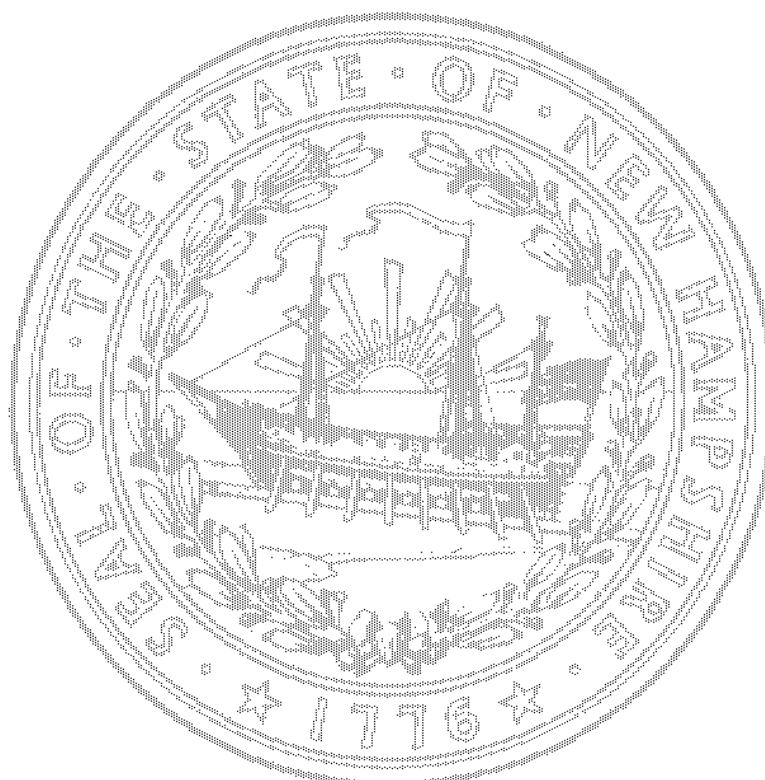


March 20, 2008

Nos. 9-10

STATE OF NEW HAMPSHIRE

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Legislative

SENATE JOURNAL

ADJOURNMENT – MARCH 13, 2008 SESSION
COMMENCEMENT – MARCH 20, 2008 SESSION

SENATE

JOURNAL 9 (cont.)

March 13, 2008

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 1151, relative to reporting dates for the instream flow pilot program.

INTRODUCTION OF HOUSE BILL(S)

Senator Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 1151**, 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 1151, relative to reporting dates for the instream flow pilot program. (Energy, Environment and Economic Development)

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 847, relative to general rules for vessels operating on water.

HB 1136, relative to automated external defibrillators.

HB 1165, relative to department of transportation traffic control regulations.

HB 1191, relative to environmental investigations in tax lien and tax sale proceedings.

HB 1192, relative to the solemnization of marriage.

HB 1201, allowing communities to conduct point of dispensing exercises to test emergency management operations plans, allowing qualified health professionals to prescribe and

administer flu vaccine during such exercises, and granting immunity to such qualified health professionals.

HB 1207, relative to standards for highway and bridge construction.

HB 1226, allowing the town of Bristol to establish a capital reserve fund for use of the water works and sewer department.

HB 1228, relative to sales of motor fuel by the department of transportation to certain nonprofit corporations.

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription.

HB 1240, relative to disqualification of certain election officers and relative to arrangement of polling places.

HB 1243, amending the timeframes for involuntary civil commitment of sexually violent predators.

HB 1244, relative to auditable basis policies.

HB 1245, relative to insurance department records, investigations, and enforcement.

HB 1246, relative to insurance policy denial provisions.

HB 1254, relative to the ability of towns to regulate the storage of deicing chemicals.

HB 1257, relative to license suspensions for persons operating under the influence of drugs.

HB 1258, relative to vehicle impoundment following an arrest for DWI or refusing consent to a blood alcohol test.

HB 1259, authorizing communities to establish municipal housing commissions and affordable housing revolving funds.

HB 1262, relative to continuing medical education requirements for persons licensed by the board of medicine.

HB 1264, relative to prohibiting ATV and trail bike use on state-owned rail trails acquired using federal funds.

HB 1274, relative to certain securities professional designations and securities administration.

HB 1278, relative to the purchase of computer services and supplies for state agencies.

HB 1279, relative to the scope of certain insurance laws.

HB 1281, prohibiting public schools from requiring health insurance as a condition of enrollment except if health insurance is a requirement of the student's program of study.

HB 1282, amending the pre-engineering technology curriculum.

HB 1295, establishing a commission to study issues relating to stormwater.

HB 1299, establishing a committee to study the feasibility of creating a preschool incentive fund program.

HB 1304, authorizing Plymouth state university to award doctoral degrees.

HB 1307, making technical corrections to town audit and reporting requirements.

HB 1313, relative to voting by the chairman of the retirement system board of trustees.

HB 1319, relative to the reasonable cost of medical support for dependent children.

HB 1321, relative to the inspection of juvenile detention facilities.

HB 1332-L, defining “hauler” of solid waste and requiring haulers to register with the department of environmental service, and relative to the weight and measurement of solid waste.

HB 1335, establishing a commission to study the effects of post-traumatic stress disorder and traumatic brain injury suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan.

HB 1341-FN-A, making an appropriation to the department of administrative services for an energy audit and system evaluation of the state house.

HB 1343, prohibiting the placing on file or masking of convictions incurred by holders of commercial driver licenses or persons required to hold such licenses.

HB 1352, relative to the comprehensive state development plan.

HB 1353, extending the commission to study issues relative to groundwater withdrawal.

HB 1367, relative to the conversion to a new state financial accounting and statewide budget system.

HB 1370, establishing a pilot program for an integrated juvenile justice information sharing system.

HB 1371, extending certain studies.

HB 1374, establishing a division of homeland security and emergency management in the department of safety.

HB 1377, relative to New Hampshire’s rest areas and welcome centers.

HB 1382, adopting the uniform prudent management of institutional funds act.

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions.

HB 1386, relative to a grandparent's rights to access court and case records involving a grandchild.

HB 1388, establishing a commission to study practices relative to medications prescribed to children in out-of-home placements.

HB 1394-FN, relative to procedures for approvals of nursing education programs.

HB 1402-FN, relative to community health centers.

HB 1404-FN, relative to liability insurance for passenger rail service.

HB 1405-FN, regulating outdoor wood-fired hydronic heaters.

HB 1412, establishing a commission to study appointing or contracting with a fleet manager for state-owned motor vehicles.

HB 1414-FN, increasing the fee for bail commissioners.

HB 1422, establishing a committee to study the prevention of childhood obesity.

HB 1424, relative to notice of meetings of county conventions.

HB 1446, relative to changes to the school building aid statutes and to the schoolhouses statutes.

HB 1451, relative to the transportation of deer by certain persons not issued a deer tag.

HB 1453, relative to civil liability for damage to protective barriers.

HB 1457, allowing smoking in cigar bars.

HB 1470, relative to vehicular pursuits by police officers.

HB 1484, establishing a commission to study retail health clinics.

HB 1493, relative to the commission to study the state highway trust fund.

HB 1561, establishing an energy conservation and efficiency board.

HB 1568-FN, relative to endangering the public water supply.

HB 1579-FN, establishing a commission to study issues relating to land development and land development regulation in New Hampshire.

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste.

HCR 11, urging municipalities to establish an annual free tire collection day.

HCR 17, encouraging the use of reusable shopping bags.

INTRODUCTION OF HOUSE BILL(S)

Senator Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 847 to HCR 17**, 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 847, relative to general rules for vessels operating on water. (Transportation and Interstate Cooperation)

HB 1136, relative to automated external defibrillators. (Health and Human Services)

HB 1165, relative to department of transportation traffic control regulations. (Transportation and Interstate Cooperation)

HB 1191, relative to environmental investigations in tax lien and tax sale proceedings. (Public and Municipal Affairs)

HB 1192, relative to the solemnization of marriage. (Judiciary)

HB 1201, allowing communities to conduct point of dispensing exercises to test emergency management operations plans, allowing qualified health professionals to prescribe and administer flu vaccine during such exercises, and granting immunity to such qualified health professionals. (Health and Human Services)

HB 1207, relative to standards for highway and bridge construction. (Transportation and Interstate Cooperation)

HB 1226, allowing the town of Bristol to establish a capital reserve fund for use of the water works and sewer department. (Public and Municipal Affairs)

HB 1228, relative to sales of motor fuel by the department of transportation to certain nonprofit corporations. (Transportation and Interstate Cooperation)

HB 1230, requiring pharmacists to charge an insured person the usual and customary price or the copayment, whichever is less, of filling a prescription. (Commerce, Labor and Consumer Protection)

HB 1240, relative to disqualification of certain election officers and relative to arrangement of polling places. (Election Law and Internal Affairs)

HB 1243, amending the timeframes for involuntary civil commitment of sexually violent predators. (Judiciary)

HB 1244, relative to auditable basis policies. (Commerce, Labor and Consumer Protection)

HB 1245, relative to insurance department records, investigations, and enforcement. (Commerce, Labor and Consumer Protection)

HB 1246, relative to insurance policy denial provisions. (Commerce, Labor and Consumer Protection)

HB 1254, relative to the ability of towns to regulate the storage of deicing chemicals. (Public and Municipal Affairs)

HB 1257, relative to license suspensions for persons operating under the influence of drugs. (Judiciary)

HB 1258, relative to vehicle impoundment following an arrest for DWI or refusing consent to a blood alcohol test. (Judiciary)

HB 1259, authorizing communities to establish municipal housing commissions and affordable housing revolving funds. (Public and Municipal Affairs)

HB 1262, relative to continuing medical education requirements for persons licensed by the board of medicine. (Executive Departments and Administration)

HB 1264, relative to prohibiting ATV and trail bike use on state-owned rail trails acquired using federal funds. (Transportation and Interstate Cooperation)

HB 1274, relative to certain securities professional designations and securities administration. (Commerce, Labor and Consumer Protection)

HB 1278, relative to the purchase of computer services and supplies for state agencies. (Executive Departments and Administration)

HB 1279, relative to the scope of certain insurance laws. (Commerce, Labor and Consumer Protection)

HB 1281, prohibiting public schools from requiring health insurance as a condition of enrollment except if health insurance is a requirement of the student's program of study. (Health and Human Services)

HB 1282, amending the pre-engineering technology curriculum. (Education)

HB 1295, establishing a commission to study issues relating to stormwater. (Energy, Environment and Economic Development)

HB 1299, establishing a committee to study the feasibility of creating a preschool incentive fund program. (Education)

HB 1304, authorizing Plymouth state university to award doctoral degrees. (Education)

HB 1307, making technical corrections to town audit and reporting requirements. (Public and Municipal Affairs)

HB 1313, relative to voting by the chairman of the retirement system board of trustees. (Executive Departments and Administration)

HB 1319, relative to the reasonable cost of medical support for dependent children. (Judiciary)

HB 1321, relative to the inspection of juvenile detention facilities. (Judiciary)

HB 1332-L, defining “hauler” of solid waste and requiring haulers to register with the department of environmental service, and relative to the weight and measurement of solid waste. (Energy, Environment and Economic Development)

HB 1335, establishing a commission to study the effects of post-traumatic stress disorder and traumatic brain injury suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan. (Election Law and Internal Affairs)

HB 1341-FN-A, making an appropriation to the department of administrative services for an energy audit and system evaluation of the state house. (Finance)

HB 1343, prohibiting the placing on file or masking of convictions incurred by holders of commercial driver licenses or persons required to hold such licenses. (Transportation and Interstate Cooperation)

HB 1352, relative to the comprehensive state development plan. (Capital Budget)

HB 1353, extending the commission to study issues relative to groundwater withdrawal. (Energy, Environment and Economic Development)

HB 1367, relative to the conversion to a new state financial accounting and statewide budget system. (Finance)

HB 1370, establishing a pilot program for an integrated juvenile justice information sharing system. (Judiciary)

HB 1371, extending certain studies. (Election Law and Internal Affairs)

HB 1374, establishing a division of homeland security and emergency management in the department of safety. (Executive Departments and Administration)

HB 1377, relative to New Hampshire’s rest areas and welcome centers. (Transportation and Interstate Cooperation)

HB 1382, adopting the uniform prudent management of institutional funds act. (Commerce, Labor and Consumer Protection)

HB 1384, relative to the regulation of designated agents by the New Hampshire real estate commission, and relative to the disclosure of certain property conditions. (Commerce, Labor and Consumer Protection)

HB 1386, relative to a grandparent’s rights to access court and case records involving a grandchild. (Judiciary)

HB 1388, establishing a commission to study practices relative to medications prescribed to children in out-of-home placements. (Health and Human Services)

HB 1394-FN, relative to procedures for approvals of nursing education programs. (Executive Departments and Administration)

HB 1402-FN, relative to community health centers. (Executive Departments and Administration)

HB 1404-FN, relative to liability insurance for passenger rail service. (Transportation and Interstate Cooperation)

HB 1405-FN, regulating outdoor wood-fired hydronic heaters. (Energy, Environment and Economic Development)

HB 1412, establishing a commission to study appointing or contracting with a fleet manager for state-owned motor vehicles. (Finance)

HB 1414-FN, increasing the fee for bail commissioners. (Judiciary)

HB 1422, establishing a committee to study the prevention of childhood obesity. (Health and Human Services)

HB 1424, relative to notice of meetings of county conventions. (Public and Municipal Affairs)

HB 1446, relative to changes to the school building aid statutes and to the schoolhouses statutes. (Education)

HB 1451, relative to the transportation of deer by certain persons not issued a deer tag. (Wildlife, Fish and Game and Agriculture)

HB 1453, relative to civil liability for damage to protective barriers. (Judiciary)

HB 1457, allowing smoking in cigar bars. (Commerce, Labor and Consumer Protection)

HB 1470, relative to vehicular pursuits by police officers. (Judiciary)

HB 1484, establishing a commission to study retail health clinics. (Health and Human Services)

HB 1493, relative to the commission to study the state highway trust fund. (Transportation and Interstate Cooperation)

HB 1561, establishing an energy conservation and efficiency board. (Energy, Environment and Economic Development)

HB 1568-FN, relative to endangering the public water supply. (Judiciary)

HB 1579-FN, establishing a commission to study issues relating to land development and land development regulation in New Hampshire. (Energy, Environment and Economic Development)

HB 1584-FN-A, creating a commission to study the recycling and disposal of electronic waste. (Energy, Environment and Economic Development)

HCR 11, urging municipalities to establish an annual free tire collection day. (Public and Municipal Affairs)

HCR 17, encouraging the use of reusable shopping bags. (Energy, Environment and Economic Development)

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 173-FN-A, relative to the promotion, acquisition, and retention of a large animal veterinarian in those areas of the state where there is a need, and making an appropriation therefor.

