cents.* The tax under this section may be rounded to the nearest cent if the commissioner determines that the amount of tax would not thereby be made materially disproportionate. No such tax is imposed on any transactions, the taxation of which by this state is prohibited by the Constitution of the United States.

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

**2006-1508s**

**AMENDED ANALYSIS**

This bill clarifies and establishes tax rates for loose tobacco products and other smokeless tobacco products.

**Floor amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**Senator Barnes is in opposition to the floor amendment on SB 107-FN.**

**Senators Green and Odell are in opposition to SB 107-FN.**



**MOTION TO REMOVE FROM THE TABLE**

**Senator Estabrook moved to have SB 345 removed from the table.**

**Adopted.**

**SB 345**, establishing a lobbying commission and relative to lobbyist registration and financial disclosure requirements.

**The question is on the committee report of interim study.**

**Motion failed.**

**Senator Estabrook moved ought to pass.**

**Senator Estabrook offered a floor amendment.**

**Sen. Estabrook, Dist. 21**

**Sen. Clegg, Dist. 14**

**March 22, 2006**

**2006-1496s**

**05/10**

**Floor Amendment to SB 345**

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

AN ACT relative to lobbyist registration requirements.

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

1 Lobbyists; Penalty; Civil Fine for Late Filing. Amend RSA 15:5 to read as follows:

15:5 Penalty. Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. ***The attorney general may impose a civil penalty of \$25 per day, per client, for late filing of the statement required under RSA 15:3.*** Whoever shall make and file any statement under this chapter which is to his knowledge false shall be deemed guilty of perjury and punished accordingly.

2 Lobbyists; Penalty; Civil Fine for Late Filing. Amend RSA 15:8 to read as follows:

15:8 Penalty. Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. ***The attorney general may impose a civil penalty of \$25 per day, per client, for late filing of the statement required under RSA 15:6.*** Whoever shall make and file any statement under this chapter which is to his or her knowledge false shall be deemed guilty of perjury and punished accordingly.

3 Contingency. If SB 206-FN of the 2006 general session becomes law, section 1 of this act shall not take effect and section 2 of this act shall take effect on June 2, 2006 at 12:01 a.m. If SB 206-FN of the 2006 general session does not become law, section 1 of this act shall take effect upon its passage and section 2 of this act shall not take effect.

4 Effective Date.

I. Sections 1 and 2 of this act shall take effect as provided in section 3 of this act.

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

**2006-1496s**

**AMENDED ANALYSIS**

This bill permits the attorney general to impose a civil penalty on lobbyists who file late financial statements under RSA 15.

**A division vote was requested.**

**Yeas: 12 – Nays: 10**

**Floor amendment adopted.**

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

**Adopted.**

**Ordered to third reading.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

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

**HB 1296**, relative to the voluntary scrapie flock certification program.

**SB 206-FN**, establishing an executive branch ethics committee and recodifying RSA 15 relative to lobbyists, RSA 15-A relative to financial statements, and RSA 15-B relative to gifts, honorariums and expense reimbursements.

Senator D'Allesandro moved adoption.

**Adopted.**

**REPORT OF COMMITTEE ON ENROLLED BILLS**

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

**HB 581**, relative to approval and review of municipal charters.

**HB 1118**, requiring paper ballots at all elections.

**HB 1156**, changing the notification for public hearings on ski area passenger tramway rules from registered mail to first class mail.

**HB 1225**, relative to the judicial branch family division for the Henniker and Hillsborough District Courts.

**HB 1471-FN**, repealing the statutes relative to regional highway conferences.

**HB 1503**, relative to financial programs administered by the postsecondary education commission.

**HB 1654-FN**, relative to the probate court mediation fund and fee.

Senator D'Allesandro moved adoption.

**Adopted.**

**RESOLUTION**

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

**Adopted.**

**LATE SESSION****Third Reading and Final Passage**

**SB 107-FN**, relative to the tax on tobacco products other than cigarettes.

**SB 230**, relative to the qualifications and liability of the medical director responsible for utilization review under the managed care law.

**SB 232-FN-A**, making a capital appropriation to the department of health and human services for a dental facility in the town of Tamworth.

**SB 267**, relative to the definition of employee and clarifying the criteria for exempting workers from employee status.

**SB 268**, raising the age of required attendance of children in school and establishing a 2-year pilot program for increasing vocational education opportunities in the Manchester and Nashua school districts and making an appropriation therefor.

**SB 273**, relative to reasonable accommodations for employees with disabilities.

**SB 298-FN**, relative to motor vehicle fines.

**SB 304**, relative to provider payments negotiated by the commissioner of the department of health and human services.

**SB 306-FN-A**, establishing a quality early learning opportunity initiative and making an appropriation therefor.

**SB 314-FN-L**, establishing minimum renewable standards for energy portfolios.

**SB 317-FN**, establishing a screening panel to review complaints to occupational and professional regulatory boards and establishing an appeals board to review decisions by occupational and professional regulatory boards.

**SB 324**, requiring notification concerning certain offenders against children.

**SB 339**, changing certain job titles and responsibilities in the department of transportation.

**SB 341**, extending by one year the advisory-only period for OBD II testing.

**SB 342**, relative to the treatment of glaucoma by optometrists.

**SB 345**, relative to lobbyist registration requirements.

**SB 352-FN**, relative to the regulation of real estate appraisers.

**SB 354-FN**, requiring security officers of the New Hampshire hospital security force to be fully certified as police officers and including such security officers in group II of the New Hampshire retirement system.

**SB 364-FN-A**, relative to funding of the fish and game search and rescue fund and making an appropriation therefor.

**SB 367-FN**, imposing a penalty on Medicaid providers who receive overpayments of state Medicaid funds.

**SB 369**, relative to portability, availability, and renewability of health coverage.

**SB 373-FN-A**, relative to a public health response to arbovirus.

**SB 374-FN**, relative to the state children's health insurance program.

**SB 380-FN-A**, establishing a research and development credit against business taxes.

**SB 384-FN-A-L**, establishing a temporary one-time exemption from the real estate transfer tax for certain transfer of family farm or open space land.

**SB 391-FN**, relative to insurance third party administrators.

**SB 394**, establishing the Trust Modernization and Competitiveness Act.

**SB 395**, relative to the number of children in a licensed foster home.

**SB 397-FN-A**, relative to an exemption for certain new businesses from the business.

**SB 403**, relative to verification of identity when a person registers or attempts to vote.

**SB 407-FN-A**, relative to enforcement of labor statutes under current federal immigration laws.

**CACR 44**, relating to limits on the taking of private property. Providing that no person's private real property shall be taken by eminent domain unless it is to be put to public use.

**HB 349**, relative to placement and removal of political advertising.

**HB 410**, relative to the confidentiality of documents submitted with an application for a property tax credit, exemption, or deferral.

**HB 1114**, relative to regulation by the board of licensure of interpreters for the deaf and hard of hearing.

**HB 1122**, relative to special elections.

**HB 1147**, relative to the conduct of recounts.

**HB 1152**, naming a certain bridge over the Merrimack River.

**HB 1226-FN**, relative to the New Hampshire Humanities Council.

**HB 1370**, transferring certain surplus moneys to the revenue stabilization reserve account.

**HJR 23**, a resolution designating a Purple Heart Trail spur to the New Hampshire state veterans cemetery and providing additional signs for the Purple Heart Trail.

#### **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.**