HB 352-L, relative to trust funds for public school educational enhancement.

HB 1129, relative to special number plates for municipal police department vehicles.

HB 1130, relative to repealed DWI laws.

HB 1133, relative to the age of majority for purposes of pornography-related offenses.

HB 1141, establishing a committee to study parking for wheelchair-lift vans.

HB 1143, relative to shelter for dogs and the authority of law enforcement officers to take abused and neglected dogs into custody.

HB 1145, designating the Senator Otto Oleson Scenic Overlook in Jefferson.

HB 1152-FN, relative to interpreting statutory deadlines.

HB 1153, relative to physician assistants and physicians regulation by the board of medicine.

HB 1155-FN-A, making an appropriation of certain revenues to the board of nursing.

HB 1157, relative to requirements for approval of village plan alternative subdivisions.

HB 1161, establishing a committee to study the truancy laws.

HB 1167, relative to substituting generically equivalent drug products.

HB 1174, relative to condominium association meetings.

HB 1179, including certain nonprofit organizations under the right-to-know law.

HB 1180, relative to the definitions of "law enforcement officer" and "judicial officer" under the capital murder law and establishing a commission to study the death penalty in New Hampshire.

HB 1181, naming the Manchester district courthouse the Armand Capistran district courthouse.

HB 1196, relative to the procedure for amending municipal charters.

HB 1203, relative to bicycles.

HB 1204, relative to the number of write-in votes required to receive a party's nomination.

HB 1227, clarifying when persons elected may assume certain offices.

HB 1232, relative to the regulation by the fish and game department of baiting of game birds.

HB 1234, establishing an affirmative defense to prosecution for a possession offense if a person has a lawful prescription for a controlled drug.

HB 1235, relative to motorist duties when approaching highway emergencies.

HB 1236, relative to motor vehicle laws.

HB 1239, relative to the legislative youth advisory council.

HB 1247, relative to revolving accounts for public, educational, and governmental access to cable.

HB 1260-L, relative to growth management ordinances.

HB 1261, establishing a commission to investigate a program in which senior year of high school may be spent at a community college.

HB 1276, establishing a committee to study revisions to the auctioneers' practice act.

HB 1294, establishing the offense of public urination or defecation.

HB 1309-FN-A, relative to the definition of "cigarette."

HB 1410, relative to youth training and employment in firefighting.

HB 1442-FN-A-L, relative to the taxation of farm buildings and land under farm buildings.

HB 1456, naming route 202 in Strafford county the Charles E. Smith Memorial Highway.

HB 1468, relative to mosquito control policy for lands managed by the fish and game department.

HB 1471, relative to time limits for excavating and dredging permits.

HB 1585-FN, relative to regulation of fuel gas fitters by the state fire marshal.

HB 1590-FN, establishing a DWI victim fatality sign program.

HB 1603-FN-A, establishing a penalty for payment of a state obligation with an invalid form of payment.

HB 1607-FN, relative to firefighter services leave for state employees.

HB 1638, establishing an oversight commission on motor vehicle fines.

INTRODUCTION OF HOUSE BILL(S)

Senator Foster offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from **HB 173 to HB 1638**, 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 173-FN-A, relative to the promotion, acquisition, and retention of a large animal veterinarian in those areas of the state where there is a need, and making an appropriation therefor. (Wildlife, Fish and Game and Agriculture)

HB 352-L, relative to trust funds for public school educational enhancement. (Education)

HB 1129, relative to special number plates for municipal police department vehicles. (Transportation and Interstate Cooperation)

HB 1130, relative to repealed DWI laws. (Judiciary)

HB 1133, relative to the age of majority for purposes of pornography-related offenses. (Judiciary)

HB 1141, establishing a committee to study parking for wheelchair-lift vans. (Transportation and Interstate Cooperation)

HB 1143, relative to shelter for dogs and the authority of law enforcement officers to take abused and neglected dogs into custody. (Public and Municipal Affairs)

HB 1145, designating the Senator Otto Oleson Scenic Overlook in Jefferson. (Public and Municipal Affairs)

HB 1152-FN, relative to interpreting statutory deadlines. (Commerce, Labor and Consumer Protection)

HB 1153, relative to physician assistants and physicians regulation by the board of medicine. (Executive Departments and Administration)

HB 1155-FN-A, making an appropriation of certain revenues to the board of nursing. (Finance)

HB 1157, relative to requirements for approval of village plan alternative subdivisions. (Public and Municipal Affairs)

HB 1161, establishing a committee to study the truancy laws. (Education)

HB 1167, relative to substituting generically equivalent drug products. (Health and Human Services)

HB 1174, relative to condominium association meetings. (Commerce, Labor and Consumer Protection)

HB 1179, including certain nonprofit organizations under the right-to-know law. (Public and Municipal Affairs)

HB 1180, relative to the definitions of “law enforcement officer” and “judicial officer” under the capital murder law and establishing a commission to study the death penalty in New Hampshire. (Judiciary)

HB 1181, naming the Manchester district courthouse the Armand Capistran district courthouse. (Public and Municipal Affairs)

HB 1196, relative to the procedure for amending municipal charters. (Public and Municipal Affairs)

HB 1203, relative to bicycles. (Transportation and Interstate Cooperation)

HB 1204, relative to the number of write-in votes required to receive a party’s nomination. (Election Law and Internal Affairs)

HB 1227, clarifying when persons elected may assume certain offices. (Election Law and Internal Affairs)

HB 1232, relative to the regulation by the fish and game department of baiting of game birds. (Wildlife, Fish and Game and Agriculture)

HB 1234, establishing an affirmative defense to prosecution for a possession offense if a person has a lawful prescription for a controlled drug. (Judiciary)

HB 1235, relative to motorist duties when approaching highway emergencies. (Transportation and Interstate Cooperation)

HB 1236, relative to motor vehicle laws. (Transportation and Interstate Cooperation)

HB 1239, relative to the legislative youth advisory council. (Election Law and Internal Affairs)

HB 1247, relative to revolving accounts for public, educational, and governmental access to cable. (Public and Municipal Affairs)

HB 1260-L, relative to growth management ordinances. (Public and Municipal Affairs)

HB 1261, establishing a commission to investigate a program in which senior year of high school may be spent at a community college. (Education)

HB 1276, establishing a committee to study revisions to the auctioneers’ practice act. (Executive Departments and Administration)

HB 1294, establishing the offense of public urination or defecation. (Judiciary)

HB 1309-FN-A, relative to the definition of “cigarette.” (Ways and Means)

HB 1410, relative to youth training and employment in firefighting. (Commerce, Labor and Consumer Protection)

HB 1442-FN-A-L, relative to the taxation of farm buildings and land under farm buildings. (Public and Municipal Affairs)

HB 1456, naming route 202 in Strafford county the Charles E. Smith Memorial Highway. (Transportation and Interstate Cooperation)

HB 1468, relative to mosquito control policy for lands managed by the fish and game department. (Public and Municipal Affairs)

HB 1471, relative to time limits for excavating and dredging permits. (Energy, Environment and Economic Development)

HB 1585-FN, relative to regulation of fuel gas fitters by the state fire marshal. (Executive Departments and Administration)

HB 1590-FN, establishing a DWI victim fatality sign program. (Transportation and Interstate Cooperation)

HB 1603-FN-A, establishing a penalty for payment of a state obligation with an invalid form of payment. (Ways and Means)

HB 1607-FN, relative to firefighter services leave for state employees. (Executive Departments and Administration)

HB 1638, establishing an oversight commission on motor vehicle fines. (Transportation and Interstate Cooperation)

Out of Recess.

LATE SESSION

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

Adopted.

Adjournment.

SENATE JOURNAL 10

March 20, 2008

The Senate met at 10:30 a.m.

A quorum was present.

The Reverend Canon Timothy Rich, chaplain to the Senate, offered the prayer:

O God, of unfathomable love: Move us all – Jewish, Muslim or Christian; Republican, Democrat or Independent – to pour the healing waters of grace upon one another, washing

away our bitterness, judgment, anger and resentment. And then help us, we pray, to consider the example and commandment of Jesus that we might discover a way to bend the knee of our hearts and love one another as You have loved us. In the name of Love, we pray. Amen

Senator Kelly led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

COMMITTEE REPORTS

SB 391, relative to affordable health insurance for small employers. Commerce, Labor and Consumer Protection Committee. Inexpedient to Legislate, Vote 5-0. Senator Barnes for the committee.

Committee report of Inexpedient to Legislate is adopted.

SB 465, relative to the laws regulating trusts and trust companies in New Hampshire. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

Sen. D'Allesandro, Dist. 20

March 6, 2008

2008-0892s

08/09

Amendment to SB 465

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

1 Purpose. The general court finds:

I. The market for trusts and fiduciary 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 continue New Hampshire's firm commitment to be the best and most attractive legal environment in the nation for trusts and fiduciary services, an environment that will continue to attract to our state good-paying jobs for trust and investment management, legal and accounting professionals, and other professionals to provide the support and infrastructure required to service this growing sector of the nation's economy.

2 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103(22) to read as follows:

(22) "Ascertainable standard" means a standard related 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].

3 Uniform Trust Code; Definitions. RSA 564-B:1-103(24) is repealed and reenacted to read as follows:

(24) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of the trust, an agreement of the qualified beneficiaries, or court order, (i) the trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty, and (ii) the power or duty is granted or reserved to another person.

4 Uniform Trust Code; Definitions. RSA 564-B:1-103(27)-(28) is repealed and reenacted to read as follows:

(27) "Trust advisor" means any person described in RSA 564-B:12-1201(a).

(28) "Trust protector" means any person described in RSA 564-B:12-1201(a).

5 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103 by inserting after paragraph (28) the following new paragraph:

(29) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and as in effect from time to time.

6 Uniform Trust Code; Nonjudicial Settlement Agreements. Amend RSA 564-B:1-111(a) to read as follows:

(a) For purposes of this section, "interested persons" means persons, ***other than the settlor***, whose consent would be required in order to achieve a binding settlement were the settlement to be approved by a court.

7 Uniform Trust Code; Representation by Fiduciaries and Parents. RSA 564-B:3-303(7) is repealed and reenacted to read as follows:

(7) a parent may represent and bind (i) the parent's minor or unborn child if neither a guardian of the estate nor guardian of the person for the child has been appointed and (ii) a minor or unborn descendent of such child if neither a guardian of the estate of the descendent nor a guardian of the person of the descendent has been appointed.

8 Uniform Trust Code; Noncharitable Trust Without an Ascertainable Beneficiary. Amend RSA 564-B:4-409 to read as follows:

564-B:4-409 Noncharitable Trust Without Ascertainable Beneficiary. Except as otherwise provided in RSA 564-B:4-408 or by another statute, the following rules apply:

(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~~.

(2) A trust authorized by this section may be enforced by ***a trustee***, a trust advisor, a trust protector, a person appointed ~~in~~ ***under*** the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) ~~Property of a trust authorized by this section may be applied only to its intended use.~~ Except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use, ***property of a trust authorized by this section may be applied only to its intended use, including appointing trust property to or for the benefit of an existing or new trust whose purposes are limited to one or more purposes of the original trust.*** Except as otherwise provided ~~in~~ ***by*** the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

9 New Section; Uniform Trust Code; Trustee's Authority to Decant Trust. Amend RSA 564-B by inserting after section 4-417 the following new section:

564-B:4-418 Trustee's Authority to Decant Trust.

(a) Unless the terms of the trust expressly provide otherwise, a trustee with the discretion to make distributions to or for the benefit of one or more beneficiaries of a trust (the "first trust") may exercise that discretion by appointing the property subject to that authority in favor of another trust for the benefit of one or more of those beneficiaries (the "second trust").

(b) Notwithstanding the provisions of paragraph (a), the trustee may not decant property of the first trust in favor of the second trust under any of the following circumstances:

(1) the second trust includes a beneficiary that is not a beneficiary of the first trust. For purposes of this subparagraph, a permissible appointee of a power of appointment held by a beneficiary of the second trust is not considered to be a beneficiary of the second trust;

(2) the exercise of the power to decant will reduce any current fixed income interest, annuity interest, or unitrust interest of a beneficiary of the first trust;

(3) a contribution to the first trust qualified for a marital or charitable deduction for federal or state income, gift, or estate tax purposes or qualified for a gift tax exclusion for federal or state gift tax purposes, while the terms of the second trust include a provision which, if included in the terms of the first trust, would have prevented the first trust from qualifying for the deduction or exclusion;

(4) the property is subject to a presently exercisable power of withdrawal held by a beneficiary of the first trust; or

(5) under the terms of the second trust:

(A) discretionary distributions may be made to a beneficiary or among a group of beneficiaries of the first trust;

(B) the distributions are not limited by an ascertainable standard; and

(C) the beneficiary or group of beneficiaries has the power to remove and replace the trustee of the first trust with the beneficiary or a member of the group of beneficiaries or with a trustee that is related or subordinate to the beneficiary or a member of the group of beneficiaries (as defined in section 672(c) of the Internal Revenue Code).

(c) Notwithstanding the provisions of paragraph (a), a trustee who is a beneficiary of the first trust may not exercise the authority to appoint property of the first trust in favor of the second trust under any of the following circumstances:

(1) under the terms of the first trust or pursuant to the law governing the administration of the first trust:

(A) such trustee of the first trust does not have the discretion to make or participate in making distributions to himself or herself;

(B) such trustee's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard; or

(C) such 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; while under the terms of the second trust, such trustee's discretion to make or participate in making distributions to himself or herself is not limited by an ascertainable standard and is exercisable without the consent of a cotrustee or another person holding an adverse interest; or

(2) under the terms of the first trust or pursuant to the law governing the administration of the first trust, such trustee of the first trust does not have the discretion to make or participate in making distributions in a manner that will discharge such trustee's legal support obligations, while under the terms of the second trust, such trustee's discretion is not so limited.

(d) The trustee of the first trust shall notify in writing the director of charitable trusts of a proposed appointment in favor of a second trust at least 30 days in advance of the proposed appointment if, at the time the appointment is being proposed:

(1) at least one charitable organization has the rights of a qualified beneficiary of the first trust; or

(2) the director of charitable trusts has the rights of a qualified beneficiary of the first trust.

(e) This section does not abrogate the trustee's duty under RSA 564-B:8-801.

(f) This section does not impose on a trustee a duty to exercise a power to decant in favor of another trust or to consider exercising a power to decant in favor of another trust.

(g) A power to decant is not a power to amend the trust. Accordingly, a trustee is not prohibited from decanting property in favor of another trust solely because the first trust is irrevocable or the terms of the first trust provide that it may not be amended.

(h) A trustee's authority to decant property to another trust under this section is not limited or prohibited by a spendthrift provision in the first trust.

10 New Paragraph; Uniform Trust Code; Discretionary Trusts; Effect of Standard. Amend RSA 564 B:5-504 by inserting after paragraph (e) the following new paragraph:

(f) Except as otherwise provided in paragraph (c), if a trustee has the discretion to make a distribution to a beneficiary and exercises that discretion by directly paying expenses on behalf of the beneficiary, the trustee is not liable to a creditor of the beneficiary:

(1) whether or not the trust contains a spendthrift provision; and

(2) even if directly paying the beneficiary's expenses exhausts the income and principal of the trust.

11 Uniform Trust Code; Creditor's Claim Against Settlor; Additional Exclusion for Certain Irrevocable Trusts. Amend RSA 564-B:5-505(a)(2) to read as follows:

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subparagraph shall not apply to:

(A) an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. 1396p(d)(4) or similar federal law governing the transfer to such a trust[-]; or

(B) an irrevocable trust solely because of the existence or exercise of a discretionary power granted to the trustee by the terms of the trust, court order, agreement of the qualified beneficiaries or any other provision of law (or the existence or exercise of a discretionary power granted to a trust advisor or trust protector by the terms of the trust, court order, agreement of the qualified beneficiaries, or any other provision of law, to direct the trustee) to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

12 Uniform Trust Code; Additional Exclusion for Certain Irrevocable Trusts. Amend RSA 564 B:5-505(b)(2) to read as follows:

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of:

(A) the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code ~~[of 1986]~~, or

(B) The amount specified in section 2503(b) of the Internal Revenue Code [of 1986, in each case as in effect on the effective date of this chapter, or as later amended].

13 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.

14 Uniform Trust Code; Directed Trusts. Amend RSA 564-B:7-711 is repealed and reenacted to read as follows:

564-B:7-711 Directed Trusts. If the terms of the trust, an agreement of the qualified beneficiaries, or a court order requires a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector and the trustee, trust advisor, or trust protector acts in accordance with such direction, then the trustee, trust advisor, or trust protector shall be treated as an excluded fiduciary.

15 Uniform Trust Code; Trustee Duty to Inform. Amend RSA 564-B:8-813(b) to read as follows:

(b) A trustee shall keep the qualified beneficiaries of an irrevocable trust who have attained 21 years of age and those having the rights of a qualified beneficiary reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. **A trustee shall be presumed to have**

fulfilled this duty if the trustee provides the information described in paragraphs (c) and (d). Unless unreasonable under the circumstances, a trustee of an irrevocable trust shall promptly respond to the request of any qualified beneficiary or one having the rights of a qualified beneficiary for information related to the administration of the trust. ~~[A trustee shall be presumed to have fulfilled the duty under this subsection if the trustee provides the information described in subsections (c) and (d). The]~~ A trustee may provide any other information the trustee deems necessary or appropriate to keep beneficiaries reasonably informed.

16 Uniform Trust Code; Trustee's Discretionary Power. RSA 564-B:8-814(b)-(d) are repealed and reenacted to read as follows:

(b) Subject to the provisions of paragraph (a), if a distribution to or for the benefit of a beneficiary is subject to the exercise of the trustee's discretion, whether or not the terms of a trust include a standard to guide the trustee in making distribution decisions, then the beneficiary's interest is neither a property interest nor an enforceable right, but a mere expectancy.

(c) Subject to the provisions of paragraph (a), unless the terms of the trust manifestly provide otherwise, if the terms of a trust permit distributions among a class of beneficiaries, distributions to or for the benefit of whom is subject to the exercise of the trustee's discretion without a standard to guide the trustee in making distribution decisions, then the trustee may make distributions unequally among the beneficiaries and may make distributions entirely to one beneficiary to the exclusion of the other beneficiaries.

(d) Subject to paragraph (f), and unless the terms of the trust expressly indicate that a rule in this paragraph does not apply:

(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; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power whose exercise is limited or prohibited by paragraph (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special trustee with authority to exercise the power.

(f) Paragraph (d) does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction was previously allowed under section 2056(b)(5) or 2523(e) of the Internal Revenue Code;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

17 Uniform Trust Code; Powers to Direct Trustee. RSA 564-B:8-808 is repealed and reenacted to read as follows:

564-B:8-808 Powers to Direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust, an agreement of the qualified beneficiaries, or a court order, confer upon a person (other than the settlor of a revocable trust) the power to direct certain actions of the trustee, then the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person who holds a power to direct is a trust advisor, except to the extent that the person is a beneficiary of the trust and, under such power, the person may direct the trustee to make distributions.

18 New Section; Uniform Trust Code; Governing Law. Amend article 9 of RSA 564-B by inserting after section 564-B:9-906 the following new section:

564-B:9-907 The provisions of article 9 of this code shall be construed as pertaining to the administration of a trust and as applicable to any trust that is administered in this state or that is governed by the laws of this state.

19 Uniform Trust Code; Trust Advisors and Trust Protectors. Article 12 of RSA 564-B is repealed and reenacted to read as follows:

ARTICLE 12

TRUST PROTECTORS AND TRUST ADVISORS

564-B:12-1201 Powers of Trust Advisors and Trust Protectors.

(a) A trust protector or trust advisor is any person, other than a trustee, who under the terms of the trust, an agreement of the qualified beneficiaries, or a court order has a power or duty with respect to a trust, including, without limitation, one or more of the following powers:

(1) the power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including (without limitation) any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) the power 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;

(3) the power to appoint a successor trust protector;

(4) the power to review and approve a trustee's trust reports or accountings;

(5) the power to change the governing law or principal place of administration of the trust;

(6) the power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) the power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) the power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) the power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any non-charitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor, or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) the power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) the power to advise the trustee or cotrustee concerning any beneficiary;

(12) the power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets; and

(13) the power to direct the acquisition, disposition, or retention of any trust investment.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

564-B:12-1202 Trust Advisors and Trust Protectors as Fiduciaries.

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

564-B:12-1203 Trust Advisor and Trust Protector Subject to Court Jurisdiction. By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally 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 relating to a decision, action, or inaction of the trust advisor or trust protector.

564-B:12-1204 No Duty to Review Actions of Trustee, Trust Advisor, or Trust Protector.

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provides otherwise, the excluded fiduciary shall have no duty to:

- (1) monitor the conduct of the trustee, trust advisor, or trust protector;
- (2) provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or
- (3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent clear and convincing evidence to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority (such as confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee, trust advisor, or trust protector's direction or other information pursuant to RSA 564-B:8-813), shall be presumed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee, trust advisor, or trust protector's authority.

564-B:12-1205 Fiduciary's Liability for Action or Inaction of Trustee, Trust Advisor, and Trust Protector. An excluded fiduciary is not liable for (i) any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector or (ii) any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

20 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:1-104(h)(1) to read as follows:

(1) The trustee shall mail notice of the proposed action to all qualified beneficiaries (as defined in RSA 564-B:1-103(12)) ~~[who are adults]~~ **of the trust who have attained 21 years of age** and to those persons who have the rights of a qualified beneficiary with respect to the trust under RSA 564-B:1-110. Notice may be given to any other

beneficiary. Notice of the 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.

21 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:1-104(h)(4)-(5) to read as follows:

(4) If a trustee does not receive a written objection to the proposed action from the beneficiary **or the person who has the rights of a qualified beneficiary** within the applicable period, the trustee is not liable for the action to a beneficiary if:

(A) notice is mailed to ~~the~~ **such** beneficiary~~[-]~~ (or a person who may represent and bind the beneficiary under the provisions of article 3 of RSA 564-B) or ~~the~~ **such** person ~~[who has the rights of a qualified beneficiary]~~ at the address determined by the trustee after reasonable diligence;

(B) ~~the~~ **such** beneficiary (or a person who may represent and bind the beneficiary under the provisions of article 3 of RSA 564-B) or ~~the~~ **to such** person ~~[who has the rights of a qualified beneficiary]~~ receives actual notice; or

(C) ~~the~~ **such** beneficiary (or a person who may represent and bind the beneficiary under the provisions of article 3 of RSA 564-B) or ~~the~~ **such** person ~~[who has the rights of a qualified beneficiary]~~ 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, a beneficiary or a person who has the rights of a qualified 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 or a person who has the rights of a qualified 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 or a person who has the rights of a qualified 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 qualified beneficiaries of the trust ~~[who are adults]~~ **who have attained 21 years of age** and those persons who have the rights of a qualified beneficiary 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 or a person who has the rights of a qualified beneficiary may petition the court to have the action performed and has the burden of proof as to whether it should be performed.

22 Uniform Principal and Income Act; Distributions. Amend RSA 564-C:2-201(3) to read as follows:

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will or the terms of the trust 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 and no interest or other amount is provided for by the will or by the terms of the trust ~~[then,]~~ **and** if the pecuniary amount is not distributed to the beneficiary within one year of the date of death of the testator or the date the income interest ends, **then** the fiduciary shall distribute to the beneficiary interest at the rate prescribed in RSA 336:1, II **on any amount that remains undistributed after such one-year anniversary until such pecuniary amount is distributed in full.**

23 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:5-501(a) to read as follows:

(a) **Except as otherwise ordered by a court**, so much of the compensation of the trustee and of any person providing investment advisory or custodial services to the trustee, and **so much of the** expenses for accounting, judicial proceedings, or other matters that involve the income and remainder interests as shall be determined by the trustee.

24 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:5-502(a)(1) to read as follows:

(1) ~~[the remaining 1/2 of the disbursements described in RSA 564-C:5-501(1) and (2) except as otherwise ordered by court]~~ ***Such of the disbursements described in paragraph (a) of RSA 564-C:5-501 as are not charged to income;***

25 Uniform Principal and Income Act; Trustee Notice. Amend RSA 564-C:6-602(b) to read as follows:

(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 of a decedent who dies on or after the effective date of this chapter; ***and***

(4) to any ***other*** estate or testamentary trust upon the approval by a court of competent jurisdiction, upon either (A) a petition filed by an interested person or (B) the court on its own motion.

26 Repeal. RSA 564-A:3-c, relative to the power to convert to unitrusts, is repealed.

27 New Section; Uniform Principal and Income Act; Trustee's Power to Convert to Unitrust. Amend RSA 564-C by inserting after section 1-105 the following new section:

564-C:1-106 Trustee's Power to Convert to Unitrust.

(a) Unless expressly prohibited by the terms of the trust, a trustee may convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

(A) are currently eligible to receive income from the trust;

(B) would be eligible, if a power of appointment were not exercised, to receive income from the trust if the interest of all the beneficiaries eligible to receive income under subparagraph (a)(2)(A) were to terminate immediately before the giving of notice; and

(C) would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

(3) There is at least one sui juris beneficiary under subparagraph (a)(2)(A) and at least one sui juris beneficiary under subparagraph (a)(2)(B).

(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph (a)(2).

(b)(1) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

(A) A beneficiary timely objects to the conversion to a unitrust.

(B) There are no sui juris beneficiaries under subparagraph (a)(2)(A).

(C) There are no sui juris beneficiaries under subparagraph (a)(2)(C).

(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(c) In deciding whether to exercise the power conferred by paragraph (a), a trustee may consider, among other things, all of the following:

- (1) the size of the trust;
- (2) the nature and estimated duration of the trust;
- (3) the liquidity and distribution requirements of the trust;
- (4) the needs for regular distributions and preservation and appreciation of capital;
- (5) the expected tax consequences of the conversion;
- (6) 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; and the extent to which an asset is used by a beneficiary.
- (7) to the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the terms of the trust;
- (8) whether and to what extent the terms of the trust gives the trustee the power to invade principal or accumulate income or prohibits 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; and
- (9) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(d) After a trust is converted to a unitrust, all of the following apply:

- (1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:
 - (A) from appreciation of capital;
 - (B) from earnings and distributions from capital; or
 - (C) from both.
- (2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.
- (3) Under the terms of the trust, the term "income" shall mean an annual distribution (the unitrust distribution) equal to not less than 3 percent nor more than 5 percent (the payout percentage) of the net fair market value of the trust's assets as determined at the end of the calendar year, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:
 - (A) The 3 preceding years; or
 - (B) The period during which the trust has been in existence.

(e) The trustee may in the trustee's discretion from time to time determine all of the following:

- (1) The effective date of a conversion to a unitrust.
 - (2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.
 - (3) The frequency of unitrust distributions during the year.
 - (4) The effect of other payments from or contributions to the trust on the trust's valuation.
 - (5) How frequently to value nonliquid assets and whether to estimate their value.
 - (6) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.
 - (7) Any other matters necessary for the proper functioning of the unitrust.
- (f)(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.
- (2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be paid from net income, as such term would be determined if the trust were not a unitrust. To the extent net income is insufficient, the unitrust distribution shall

be paid from net realized short-term capital gains. To the extent income and net realized short-term capital gains are insufficient, the unitrust distribution shall be paid from net realized long-term capital gains. To the extent income and net realized short-term and long-term capital gains are insufficient, the unitrust distribution shall be paid from the principal of the trust.

(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

(1) select a payout percentage different than 3 to 5 percent;

(2) provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit;

(3) average the valuation of the trust's net assets over a period other than 3 years; or

(4) Reconvert from a unitrust.

(h) A conversion to a unitrust does not affect a term of the trust directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(i) A trustee may not convert a trust into a unitrust in any of the following circumstances:

(1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(2) If the unitrust distribution would be made from any amount which is permanently set aside for charitable purposes under the terms of the trust and for which a federal estate or gift tax deduction has been taken, unless both income and principal are so set aside.

(3) If:

(A) Possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for federal income tax purposes; and

(B) The individual would not be treated as the owner if the trustee did not possess the power to convert.

(4) If:

(A) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to federal estate or gift tax with respect to an individual; and

(B) the assets would not be subject to federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(5) If the conversion would result in the disallowance of a federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(6) If the trustee is a beneficiary of the trust.

(j)(1) If subparagraph (i)(3), (i)(4), or (i)(5) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

(2) If subparagraph (i)(3), (i)(4), or (i)(5) applies to all the trustees, the trustees may petition the court to direct a conversion.

(k) A trustee may permanently release the power conferred by paragraph (a) or may release the power conferred by paragraph (a) for a specified period including a period measured by the life of an individual to convert to a unitrust if any of the following apply:

(1) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subparagraph (i)(3), (i)(4), or (i)(5).

(2) 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 paragraph (i).

(l) The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other than sui juris beneficiaries.

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a unitrust, to reconvert from a unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

(n) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in New Hampshire or that is governed by the laws of this section unless:

(1) the terms of the trust reflect an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) the trust is a trust having a guaranteed annuity interest or fixed percentage interest as described in section 170(f)(2)(B) of the Internal Revenue Code, a pooled income fund (within the meaning of section 642(c)(5) of the Internal Revenue Code), a charitable remainder trust (within the meaning of section 664(d) of the Internal Revenue Code), a qualified subchapter S trust (within the meaning of section 1361(c) of the Internal Revenue Code), a personal residence trust (within the meaning of section 2702(a)(3)(A) of the Internal Revenue Code), or a trust in which one or more settlors retained a qualified interest (within the meaning of section 2702(b) of the Internal Revenue Code);

(3) one or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard or that can be exercised to discharge a duty of support he or she possesses; or

(4) the terms of the trust expressly prohibit the use of this section by specific reference to the chapter or expressly states the settlor's intent that net income not be calculated as a unitrust amount.

28 New Chapter; Qualified Dispositions in Trust Act. Amend RSA by inserting after chapter 564-C the following new chapter:

CHAPTER 564-D

QUALIFIED DISPOSITIONS IN TRUST ACT

564-D:1 Definitions.

I. "Claim" means a right to payment, whether or not the right is reduced to judgment liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

II. "Creditor" means, with respect to a transferor, a person who has a claim.

III. "Debt" means liability on a claim.

IV. "Disposition," means a conveyance, assignment or any other transfer of property, including a change in the legal ownership of property occurring upon the substitution of one trustee for another or the addition of one or more new trustees, or the exercise of a power so as to cause a transfer of property to a trustee or trustees. The term "disposition" shall not include the release or relinquishment of an interest in property that theretofore was the subject of a qualified disposition.

V. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and as in effect from time to time.

VI. "Property" means real property, personal property, and interests in real or personal property.

VII. "Qualified disposition" means a disposition by or from a transferor to a qualified trustee or qualified trustees, with or without consideration, by means of a trust instrument.

VIII. "Spouse" and "former spouse" means only persons to whom the transferor was married at, or before, the time the qualified disposition is made.

IX. "Transferor" means any person as an owner of property; as a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate, or the creditors of the holder's estate; or as a trustee, directly or indirectly, who makes a disposition or causes a disposition to be made.

564-D:2 Trust Instrument Defined.

I. For the purposes of this chapter, a trust instrument is a trust instrument (within the meaning of RSA 564-B:1-103(20)) that appoints a qualified trustee for the property that is the subject of a disposition and meets the following requirements:

- (a) The trust instrument expressly incorporates the law of this state to govern the validity, construction, and administration of the trust;
- (b) The trust instrument is irrevocable; and
- (c) The trust instrument provides that the interest of the transferor or other beneficiary in the trust property or the income therefrom may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income therefrom to the beneficiary, and such provision of the trust instrument shall be deemed to be a restriction on the transfer, assignment, pledge, or mortgage of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of section 541(c)(2) of the Bankruptcy Code (11 U.S.C. section 541(c)(2)) as it exists as of the time such restriction is established.

II. For purposes subparagraph I(b), a trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers and interests:

- (a) A transferor's power to veto a distribution from the trust;
- (b) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death;
- (c) The transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument;
- (d) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of section 664(d) of the Internal Revenue Code) and the transferor's right, at any time, and from time to time, to release, in writing delivered to the qualified trustee, all or any part of the transferor's retained interest in such trust, in favor of one or more charitable organizations that have a remainder interest in such trust at the time of such release;
- (e) The transferor's receipt each year of a percentage, not to exceed 5 percent, specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument;
- (f) The transferor's potential or actual receipt or use of principal if such potential or actual receipt or use of principal would be the result of a qualified trustee or qualified trustees, including a qualified trustee or qualified trustees acting at the direction of a trust advisor described in RSA 564-D:4, acting either in such qualified trustee's or qualified trustees' sole discretion or pursuant to an ascertainable standard contained in the trust instrument;
- (g) The transferor's right to remove a trustee or trust advisor and to appoint a new trustee or trust advisor, other than a person who is a related or subordinate party with respect to the transferor (within the meaning of section 672(c) of the Internal Revenue Code);
- (h) The transferor's potential or actual use of real property held under a personal residence trust (within the meaning of such term as described in section 2702(c) of the Internal Revenue Code);

(i) The transferor's potential or actual receipt or use of a qualified annuity interest (within the meaning of such term described in section 2702 of the Internal Revenue Code); and

(j) The ability, whether pursuant to discretion or direction, of a qualified trustee to pay, after the transferor's death, all or any part of the transferor's debts outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate inheritance tax imposed on or with respect to the transferor's estate.

III. For purposes of subparagraph I(b), a trust instrument shall not be deemed revocable on account of the transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income if such receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and such receipt of income or principal results from (i) the qualified trustee's acting in such qualified trustee's discretion or (ii) the qualified trustee acting at the direction of a trust advisor who is acting in such trust advisor's discretion. Any distribution to pay income taxes made under discretion included in a trust instrument pursuant to subparagraphs II(c), (f), and (i) may be made by direct payment to the taxing authorities.

IV. A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee may not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of paragraph I.

564-D:3 Qualified Trustee Defined. For the purposes of this chapter, a qualified trustee is any person, other than the transferor, who in the case of a natural person, is a resident of this state or who, in all other cases, is a state or federally chartered bank or trust company having a place of business in New Hampshire, is authorized to engage in a trust business in this state, and maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records in this state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation in this state of fiduciary income tax returns for the trust, or otherwise materially participates in this state in the administration of the trust.

564-D:4 Persons Not Eligible to be Considered a Qualified Trustee; Appointment of Trust Advisors. Neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in RSA 564-D:3 may be considered a qualified trustee. However, nothing in this chapter precludes a transferor from appointing one or more trust advisors (whether or not such trust advisors would meet the requirements imposed by RSA 564-D:3), including, but not limited to:

I. Trust advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors; and

II. Trust advisors who have authority under the terms of the trust instrument to direct, consent to, or disapprove distribution from the trust. For purposes of this section, the term trust advisor includes a trust advisor as described in RSA 564-B:1-103(26), a trust protector as described in RSA 564-B:1-103(27), or any other person who, in addition to a qualified trustee, holds one or more trust powers.

564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if such transferor serves as the trust advisor, his or her rights and powers as a trust advisor shall be limited to the right to disapprove distributions from the trust and the right to consent to a trustee's action or inaction relating to the investment of trust assets.

564-D:6 Successor Qualified Trustee. If a qualified trustee of a trust ceases to meet the requirements of RSA 564-D:3, and there remains no trustee that meets such requirements, such formerly qualified trustee shall be deemed to have resigned as of the time of such cessation, and thereupon the successor qualified trustee provided for in the trust instrument shall become a qualified trustee of the trust, effective upon such successor qualified trustee's acceptance of the office of trustee, or, if such named successor qualified trustee is unable or

unwilling to accept such office, or if the trust instrument does not provide for any successor qualified trustee, the probate court shall, upon application of any interested party, appoint a successor qualified trustee.

564-D:7 Disposition to More Than One Trustee. In the case of a disposition to more than one trustee, a disposition that is otherwise a qualified disposition may not be treated as other than a qualified disposition solely because not all of the trustees are qualified trustees.

564-D:8 Transferor's Powers and Rights. A qualified disposition is subject to RSA 564-D:9 to RSA 564-D:14, inclusive, notwithstanding a transferor's retention of any or all of the powers and rights described in RSA 564-D:2, II or the transferor's service as trust advisor pursuant to RSA 564-D:5. The transferor has only such powers and rights as are conferred by the trust instrument. Except as permitted by RSA 564-D:2 and RSA 564-D:5, a transferor has no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.

564-D:9 Restrictions on Attachment or Other Provisional Remedy Against Property. Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition unless such action is brought pursuant to the provisions of RSA 545-A, the Uniform Fraudulent Transfer Act, or RSA 564-D:15.

564-D:10 Extinguishment of Creditor's Claim. A creditor's claim under RSA 564-D:9 is extinguished unless:

(a) The creditor's claim arose before the qualified disposition was made and the action is brought within the limitations of RSA 545-A, the Uniform Fraudulent Transfer Act, in effect on the date of the qualified disposition; or

(b) Notwithstanding the provisions of RSA 545-A, the Uniform Fraudulent Transfer Act, the creditor's claim arose on or after the date of the qualified disposition, and the action is brought within 4 years after such date.

564-D:11 Qualified Disposition Made by Transferor Who is Trustee. A qualified disposition that is made by means of a disposition by a transferor who is a trustee is deemed to have been made as of the time, whether before, on, or after the effective date of this chapter, the property that is the subject of the qualified disposition was originally transferred to the transferor (or any predecessor trustee), in a form that meets the requirements of RSA 564-D:2, II, III, and IV.

564-D:12 Creditor's Rights With Respect to a Qualified Disposition. Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before, at the time of or after a qualified disposition, or any other person has only such rights with respect to a qualified disposition as are provided in RSA 564-D:9 to RSA 564-D:16, inclusive, and no such creditor nor any other person has any claim or cause of action against the trustee, or an advisor described in RSA 564-D:4, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition.

564-D:13 Actions Against Trustee of Trust That is the Subject of a Qualified Disposition Barred. Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee, or advisor described in RSA 564-D:4, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition, if, as of the date such action is brought, an action by a creditor with respect to such qualified disposition would be barred under RSA 564-D:9 to RSA 564-D:12, inclusive.

564-D:14 More Than One Qualified Disposition is Made by Means of Same Trust Instrument. If more than one qualified disposition is made by means of the same trust instrument:

I. The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in RSA 564-D:10;

II. With respect to each subsequent qualified disposition, the limitations period with respect to actions brought under RSA 545-A, the Uniform Fraudulent Transfer Act, shall commence on the date such qualified disposition is made; and

III. Any distribution to a beneficiary is deemed to have been made from the latest such qualified disposition.

564-D:15 Persons Exempt From Application of Qualified Disposition Provisions.

I. Notwithstanding the provisions of RSA 564-D:9 to RSA 564-D:14, inclusive, this chapter does not apply in any respect:

(a) To any person to whom the transferor is indebted on account of an antenuptial agreement or an agreement or order of court for the payment of support or alimony in favor of such transferor's spouse, former spouse, or children, or for a division or distribution of property in favor of such transferor's spouse or former spouse, but only to the extent of such debt; or

(b) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, which death, personal injury, or property damage is at any time determined to have been caused in whole or in part by the act or omission of either such transferor or by another person for whom such transferor is or was vicariously liable.

II. Paragraph I shall not apply to any claim for forced heirship or legitime or the elective share of the transferor's surviving spouse, unless the transferor make the qualified disposition for the purpose of defeating the surviving spouse's elective share rights.

564-D:16 Avoidance of Qualified Disposition. A qualified disposition is avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with such costs, including attorney's fees, as the court may allow. If any qualified disposition is avoided as provided in this section, then:

I. If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

(a) Such qualified trustee has a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by such qualified trustee in the defense of the action or proceedings to avoid the qualified disposition. It is presumed that such qualified trustee did not act in bad faith merely by accepting such property; and

(b) The qualified disposition is avoided subject to the proper fees, costs, preexisting rights, claims, and interests of such qualified trustee, and of any predecessor qualified trustee that has not acted in bad faith; and

II. If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition is subject to the right of such beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees of such trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. It is presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

564-D:17 Applicability. This chapter shall apply to qualified dispositions and dispositions by transferors who are trustees made after January 1, 2009.

564-D:18 Short Title. This chapter shall be known and may be referred to as the "Qualified Dispositions in Trust Act."

29 Uniform Trust Code; Representation; Reference Change. Amend RSA 564-B:3-304 to read as follows:

564-B:3-304 Representation by Person Having Substantially Identical Interest. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented. Nothing in this section shall expand or limit the virtual representation of sui juris beneficiaries for purposes of RSA ~~[564-A:3-e]~~ **564-C:1-106**.

30 Uniform Trust Code; Duties and Powers of Trustee; Reference Change. Amend RSA 564-B:8-816(a)(29) to read as follows:

(29) convert a trust into a unitrust as provided in RSA ~~[564-A:3-e]~~ **564-C:1-106**.

31 Uniform Principal and Income Act; Definitions; Reference Change. Amend RSA 564-C:1-102(8) to read as follows:

(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-e]~~ **564-C:1-106** 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.

32 Uniform Principal and Income Act; Fiduciary Duties; Reference Change. Amend RSA 564-C:1-103(b) to read as follows:

(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-e]~~ **564-C:1-106** 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.

33 Uniform Principal and Income Act; Trustee's Power to Adjust; Reference Change. Amend RSA 564-C:1-104(c)(8) to read as follows:

(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-e]~~ **564-C:1-106** or pursuant to the terms of the will or the terms of the trust.

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

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 540-FN, relative to a standard wellness plan for small employers. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 5-0. Senator Gottesman for the committee.

Commerce, Labor and Consumer Protection
March 18, 2008
2008-1055s
01/09

Amendment to SB 540-FN

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

AN ACT relative to New Hampshire HealthFirst, an affordable, wellness-based health insurance plan for small employers.

Amend the bill by replacing section 1 with the following:

1 New Section; New Hampshire HealthFirst; Standard Wellness Plan for Small Employers. Amend RSA 420-G by inserting after section 4-a the following new section:
420-G:4-b New Hampshire HealthFirst; Standard Wellness Plan for Small Employers.

I. The purpose of this section is to:

(a) Promote the availability of more affordable health coverage in the small employer market by engaging consumers, health care providers, insurers, and small employers to address the underlying costs of health care through better care management and more efficient utilization of health care services without increasing overall cost sharing requirements or reducing coverage for services essential to health and wellness.

(b) Enhance competition among health carriers in the small employer market by facilitating comparison of a standard plan.

II. If a health carrier offers coverage in the small employer market in this state and had at least 1,000 covered lives in this market at the end of the prior calendar year, such carrier shall be required to offer the standard wellness plan to small employers. The standard wellness plan shall be offered on a guaranteed issue basis to all small employers in the state. If a health carrier is part of an insurance holding company system, as defined in RSA 401-B:1, IV, in which 2 or more affiliates, as defined in RSA 401-B:1, I, are licensed health carriers in the state with a combined New Hampshire small group membership of at least 1,000 covered lives at the end of the prior calendar year, the requirement in this paragraph to offer the standard wellness plan to all small employers shall apply. However, only one such health carrier affiliate in the holding company group shall be subject to the requirement.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the requirements for the standard wellness plan. Before adopting rules, the commissioner shall convene a standing advisory committee to include representatives of small employers, business groups and associations of small employers, consumers who obtain their coverage through the small employer market, one representative, appointed by the speaker of the house of representatives and one member of the senate, appointed by the president of the senate. The advisory committee shall, at least once every 3 years, make recommendations to the insurance commissioner on the requirements for the standard wellness plan. Prior to making these recommendations, the advisory committee shall consult with interested health carriers, health insurance producers, health care providers, and, as necessary and appropriate, other available experts. The plan shall include benefit structure, cost sharing requirements, and provider payment initiatives to promote the delivery of quality care. The committee shall recommend an out-of-pocket maximum for the standard wellness plan.

IV. The commissioner shall ensure that the standard wellness plan creates incentives for consumers, health care providers, employers, and/or health carriers to:

(a) Promote wellness.

(b) Promote primary care, preventive care, and a medical home model.

(c) Manage and coordinate care for persons with chronic health conditions or acute illness.

(d) Promote the use of cost effective care.

(e) Promote quality of care by the use of evidence-based, best practice standards and patient-centered care.

V. To the extent practicable, health carriers shall be permitted to utilize existing programs to meet the requirements for the standard wellness plan.

VI. The plan shall be made available in accordance with this section on or before October 1, 2009 and shall be reviewed and revised as necessary, but no less frequently than once every 3 years thereafter.

VII.(a) The standard wellness plan requirements shall be established so that small employer health insurance carriers would be reasonably expected to set the plan's health coverage plan rate, as defined in RSA 420-G:4, I(c), at or below 10 percent of the prior year's median statewide wage as reported by the United States Department of Labor. Small employer carriers shall be required to file their standard wellness plan rates 60 days prior to the date on which the plan is to be made available. If no small employer carrier files a health coverage plan rate at or below the stated target, then the commissioner shall engage actuarial experts at the expense of the small employer carriers who are subject to the requirements of this section and hold a hearing to determine whether small employer carriers shall be compelled to offer the standard wellness plan at a health coverage plan rate equal to the target or whether changes should be made to the standard wellness plan requirements to adjust benefits or cost sharing requirements.

(b) Between plan revisions, carriers may request rate adjustments with appropriate supporting documentation. However, the commissioner shall not grant any rate adjustment in excess of the carrier's overall small group trend.

VIII. In establishing the requirements for the standard wellness plan, the commissioner:

(a) May require the use of qualified wellness or disease management programs and the use of rating factors for such programs as provided in RSA 420-G:4-a.

(b) Shall prohibit small employer carriers from offering nonconforming products with similar benefit designs with the intent or likely effect of undermining the purposes of this section.

(c) Shall require small employer carriers to illustrate or quote the standard wellness plan together with any proposal or quote provided to any small employer.

IX. Except as specifically provided in this section, all statutory and regulatory requirements applicable to small employer health benefit plans shall apply to the standard wellness plan.

2008-1055s

AMENDED ANALYSIS

This bill establishes New Hampshire HealthFirst, a standard wellness plan for small employers.

Amendment adopted.

Senator Gottesman moved the question.

Without objection Senator Larsen moved to close debate.

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

A roll call was requested by Senator Gatsas.

Seconded by Senator Foster.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Roberge, Gatsas.

Yeas: 21 - Nays: 3

Adopted.

Ordered to third reading.

SB 482, relative to ethical standards for volunteer service in the executive branch. Election Law and Internal Affairs Committee. Ought to Pass, Vote 3-0. Senator Burling for the committee.

Adopted.

Ordered to third reading.

SB 417, relative to changes to the shoreland protection act. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development

March 11, 2008

2008-0967s

06/10

Amendment to SB 417

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

1 New Paragraphs; Projects Exempt from Permit Requirement. Amend RSA 483-B:5-a by inserting after paragraph IV the following new paragraphs:

IV-a. Subject to paragraph IV-b, activities in the protected shoreland shall not require a permit under this section if:

(a) The activities are specifically identified in an application that has been the subject of notice by a planning board under RSA 676:4, I(d) or the zoning board of adjustment prior to July 1, 2007, regardless of whether an approval has been issued, provided that such application is ultimately approved by the municipal board or boards having authority over the activities covered by the application;

(b) The activities are specifically identified in a building permit application submitted to a municipality prior to July 1, 2007;

(c) A concrete foundation for the primary structure was installed as part of an active project prior to October 1, 2008.

(d) The activities are specifically identified in a variance or redevelopment waiver issued by the department prior to October 1, 2008 under RSA 483-B; unless the

approval specifically requires the permittee to obtain a permit under this section if work was not commenced prior to October 1, 2008; or

(e) The activities were specifically approved in a permit issued under RSA 485-A:17 prior to October 1, 2008, unless the approval specifically requires the permittee to obtain a permit under this section if work was not commenced prior to October 1, 2008.

IV-b. An exemption shall not be available under paragraph IV-a if:

(a) The applicant proposes changes to the activities from those that would otherwise be exempt under paragraph IV-a, and such changes would increase impacts in the natural woodland buffer established by RSA 483-B:9, V(b)(1); or

(b) The applicable permit, approval, variance, or redevelopment waiver expires or otherwise lapses prior to the commencement of work, or is revoked for cause by the issuing authority.

2 Natural Woodland Buffer. Amend RSA 483-B:9, V(b)(2)(A) to read as follows:

(A) At least 50 percent of the area outside of ***the waterfront buffer, exclusive of*** impervious surfaces, shall be maintained in an undisturbed state. ***No chemicals, including pesticides of any kind, except as allowed under special permit issued by the division of pesticide control under rules adopted by the pesticide control board under RSA 430:31, IV(b), or fertilizers of any kind except those specified in RSA 483-B:9, II(d), shall be applied.*** Owners of lots legally developed prior to ~~April~~ **October** 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an undisturbed state, except as required by the department under RSA 483-B:11, II. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.

3 Effective Date. This act shall take effect April 1, 2008 at 12:01 a.m.
2008-0967s

AMENDED ANALYSIS

This bill adds certain exemptions from the permit requirements of the shoreland protection act.

MOTION TO TABLE

Senator Fuller Clark moved to have SB 417 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 417, relative to changes to the shoreland protection act.

SCR 10, urging the New Hampshire delegation to actively seek an increase in federal funding for wastewater treatment facility improvements. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

Energy, Environment, and Economic Development
March 11, 2008
2008-0965s
06/09

Amendment to SCR 10

Amend the resolution by replacing the first paragraph after the resolving clause with the following:

That the state of New Hampshire hereby requests that the New Hampshire congressional delegation seek an increase in federal funding for wastewater treatment facility improvements such that the ratio of cost-sharing will be apportioned to 60 percent federal, 30 percent state, and 10 percent local, consistent with grant programs available during the 1960's prior to the passage of the federal Clean Water Act; and

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 383, establishing a commission to develop a plan for the expansion of transmission capacity in the north country. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-0. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development
March 18, 2008
2008-1071s
06/09

Amendment to SB 383

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

1 Findings. The general court finds that:

I. In 2007, 354:1, the general court concluded that "it is in the public interest and to the benefit of New Hampshire to encourage the development of renewable energy" and that instrumental to such a goal the "existing transmission infrastructure, particularly in the northern part of the state, will need to be upgraded or replaced or new transmission facilities will need to be built."

II. It is in the public interest to avoid further delays caused by uncertainties in the ISO-NE Generator Interconnection Study Queue and cost responsibility for the design and construction of transmission facilities in the north country necessary to integrate new renewable resources into the electric grid.

III. It is in the public interest to take immediate steps to undertake appropriate technical and economic studies necessary to ensure the timely development of renewable energy generating projects in the north country.

IV. It is in the public interest, as well as in the economic interest of the region, and in the best interest of system reliability, for the public utilities commission to support regional efforts to address timely approvals of remote transmission facilities.

V. It may be in the public interest to move forward on a near-term basis with a New Hampshire-only transmission improvements plan in order to ensure the timely development of renewable energy generating projects in the north country.

2 Commission Established. There is established a commission to develop a plan for the expansion of transmission capacity in the north country.

3 Membership and Compensation.

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

- (a) Two members of the senate, appointed by the president of the senate.
- (b) Two members of the house of representatives, appointed by the speaker of the house of representatives.
- (c) The director of the office of energy and planning, or designee.
- (d) The commissioner of the department of resources and economic development, or designee.
- (e) A commissioner of the public utilities commission, or designee.
- (f) The governor, or designee.
- (g) Three representatives of the north country, appointed by the governor.
- II. The commission shall include as non-voting participants the following:
 - (a) A representative of active applications in the ISO-NE Generator Interconnection Study Queue, appointed by ISO-NE.
 - (b) A representative of the unregulated energy supply industry, appointed by that industry.
 - (c) A representative of the (FERC) Federal Energy Regulatory Commissioner or an individual with expertise in the area of federal electricity transmission regulation, appointed by that commission.
 - (d) A representative of Public Service of New Hampshire, appointed by that organization.
 - (e) A representative of National Grid Group, appointed by that organization.
 - (f) A representative from New England Power Generators Association, appointed by the association.

III. The commission shall seek input and participation ISO-NE.

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

4 Duties. The commission:

I. Shall develop a proposal for the upgrade of the transmission system in the north country no later than December 1, 2008, with the support of the public utilities commission and a consensus of the state's electric distribution providers, electric transmission companies, the consumer advocate, the commission staff and developers of renewable energy projects who have active applications in the ISO-NE Generator Interconnection Study Queue as of the effective date of this act. Consideration in the development of such a plan shall be given to both a regional solution and, in the event that a regional solution is not recommended for the Coos Loop, a New Hampshire-only solution shall also be explored. As part of the proposal, the commission shall:

- (a) Expedite the necessary studies required to achieve transmission expansion.
- (b) Determine what the options, process, and timelines would be for pursuing a regional solution.

(c) Direct the public utilities commission, in conjunction with the formulation of the proposal, to seek a petition to FERC for approval for expansion, upgrades, and pooled transmission facility determination for the Coos Loop.

II. Is authorized to utilize the services of the public utilities commission and its staff, and to hire a consultant to facilitate the development of a plan, with the participation of interested parties, to facilitate the transmissions upgrade in the north country.

III. Is authorized to obtain the services of a consultant to complete any necessary engineering or economic studies to contribute to any such studies. The commission may spend up to \$200,000 for the purposes of this act. The commission is authorized to obtain grants and contributions for the purposes of this section, in accordance with RSA 4:8, and is authorized to spend up to \$100,000 from funds received pursuant to utility assessment under RSA 365:37, RSA 362-F:10, or both, for this purpose. The commission shall be exempt from the provisions of RSA 21-I concerning competitive bidding procedures for the purpose of obtaining a consultant or hiring an entity to complete a study as authorized by this section.

5 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this act. Seven members of the commission shall constitute a quorum. The commission shall meet monthly to receive updates from the public utilities commission on the progress that is being made and to provide input to the public utilities commission with regard to achieving the necessary transmission capacity expansion in a timely fashion.

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 December 1, 2008.

7 Site Evaluation Committee; Review of Renewable Energy Projects. Amend RSA 162-H:4, V by inserting after subparagraph (b) the following new subparagraph:

(c) The committee shall give expedited public interest consideration to any project which is formally a party to any settlement agreement approved by the commission.

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

Amendment adopted.

Senator Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 19, 2008

2008-1087s

06/09

Floor Amendment to SB 383

Amend subparagraph II(a) of section 3 of the bill by replacing it with the following:

(a) Representatives of active applications in the ISO-NE Generator Interconnection Study Queue, one member appointed by U.S. Senator Judd Gregg, one member appointed by U.S. Senator John Sununu, one member appointed by U.S. Congressman Paul Hodes, and one member appointed by U.S. Congresswoman Carol Shea Porter.

MOTION TO TABLE

Senator Barnes moved to have SB 383 laid on the table.

The question is on the motion to table.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Kenney, Odell, Roberge, Bragdon, Gottesman, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 11 - Nays: 13

Motion failed.

The question is on the adoption of the floor amendment.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

SB 419, relative to the duties of the energy planning and advisory board and restructuring policy principles. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 3-0. Senator Odell for the committee.

Sen. Downing, Dist. 22

March 18, 2008

2008-1068s

06/09

Amendment to SB 419

Amend the bill by replacing section 1 with the following:

1 New Subparagraphs; Energy Planning and Advisory Board. Amend 2004, 164:2, III by inserting after subparagraph (b) the following new subparagraphs:

(c) The board shall oversee and coordinate with other boards and study committees whose duties include consideration of matters related to energy, including usage, planning, conservation, supply, environmental attributes, sale, distribution, transmission, or storage. If any disparities between such boards and study committees occur, the energy planning advisory board shall resolve such matters.

(d) The board shall review, beginning with the effective date of this section, the cumulative effects on the electric rates of New Hampshire residents and businesses of the passage of energy legislation, including but not limited to, the multiple pollutant reduction program under RSA 125-O and the renewable portfolio standard, related regional mandates that affect overall electric rates in New Hampshire such as the regional greenhouse gas initiative (RGGI), the forward capacity market and reliability-must-run requirements implemented through ISO New England Inc., and any additional energy or environmental regulatory requirements resulting from state, regional, or federal action that have the potential to affect electric rates.

(e) The board may work with the office of energy and planning and the public utilities commission to establish the qualifications requirements for applicants and to oversee uses of such funds and design the criteria for the use of energy efficiency funds from the multiple pollutant reduction program under RSA 125-O.

(f) The board shall monitor and collect data on the development of any administrative costs associated with the RGGI program, including fund oversight and distribution.

(g) The board shall monitor any federal action concerning renewable energy or controlling greenhouse gas emissions.

(h) The board shall chart and monitor consumer electricity costs on a yearly basis.

(i) The board shall provide a yearly report to the general court.

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

Amendment adopted.

Senator Cilley offered a floor amendment.

Sen. Cilley, Dist. 6

March 20, 2008

2008-1092s

06/04

Floor Amendment to SB 419

Amend the bill by replacing section 1 with the following:

1 New Chapter; Energy Planning and Coordination. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ENERGY PLANNING AND COORDINATION

374-G:1 Energy Planning Advisory Board.

I. There is established an energy planning advisory board to monitor and assist in the implementation of the New Hampshire energy plan prepared by the governor's office of energy and community services pursuant to 2001, 121.

II.(a) The members of the committee shall be as follows:

(1) The governor, or designee.

(2) One member representing the office of energy and planning appointed by that office.

(3) One member of the senate energy, environment, and economic development committee, appointed by the president of the senate.

(4) One member of the house science, technology and energy committee, appointed by the speaker of the house of representatives.

(5) Two members representing the public utilities commission, appointed by the chairman.

(6) One member representing the department of administrative services, appointed by the commissioner.

(7) One member representing the department of environmental services, appointed by the commissioner.

(8) One member representing the university system of New Hampshire, appointed by the chancellor.

(9) One member representing the department of transportation, appointed by the commissioner.

(10) One member representing the department of resources and economic development, appointed by the commissioner.

(11) The consumer advocate, or designee.

(12) Two members of the business and industry community, appointed by the governor and council.

(13) Two members of the public representing renewable energy and energy efficiency interests appointed by the governor and council.

(b) The legislative members of the committee shall serve for the duration of their legislative term, and shall receive mileage at the legislative rate when attending to the duties of the board. Public members of the board shall serve for 3 years and until a successor is appointed.

III. Duties.

(a) The primary duties of the board shall be to meet on a regular basis to discuss energy policy and planning at the state level and develop strategic planning for the state's energy policies that include, but shall not be limited to:

(1) Supply and demand for energy resources.

(2) Transmission and distribution infrastructure for electricity, natural gas, and other transportable energy.

(3) Fuel diversity within the state and region.

(4) Supporting the department of transportation's planning efforts.

(5) Deliverable fuels.

(6) Energy efficiency and conservation opportunities.

(7) The state's role as a major energy consumer.

(8) The environmental effects of energy generation, transmission, and distribution.

(9) New Hampshire's role in regional energy issues.

(10) Periodic revision and update of the New Hampshire energy plan for currency as circumstances change.

(11) The board may consult and participate with members and groups of the business and residential communities within the state that may have important perspectives on energy planning.

IV. The members of the board shall elect a chairperson from among the members.

V. The board shall coordinate with other boards and study committees whose duties include consideration of matters related to energy, including usage, planning, conservation, supply, environmental attributes, sale, distribution, transmission, or storage. If any disparities between such boards and study committees occur, the energy planning advisory board shall report such matters to the legislature in its annual report, with recommendations for resolution as appropriate.

VI. The board shall review, in coordination with the public utilities commission, beginning with the effective date of this chapter, the cumulative effects on the electric rates of New Hampshire residents and businesses of the passage of energy legislation, including but not limited to, the multiple pollutant reduction program under RSA 125-O and the renewable portfolio standard, related regional mandates that affect overall electric rates in New Hampshire such as the regional greenhouse gas initiative (RGGI), the forward capacity market and reliability-must-run requirements implemented through ISO New England Inc., and any additional energy or environmental regulatory requirements resulting from state, regional, or federal action that have the potential to affect electric rates.

VII. The board shall monitor any federal action concerning renewable energy or controlling greenhouse gas emissions.

VIII. The board, in coordination with the public utilities commission, shall chart and monitor consumer electricity costs on a yearly basis.

IX. The board shall report annually to the governor, the speaker of the house of representatives and the president of the senate.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 4-1. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development
March 18, 2008
2008-1072s
09/03

Amendment to SB 451

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

1 New Chapter; Electric Utility Investment in Distributed Energy Resources. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ELECTRIC UTILITY INVESTMENT
IN DISTRIBUTED ENERGY RESOURCES

374-G:1 Purpose. Distributed energy resources can increase overall energy efficiency and provide energy diversity by eliminating, displacing, or better managing energy deliveries from the centralized bulk power grid, in keeping with the objectives of RSA 362-F:1. It is therefore in the public interest to stimulate investment in distributed energy resources in New Hampshire by encouraging New Hampshire electric public utilities to invest in distributed energy resources benefiting the transmission and distribution system under state regulatory oversight.

374-G:2 Definitions. In this chapter:

I. "Commission" means the public utilities commission.

II. "Distributed energy resources" means electric generation, energy storage, demand response, load reduction or control programs, and technologies or devices located on or interconnected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for minimizing transmission and distribution costs as provided in RSA 374-F:3, III. Distributed energy resources shall exclude generation projects in excess of 5 megawatts and generation projects intended to produce electric energy primarily for retail. In addition, any biomass-fueled generation project shall meet the emission requirements for eligible biomass technology under RSA 362-F:2, VIII and any fossil fueled generation project must meet the following emission standards (in lbs/MW-H): NO_x - 0.07; CO - 0.10; VOCs - 0.02. If a fossil fueled generation project produces combined heat and power, a credit to meet the emission standard may be applied at the rate of one MW-H for each 3.4 million BTUs of heat recovered, as long as such units achieve a minimum energy efficiency of 60 percent, measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs, and are installed as integrated combined heat and power applications.

374-G:3 Investments in Distributed Energy Resources. Notwithstanding any other provision of law to the contrary, as provided in RSA 374-G:4, a New Hampshire electric public utility may invest in or own distributed energy resources, located on the premises of a retail customer of the electric public utility. Distributed electric generation owned by or receiving investments from an electric utility under this section shall be limited to a cumulative maximum in megawatts of 12-1/2 percent of the utility's total distribution peak load in megawatts.

374-G:4 Rate Filing; Authorization.

I. A New Hampshire electric public utility may engage in a distributed energy resources program and may seek rate recovery for its investments in distributed energy resources from the commission by making an appropriate rate filing. Such filing shall include a detailed description and economic evaluation of the proposed investment and a discussion of the benefits of the proposal with specific reference to the factors listed in paragraph II. In addition, the utility shall describe any equipment or installation specifications, solicitations, and procurements it has or intends to implement and show that it has made reasonable efforts to involve local businesses in its program. The utility shall also provide evidence of compliance with any applicable emission limitations.

II. Prior to authorizing a utility's recovery of investments made in distributed energy resources, the commission shall determine that the utility's investment and its recovery in rates, as proposed, are in the public interest. Determination of the public interest under this section shall include but not be limited to consideration and balancing of the following factors:

(a) Whether the expected value of the economic benefits of the investment to the company's ratepayers over the life of the investment outweigh the economic costs to the company's ratepayers.

(b) The efficient and cost-effective realization of the purposes of RSA 362-F and the restructuring policy principles of RSA 374-F:3.

(c) The costs and benefits to any participating customer or customers.

(d) The energy security benefits of the investment to the state of New Hampshire.

(e) The environmental benefits of the investment to the state of New Hampshire.

(f) The economic development benefits and liabilities of the investment to the state of New Hampshire.

(g) The effect on the reliability, safety, and efficiency of electric service.

(h) The potential benefits and liabilities of the program to the state of New Hampshire.

(i) The effect on competition within the region's electricity markets and the state's energy services market.

III. Authorized and prudently incurred investments shall be recovered under this section in a utility's base distribution rates as a component of rate base, and cost recovery shall include the recovery of depreciation, a return on investment, taxes, and other operating and maintenance expenses directly associated with the investment, net of any revenues received by the utility directly attributable to the investment.

IV. The rate of return applied to investments authorized under this section shall be based on the utilities' most recent rate of return established by the commission. The commission shall add an incentive to the return on equity component of 25 to 100 basis points as it deems appropriate to encourage sufficient and timely investments in an approved distributed energy resource program.

V. The commission shall approve, disapprove, or approve with conditions a utility rate filing under this section within 90 days of its filing. The commission may extend this deadline to 6 months at its discretion for any filing involving an investment in excess of \$1,000,000. The commission may also extend the deadline at its discretion for failure of the applicant to respond to data requests on an expedited timeline.

374-G:5 Exemption; Rural Electric Cooperatives. The requirements for commission authorization under RSA 374-G:4 shall not apply to rural electric cooperatives for which a certificate of deregulation is on file with the commission.

374-G:6 Exclusion. Any renewable generating project funded in part by a distribution utility pursuant to this chapter shall not be included in the calculation of the total rated generating capacity under RSA 362-A:9, I for purposes of limiting net metered renewable generating projects.

2 Electric Utility Investment in distributed Energy Resources; Report. The public utilities commission shall prepare a report reviewing and evaluating utility distributed energy resources projects proposed and implemented under RSA 374-G, to be filed on November 1, 2013, with the governor, the president of the senate, the speaker of the house of representatives, and the chairmen of the house science technology, and energy committee and the senate energy, environment, and economic development committee. The report shall include any recommended changes to RSA 374-G.

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

MOTION TO TABLE

Senator Fuller Clark moved to have SB 451 laid on the table.

Adopted.

LAID ON THE TABLE

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources.

SB 523, relative to requirements for the estuary alliance for sewage treatment to take and hold land. Energy, Environment and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Fuller Clark for the committee.

Adopted.

Ordered to third reading.

HB 1151, relative to reporting dates for the instream flow pilot program. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24
March 18, 2008
2008-1057s
06/09

Amendment to HB 1151

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

- 4 Change in Effective Date. Amend RSA 2007, 267:15, IV to read as follows:
 - IV. The remainder of this act shall take effect ~~[April]~~ **July** 1, 2008.
- 5 Repeal. The following are repealed:
 - I. 2007, 267:13, relative to a contingency.
 - II. 2007, 267:15, II and III, relative to effective dates.
- 6 Effective Date.
 - I. Sections 4 and 5 of this act shall take effect upon its passage.
 - II. The remainder of this act shall take effect 60 days after its passage.

SPECIAL ORDER

Senator Larsen moved that without objection HB 1151 be Special Ordered to the Session on March 27.

HB 1151, relative to reporting dates for the instream flow pilot program.

MOTION TO REMOVE FROM THE TABLE

Senator Sgambati moved to have SB 384 removed from the table.

Adopted.

SB 384, relative to the repair of septic systems prior to the sale of waterfront property.

The question is on the adoption of the committee amendment.

Sen. Sgambati, Dist. 4

March 3, 2008

2008-0798s

08/09

Amendment to SB 384

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

1 Sale of Waterfront Property; Department Notification. Amend RSA 485-A:39 to read as follows:

485-A:39 Waterfront Property Sale; Site Assessment Study.

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at ~~his or her~~ **the owner's** expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an on-site inspection **and shall identify any remedial action required to meet the department's current standards for septic disposal systems and if the system is failing, the action necessary to bring the system into compliance.** If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be subject to the buyer's acceptance of the completed site assessment.

II. The site assessment study form shall become a part of the purchase and sale agreement.

III. The site assessment study form, with stated findings, shall be given to the buyer **and the seller** and receipt of the form shall be acknowledged in writing by the buyer **and the seller.**

IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver ~~approved plans of the septic disposal system~~ **the completed site assessment study form** pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed \$500.

V. The site assessment study shall consist of 3 sections:

(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.

(b) Section B shall include the lot size, slope, loading (based on the number of

bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.

(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.

~~[An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but must be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.]~~

VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the procedures for the availability and distribution of the form to interested parties.

VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.

VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that a system is in failure, the designer shall notify, in writing, the department and the local health officer, and shall include that information in the site assessment report.

IX. If no state-approved plan exists for the property, or the approved plan cannot be located, the assessor shall perform a standard dye test on the septic disposal system. Surfacing of the dye on the ground or in nearby surface waters shall be an indication of failure, and the assessor shall report that failure as provided in paragraph VIII.

2 Septic System Failure; Definition. Amend RSA 485-A:2, IV to read as follows:

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain ~~[or treat]~~ sewage or causes ~~[or threatens to cause]~~ the discharge of sewage on the ground surface or into adjacent surface ~~[or groundwaters]~~ ***waters.***

3 Developed Waterfront Property; Definition. Amend RSA 485-A:2, I to read as follows:

I. "Developed waterfront property" means any parcel of land which is contiguous to or within 200 feet of ~~[tidal waters or a great pond]~~ ***public waters*** as defined in ~~[RSA 4:40 a]~~ ***RSA 483-B*** and upon which stands a structure suitable for either seasonal or year-round

human occupancy.

4 Permit Renewal; Septic Designers. Amend RSA 485-A:35, I to read as follows:

I.**(a)** All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of ~~[\$40]~~ **\$80** and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of ~~each~~ **every other** year. Permits shall be renewable upon proper application, ~~[and payment of an annual fee of \$40]~~ **payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b).** A permit issued to any person may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541.

(b) Permitted designers shall complete a minimum of 3 hours annually of continuing education approved by the department.

5 Permit Renewal; Septic Installers. Amend RSA 485-A:36, I to read as follows:

I.**(a)** No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of ~~[\$40]~~ **\$80** and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of ~~each~~ **every other** year. Permits shall be renewable upon proper application ~~[and payment of an annual fee of \$40]~~ **payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b).** The installer's permit may be suspended, revoked or not renewed for

just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited with the state treasurer as unrestricted revenue.

(b) Permitted installers shall complete a minimum of 3 hours annually of continuing education approved by the department.

6 Effective Date. This act shall take effect January 1, 2009.

2008-0798s

AMENDED ANALYSIS

This bill:

I. Requires a site assessment study to identify remedial actions necessary.

II. Adds a section to the site assessment study.

III. Requires a septic disposal system designer to report remedial actions to the department of environmental services and the local health officer.

IV. Defines “developed waterfront property” and septic system “failure.”

V. Prescribes continuing education requirements for septic system designers and installers.

Amendment failed.

Senator Sgambati offered the committee amendment.

Sen. Sgambati, Dist. 4

March 3, 2008

2008-0798s

08/09

Amendment to SB 384

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

1 Sale of Waterfront Property; Department Notification. Amend RSA 485-A:39 to read as follows:

485-A:39 Waterfront Property Sale; Site Assessment Study.

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at ~~his or~~

~~her]~~ **the owner's** expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an on-site inspection **and shall identify any remedial action required to meet the department's current standards for septic disposal systems and if the system is failing, the action necessary to bring the system into compliance.** If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be subject to the buyer's acceptance of the completed site assessment.

II. The site assessment study form shall become a part of the purchase and sale agreement.

III. The site assessment study form, with stated findings, shall be given to the buyer **and the seller** and receipt of the form shall be acknowledged in writing by the buyer **and the seller.**

IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver ~~approved plans of the septic disposal system]~~ **the completed site assessment study form** pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed \$500.

V. The site assessment study shall consist of 3 sections:

(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.

(b) Section B shall include the lot size, slope, loading (based on the number of bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.

(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.

~~[An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but must be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.]~~

VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the

procedures for the availability and distribution of the form to interested parties.

VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.

VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that a system is in failure, the designer shall notify, in writing, the department and the local health officer, and shall include that information in the site assessment report.

IX. If no state-approved plan exists for the property, or the approved plan cannot be located, the assessor shall perform a standard dye test on the septic disposal system. Surfacing of the dye on the ground or in nearby surface waters shall be an indication of failure, and the assessor shall report that failure as provided in paragraph VIII.

2 Septic System Failure; Definition. Amend RSA 485-A:2, IV to read as follows:

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain ~~[or treat]~~ sewage or causes ~~[or threatens to cause]~~ the discharge of sewage on the ground surface or into adjacent surface ~~[or groundwaters]~~ ***waters.***

3 Developed Waterfront Property; Definition. Amend RSA 485-A:2, I to read as follows:

I. "Developed waterfront property" means any parcel of land which is contiguous to or within 200 feet of ~~[tidal waters or a great pond]~~ ***public waters*** as defined in ~~[RSA 4:40 a]~~ ***RSA 483-B*** and upon which stands a structure suitable for either seasonal or year-round human occupancy.

4 Permit Renewal; Septic Designers. Amend RSA 485-A:35, I to read as follows:

I.**(a)** All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of ~~[\$40]~~ ***\$80*** and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of ~~[each]~~ ***every other*** year. Permits shall be renewable upon proper application, ~~[and payment of an annual fee of \$40]~~ ***payment of a biennial fee of \$80, and documentation of compliance with the***

continuing education requirement of subparagraph (b). A permit issued to any person may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541.

(b) Permitted designers shall complete a minimum of 3 hours annually of continuing education approved by the department.

5 Permit Renewal; Septic Installers. Amend RSA 485-A:36, I to read as follows:

I.***(a)*** No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of ~~[\$40]~~ ***\$80*** and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of ~~each~~ ***every other*** year. Permits shall be renewable upon proper application ~~[and payment of an annual fee of \$40]~~ ***payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b).*** The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited with the state treasurer as unrestricted revenue.

(b) Permitted installers shall complete a minimum of 3 hours annually of continuing education approved by the department.

6 Effective Date. This act shall take effect January 1, 2009.

2008-0798s

AMENDED ANALYSIS

This bill:

I. Requires a site assessment study to identify remedial actions necessary.

II. Adds a section to the site assessment study.

III. Requires a septic disposal system designer to report remedial actions to the department of environmental services and the local health officer.

IV. Defines “developed waterfront property” and septic system “failure.”

V. Prescribes continuing education requirements for septic system designers and installers.

Amendment adopted.

A roll call was requested by Senator Gallus.

Senator Gallus withdrew his request for a roll call.

MOTION OF RECONSIDERATION

Senator Sgambati having voted with the prevailing side, moved reconsideration of SB 384 whereby the committee amendment was adopted.

Adopted.

SB 384, relative to the repair of septic systems prior to the sale of waterfront property.

Senator Sgambati offered a floor amendment.

Sen. Sgambati, Dist. 4

March 19, 2008

2008-1091s

08/10

Floor Amendment to SB 384

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

1 Sale of Waterfront Property; Department Notification. Amend RSA 485-A:39 to read as follows:

485-A:39 Waterfront Property Sale; Site Assessment Study.

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at ~~his or her~~ **the owner's** expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an on-site inspection. If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be

subject to the buyer's acceptance of the completed site assessment.

II. The site assessment study form shall become a part of the purchase and sale agreement.

III. The site assessment study form, with stated findings, shall be given to the buyer **and the seller** and receipt of the form shall be acknowledged in writing by the buyer **and the seller**.

IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver ~~approved plans of the septic disposal system~~ **the completed site assessment study form** pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed \$500.

V. The site assessment study shall consist of 3 sections:

(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.

(b) Section B shall include the lot size, slope, loading (based on the number of bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.

(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.

~~[An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but must be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.]~~

VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the procedures for the availability and distribution of the form to interested parties.

VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.

VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that a system is in failure, the designer shall notify, in writing, the department and the local health officer, and shall include that

information in the site assessment report.

IX. If no state-approved plan exists for the property, or the approved plan cannot be located, the assessor shall perform a standard dye test on the septic disposal system. Surfacing of the dye on the ground or in nearby surface waters shall be an indication of failure, and the assessor shall report that failure as provided in paragraph VIII.

2 Septic System Failure; Definition. Amend RSA 485-A:2, IV to read as follows:

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain ~~[or treat]~~ sewage or causes ~~[or threatens to cause]~~ the discharge of sewage on the ground surface or into adjacent surface ~~[or groundwaters]~~ ***waters.***

3 Developed Waterfront Property; Definition. Amend RSA 485-A:2, I to read as follows:

I. "Developed waterfront property" means any parcel of land which is contiguous to or within 200 feet of tidal waters ***as defined in RSA 483-B:4, XVI*** or a great pond as defined in RSA 4:40-a upon which stands a structure suitable for either seasonal or year-round human occupancy; ***or (b) rivers as defined in RSA 483-B:4, XVI(c) and upon which stands a structure suitable for either seasonal or year-round human occupancy.***

4 Permit Renewal; Septic Designers. Amend RSA 485-A:35, I to read as follows:

I.***(a)*** All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the person who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any person who applies to the department, and pays a fee of ~~[\$40]~~ ***\$80*** and who has demonstrated a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of ~~[each]~~ ***every other*** year. Permits shall be renewable upon proper application, ~~[and payment of an annual fee of \$40]~~ ***payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b).*** A permit issued to any person may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 541.

(b) Permitted designers shall complete a minimum of 3 hours annually of continuing education approved by the department.

5 Permit Renewal; Septic Installers. Amend RSA 485-A:36, I to read as follows:

I.(a) No person shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in accordance with the intent of the approved plan. The department shall issue an installer's permit to any person who submits an application provided by the department, pays a fee of ~~[\$40]~~ **\$80** and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Individuals who have been actively engaged in the business of installing systems for at least 12 months prior to January 1, 1980, shall not be required to submit to such examination, but shall be issued a permit upon filing an application and paying the initial fee, if application is made before June 30, 1980. Permits shall be issued from January 1 and shall expire December 31 of ~~each~~ **every other** year. Permits shall be renewable upon proper application ~~[and payment of an annual fee of \$40]~~ **payment of a biennial fee of \$80, and documentation of compliance with the continuing education requirement of subparagraph (b).** The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited with the state treasurer as unrestricted revenue.

(b) Permitted installers shall complete a minimum of 3 hours annually of continuing education approved by the department.

6 Effective Date.

I. RSA 485-A:2, I(b) as inserted by section 3 of this act shall take effect January 1, 2011.

II. The remainder of this act shall take effect January 1, 2009.
2008-1091s

AMENDED ANALYSIS

This bill:

I. Adds a section to the site assessment study.

II. Requires a septic disposal system designer to report remedial actions to the

department of environmental services and the local health officer.

III. Defines “developed waterfront property” and septic system “failure.”

IV. Prescribes continuing education requirements for septic system designers and installers.

Floor amendment adopted.

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

A roll call was requested by Senator Gallus.

Seconded by Senator Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D’Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 17 - Nays: 7

Adopted.

Ordered to third reading.

Senator Letourneau is in opposition to SB 384.

MOTION TO REMOVE FROM THE TABLE

Senator Reynolds moved to have SB 412 removed from the table.

Adopted.

SB 412, establishing the office of technology development and telecommunications planning and the position of director of telecommunications in the department of resources and economic development.

The question is on the adoption of the committee report of Ought to Pass.

A roll call was requested by Senator Gatsas.

Seconded by Senator Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D’Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Adopted.

Ordered to third reading.

SB 449, relative to immunity for emergency services volunteers. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 5-0. Senator Cilley for the committee.

Executive Departments and Administration

March 13, 2008

2008-1006s

06/09

Amendment to SB 449

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

AN ACT relative to the status of emergency services volunteers.

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

1 New Subparagraph; Definition of Employee. Amend RSA 281-A:2, VII(a) by inserting after subparagraph (7) the following new subparagraph:

(8) Any person who is officially designated by the governing body of a political subdivision as a volunteer in a New Hampshire citizen corps local council program that is organized, recruited, trained, supervised, and has been activated by an authorized political subdivision employee or official acting in his or her capacity as the emergency management director of the political subdivision.

2 Definition of Employee. Amend RSA 281-A:2, VII(b) to read as follows:

(b) "Employee," with respect to public employment shall not include any inmate of a county or state correctional facility who is, under RSA 651, required or allowed to work or perform services for which no significant remuneration is provided, any volunteer not covered under RSA 281-A:2, VII(a)(2) through ~~(5)~~ 8, who performs services for which no significant remuneration is provided, or any participant performing community service work under a court order or the provisions of a court diversion program, or any person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities. "Employee," with respect to public employment, shall include any person participating in a local welfare work program established under RSA 165:31; however, the local governing body may vote to make the provisions of this chapter not applicable to local welfare work program participants through guidelines adopted under RSA 165:1, II.

3 Effective Date. This act shall take effect January 1, 2009.
2008-1006s

AMENDED ANALYSIS

This bill adds certain emergency services volunteers to the definition of "employee" with respect to public employment.

Amendment adopted.

Senator Foster Rule #42 on SB 449.

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

Adopted.

Senator Foster Rule #42 on SB 449.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Burling moved to have SB 438 removed from the table.

Adopted.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

The question is on the adoption of the committee amendment.

Senate Executive Departments and Administration

February 20, 2008

2008-0751s

05/09

Amendment to SB 438

Amend RSA 21-I:81-b as inserted by section 1 of the bill by replacing it with the following:

21-I:81-b Worksite Accountability. At the onset of site work on any state construction project, the general contractor or designated project construction manager, if any, shall provide to the awarding agency a list of all subcontractors, and independent contractors on the job site with a record of the entity to whom that subcontractor or independent contractor is directly contracted, and by whom that contractor or subcontractor is insured for worker's compensation purposes. This list shall be posted on the jobsite and updated as needed and also posted on the agency website, to be updated weekly. Under no circumstances shall a subcontractor or independent contractor be present on a state construction site without the contractor's name and direct contracting relationship being posted in the visible location at the worksite.

Amendment failed.

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

March 20, 2008
2008-1097s
05/10

Floor Amendment to SB 438

Amend RSA 21-I:81-b as inserted by section 1 of the bill by replacing it with the following:

21-I:81-b Worksite Accountability. At the onset of site work on any state construction project, including any construction project undertaken by the community technical college system and the university system of New Hampshire, the general contractor or designated project construction manager, if any, shall provide to the awarding agency a list of all subcontractors, and independent contractors on the job site with a record of the entity to whom that subcontractor or independent contractor is directly contracted, and by whom that contractor or subcontractor is insured for worker's compensation purposes. This list shall be posted on the jobsite and updated as needed and also posted on the agency website, to be updated weekly. Under no circumstances shall a subcontractor or independent contractor be present on a state construction site without the contractor's name and direct contracting relationship being posted in the visible location at the worksite.

Floor amendment adopted.

Senator Clegg offered a floor amendment.

Sen. Clegg, Dist. 14
Sen. Gatsas, Dist. 16
Sen. Downing, Dist. 22
Sen. Kenney, Dist. 3
Sen. Barnes, Dist. 17
Sen. Gallus, Dist. 1
Sen. Odell, Dist. 8
Sen. Letourneau, Dist. 19
March 4, 2008
2008-0869s
03/05

Floor Amendment to SB 438

Amend the introductory paragraph of RSA 21-I:81-a and RSA 21-I:81-a, I as inserted by section 1 of the bill by replacing them with the following:

21-I:81-a Requirement for Listing Subcontractors Bids for State Construction Contracts. The following requirements apply to the construction, reconstruction, installation, demolition, maintenance, or repair of any building by a public agency, including the community college system and university system of New Hampshire, that is required to be awarded through competitive bidding.

I. A general contractor shall provide to the agency a list of the names, addresses, CEO, CFO, other LLC principals, and each subcontractor to be used in the performance of

the contract within 48 hours of the contract award.

MOTION TO TABLE

Senator Burling moved to have SB 438 laid on the table.

Adopted.

LAI D ON THE TABLE

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

SB 312-FN, relative to insurance coverage for obesity and morbid obesity. Finance Committee. Ought to Pass, Vote 5-2. Senator Hassan for the committee.

The question is on the adoption of the committee report of Ought to Pass.

A roll call was requested by Senator Foster.

Seconded by Senator Gottesman.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Gatsas, DeVries.

Yeas: 21 - Nays: 3

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Cilley moved to have SB 525 removed from the table.

Adopted.

SB 525, establishing the fourth Sunday in May as Emergency Medical Technician Memorial Day.

The question is on the adoption of the floor amendment.

Sen. Cilley, Dist. 6

March 13, 2008

2008-1023s

04/05

Floor Amendment to SB 525

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

AN ACT establishing the first Saturday in May as Emergency Medical Services Providers Memorial Day.

Amend the bill by replacing section 1 with the following:

1 New Section; Powers of Governor and Council; Emergency Medical Services Providers Memorial Day. Amend RSA 4 by inserting after section 13-m the following new section:

4:13-n Emergency Medical Services Providers Memorial Day. In recognition of the service given by the men and women who, night and day, serve the people of this state as emergency medical services providers, and inviting the governments, communities, and people of this state to observe such day with appropriate ceremonies and activities, the governor shall proclaim the first Saturday in May of each year as Emergency Medical Services Providers Memorial Day in honor of the emergency medical services providers who have been killed or disabled in the line of duty and those still serving.

2008-1023s

AMENDED ANALYSIS

This bill establishes the first Saturday in May as Emergency Medical Services Providers Memorial day.

Senator Cilley withdrew the floor amendment.

Senator Cilley offered a floor amendment.

Sen. Cilley, Dist. 6

March 17, 2008

2008-1035s

04/05

Floor Amendment to SB 525

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

AN ACT establishing the first Saturday in May as Emergency Medical Services Provider Recognition Day.

Amend the bill by replacing section 1 with the following:

1 New Section; Powers of Governor and Council; Emergency Medical Services Provider Recognition Day. Amend RSA 4 by inserting after section 13-m the following new section:

4:13-n Emergency Medical Services Provider Recognition Day. In recognition of the service given by the men and women who, night and day, serve the people of this state as first responders, emergency medical technicians, and paramedics, and inviting the governments, communities, and people of this state to observe such day with appropriate ceremonies and activities, the governor shall proclaim the first Saturday in May of each year as Emergency Medical Services Provider Recognition Day in honor of the emergency medical services providers who have been killed or disabled in the line of duty and those still serving.

2008-1035s

AMENDED ANALYSIS

This bill establishes the first Saturday in May as Emergency Medical Services Provider Recognition day.

Floor amendment adopted.

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

A roll call was requested by Senator Cilley.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Fuller Clark moved to have SB 451 removed from the table.

Adopted.

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources.

The question is on the adoption of the committee amendment.

**Energy, Environment and Economic Development
March 18, 2008**

2008-1072s
09/03

Amendment to SB 451

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

1 New Chapter; Electric Utility Investment in Distributed Energy Resources. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ELECTRIC UTILITY INVESTMENT

IN DISTRIBUTED ENERGY RESOURCES

374-G:1 Purpose. Distributed energy resources can increase overall energy efficiency and provide energy diversity by eliminating, displacing, or better managing energy deliveries from the centralized bulk power grid, in keeping with the objectives of RSA 362-F:1. It is therefore in the public interest to stimulate investment in distributed energy resources in New Hampshire by encouraging New Hampshire electric public utilities to invest in distributed energy resources benefiting the transmission and distribution system under state regulatory oversight.

374-G:2 Definitions. In this chapter:

I. "Commission" means the public utilities commission.

II. "Distributed energy resources" means electric generation, energy storage, demand response, load reduction or control programs, and technologies or devices located on or inter-connected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for minimizing transmission and distribution costs as provided in RSA 374-F:3, III. Distributed energy resources shall exclude generation projects in excess of 5 megawatts and generation projects intended to produce electric energy primarily for retail. In addition, any biomass-fueled generation project shall meet the emission requirements for eligible biomass technology under RSA 362-F:2, VIII and any fossil fueled generation project must meet the following emission standards (in lbs/MW-H): NO_x - 0.07; CO - 0.10; VOCs - 0.02. If a fossil fueled generation project produces combined heat and power, a credit to meet the emission standard may be applied at the rate of one MW-H for each 3.4 million BTUs of heat recovered, as long as such units achieve a minimum energy efficiency of 60 percent, measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs, and are installed as integrated combined heat and power applications.

374-G:3 Investments in Distributed Energy Resources. Notwithstanding any other provision of law to the contrary, as provided in RSA 374-G:4, a New Hampshire electric

public utility may invest in or own distributed energy resources, located on the premises of a retail customer of the electric public utility. Distributed electric generation owned by or receiving investments from an electric utility under this section shall be limited to a cumulative maximum in megawatts of 12-1/2 percent of the utility's total distribution peak load in megawatts.

374-G:4 Rate Filing; Authorization.

I. A New Hampshire electric public utility may engage in a distributed energy resources program and may seek rate recovery for its investments in distributed energy resources from the commission by making an appropriate rate filing. Such filing shall include a detailed description and economic evaluation of the proposed investment and a discussion of the benefits of the proposal with specific reference to the factors listed in paragraph II. In addition, the utility shall describe any equipment or installation specifications, solicitations, and procurements it has or intends to implement and show that it has made reasonable efforts to involve local businesses in its program. The utility shall also provide evidence of compliance with any applicable emission limitations.

II. Prior to authorizing a utility's recovery of investments made in distributed energy resources, the commission shall determine that the utility's investment and its recovery in rates, as proposed, are in the public interest. Determination of the public interest under this section shall include but not be limited to consideration and balancing of the following factors:

(a) Whether the expected value of the economic benefits of the investment to the company's ratepayers over the life of the investment outweigh the economic costs to the company's ratepayers.

(b) The efficient and cost-effective realization of the purposes of RSA 362-F and the restructuring policy principles of RSA 374-F:3.

(c) The costs and benefits to any participating customer or customers.

(d) The energy security benefits of the investment to the state of New Hampshire.

(e) The environmental benefits of the investment to the state of New Hampshire.

(f) The economic development benefits and liabilities of the investment to the state of New Hampshire.

(g) The effect on the reliability, safety, and efficiency of electric service.

(h) The potential benefits and liabilities of the program to the state of New Hampshire.

(i) The effect on competition within the region's electricity markets and the state's energy services market.

III. Authorized and prudently incurred investments shall be recovered under this section in a utility's base distribution rates as a component of rate base, and cost recovery shall include the recovery of depreciation, a return on investment, taxes, and other operating and maintenance expenses directly associated with the investment, net of any revenues received by the utility directly attributable to the investment.

IV. The rate of return applied to investments authorized under this section shall be based on the utilities' most recent rate of return established by the commission. The commission shall add an incentive to the return on equity component of 25 to 100 basis points as it deems appropriate to encourage sufficient and timely investments in an approved distributed energy resource program.

V. The commission shall approve, disapprove, or approve with conditions a utility rate filing under this section within 90 days of its filing. The commission may extend this deadline to 6 months at its discretion for any filing involving an investment in excess of \$1,000,000. The commission may also extend the deadline at its discretion for failure of the applicant to respond to data requests on an expedited timeline.

374-G:5 Exemption; Rural Electric Cooperatives. The requirements for commission authorization under RSA 374-G:4 shall not apply to rural electric cooperatives for which a certificate of deregulation is on file with the commission.

374-G:6 Exclusion. Any renewable generating project funded in part by a distribution utility pursuant to this chapter shall not be included in the calculation of the total rated generating capacity under RSA 362-A:9, I for purposes of limiting net metered renewable generating projects.

2 Electric Utility Investment in distributed Energy Resources; Report. The public utilities commission shall prepare a report reviewing and evaluating utility distributed energy resources projects proposed and implemented under RSA 374-G, to be filed on November 1, 2013, with the governor, the president of the senate, the speaker of the house of representatives, and the chairmen of the house science technology, and energy committee and the senate energy, environment, and economic development committee. The report shall include any recommended changes to RSA 374-G.

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

Amendment adopted.

Senator Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24
March 20, 2008
2008-1101s

06/01

Floor Amendment to SB 451

Amend RSA 374-G:2, II as inserted by section 1 of the bill by replacing it with the following:

II. "Distributed energy resources" means electric generation, energy storage, demand response, load reduction or control programs, and technologies or devices located on or inter-connected to the local electric distribution system for purposes including but not limited to reducing line losses, supporting voltage regulation, or peak load shaving, as part of a strategy for minimizing transmission and distribution costs as provided in RSA 374-F:3, III. Distributed energy resources shall exclude generation projects in excess of 5 megawatts and generation projects intended to produce electric energy primarily for sale or resale. In addition, any biomass-fueled generation project shall meet the emission requirements for eligible biomass technology under RSA 362-F:2, VIII and any fossil fueled generation project must meet the following emission standards (in lbs/MW-H): NO_x - 0.07; CO - 0.10; VOCs - 0.02. If a fossil fueled generation project produces combined heat and power, a credit to meet the emission standard may be applied at the rate of one MW-H for each 3.4 million BTUs of heat recovered, as long as such units achieve a minimum energy efficiency of 60 percent, measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs, and are installed as integrated combined heat and power applications.

Floor amendment adopted.

Senator Gottesman moved the question.

Without objection Senator Larsen moved to close debate.

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

A roll call was requested by Senator Barnes.

Seconded by Senator Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Cilley, Roberge, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 15 - Nays: 9

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Burling moved to have SB 438 removed from the table.

Adopted.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement process.

The question is on the adoption of the floor amendment.

Sen. Clegg, Dist. 14
Sen. Gatsas, Dist. 16
Sen. Downing, Dist. 22
Sen. Kenney, Dist. 3
Sen. Barnes, Dist. 17
Sen. Gallus, Dist. 1
Sen. Odell, Dist. 8
Sen. Letourneau, Dist. 19
March 4, 2008
2008-0869s
03/05

Floor Amendment to SB 438

Amend the introductory paragraph of RSA 21-I:81-a and RSA 21-I:81-a, I as inserted by section 1 of the bill by replacing them with the following:

21-I:81-a Requirement for Listing Subcontractors Bids for State Construction Contracts. The following requirements apply to the construction, reconstruction, installation, demolition, maintenance, or repair of any building by a public agency, including the community college system and university system of New Hampshire, that is required to be awarded through competitive bidding.

I. A general contractor shall provide to the agency a list of the names, addresses, CEO, CFO, other LLC principals, and each subcontractor to be used in the performance of the contract within 48 hours of the contract award.

Floor amendment adopted.

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

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen,

Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: Gatsas.

Yeas: 23 - Nays: 1

Adopted.

Ordered to third reading.

SB 327-FN, relative to compensation for state employees injured in the line of duty. Finance Committee. Ought to Pass, Vote 7-0. Senator D'Allesandro for the committee.

Adopted.

Ordered to third reading.

SB 329, relative to payment of members of screening panels for medical injury claims. Finance Committee. Ought to Pass, Vote 5-2. Senator Janeway for the committee.

The question is on the adoption of the committee report of Ought to Pass.

A division vote was requested.

Yeas: 13 - Nays: 11

Adopted.

Ordered to third reading.

SB 331-FN, establishing new positions and realigning functions at the department of corrections. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator D'Allesandro for the committee.

Sen. D'Allesandro, Dist. 20

March 10, 2008

2008-0898s

04/05

Amendment to SB 331-FN

Amend RSA 21-H:4 as inserted by section 2 of the bill by deleting RSA 21-H:4, VII.

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

3 Department of Corrections; Commissioner, Assistant Commissioner. RSA 21-H:6 is repealed and reenacted to read as follows:

21-H:6 Commissioner and Other Department Officials; Appointment; Term.

I. The commissioner of the department shall be appointed by the governor, with the consent of the council, and shall serve for a term of 4 years from the date of appointment and until a successor is appointed.

II. The commissioner of the department shall nominate for appointment by the governor, with the consent of the council, an assistant commissioner who shall serve at the pleasure of the commissioner.

III. The commissioner shall nominate for appointment by the governor, with the consent of the council, an inspector general who shall serve at the pleasure of the commissioner.

IV. The commissioner shall nominate for appointment by the governor, with the consent of the council, a director of security and training who shall serve at the pleasure of the commissioner.

V. The commissioner shall nominate for appointment by the governor, with consent of the council, each division director and warden of all the New Hampshire state prisons. All division directors and the wardens shall serve at the pleasure of the commissioner.

VI. The commissioner of the department shall nominate for appointment by the governor, with the consent of the council, physicians, and dentists who shall serve at the pleasure of the commissioner.

VII. Wardens, physicians, and dentists may be assigned to any correctional facility at the discretion of the commissioner.

4 Department of Corrections; Qualification and Compensation of Certain Officials.
Amend RSA 21-H:7, I to read as follows:

I. The commissioner ~~[and]~~, assistant commissioner, ***inspector general, director of security and training, and the directors of all divisions*** of the department shall be qualified to hold such positions by reason of education and experience.

5 Department of Corrections; Qualification and Compensation of Certain Officials.
Amend RSA 21-H:7, III to read as follows:

III. The salaries of the commissioner, assistant commissioner, ***inspector general, director of security and training, and the directors of all divisions***, and the division directors of the department shall be as specified in RSA 94:1-a.

6 Department of Corrections; Powers and Duties of Commissioner. Amend RSA 21-H:8, II(d) to read as follows:

(d) Delegate authority to subordinates as the commissioner deems necessary and appropriate, except that rulemaking authority shall not be delegated. The commissioner shall provide by delegation for the assistant commissioner, ***warden***, or a division director to exercise authority in the commissioner's absence. All such delegations shall be made in writing, shall be disseminated to all division directors, shall clearly delineate the authority delegated and the limitations thereto, and shall be kept on file in the commissioner's office. The assistant commissioner shall assume the duties of the commissioner in the event that the commissioner ~~[is unable for any reason]~~ ***becomes incapacitated and is unable*** to perform such duties.

7 Department of Corrections; Assistant Commissioner. Amend RSA 21-H:8-a to read as follows:

21-H:8-a Assistant Commissioner; Status in Retirement System. For purposes of classification under RSA 100-A, the assistant commissioner, ***inspector general, and director of security and training*** of the department of corrections shall be considered ~~[a]~~ permanent ~~[policeman]~~ ***policemen*** if ~~[the assistant commissioner was a]~~ ***such individuals were*** permanent police ~~[member]~~ ***members*** of group II for at least 10 years prior to appointment ~~[as assistant commissioner]~~ ***in their respective positions***, and ~~[continues]~~ ***continue*** to be certified as ~~[a]~~ police ~~[officer]~~ ***officers*** under RSA 188-F:26 and 188-F:27.

8 Salaries for Unclassified Officers.

I. The salaries for the unclassified positions established in this act shall be determined in accordance with RSA 14:14-c.

II. The positions of inspector general and director of security and training established in this act shall only be staffed if funding is available within the department's existing budgetary appropriations for the biennium ending June 30, 2009.

9 Department of Corrections; Transfer Authority. Notwithstanding any provision of law to the contrary, and for the biennium ending June 30, 2009, the commissioner of the department of corrections may make transfers within and among class lines to fund the positions of inspector general and director of security and training established in this act.

10 Repeal. RSA 21-H:7, II, relative to qualifications of division directors in the department of corrections, is repealed.

11 Effective Date. This act shall take effect July 1, 2008.
2008-0898s

AMENDED ANALYSIS

This bill:

I. Establishes the unclassified positions of inspector general and director of security and training within the department of corrections.

II. Establishes appointment procedures for the inspector general, director of security and training, physicians, and dentists, and permits the commissioner of the department of corrections to assign or reassign wardens, physicians, or dentists to any correctional facility.

III. Is a request of the department of corrections.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 402, relative to large groundwater permitting requirements for wells installed prior to 1998. Finance Committee. Interim Study, Vote 6-0. Senator Sgambati for the committee.

Committee report of Interim Study is adopted.

Senator Hassan Rule #42 on SB 402.

SB 502-FN, relative to unemployment compensation. Finance Committee. Ought to Pass with Amendment, Vote 6-1. Senator Hassan for the committee.

Sen. Hassan, Dist. 23

March 11, 2008

2008-0971s

01/09

Amendment to SB 502-FN

Amend the bill by deleting section 6 and renumbering the original section 7 to read as 6.
2008-0971s

AMENDED ANALYSIS

This bill:

I. Defines “part-time work.”

II. Defines “full-time work.”

III. Allows refusal of acceptance of full-time and part-time work to be considered in unemployment compensation benefit eligibility considerations.

Amendment adopted.

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

A roll call was requested by Senator Barnes.

Seconded by Senator Gallus.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, D’Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Roberge, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 16 - Nays: 8

Adopted.

Ordered to third reading.

Recess.

Senator Hassan in the Chair.

SB 512-FN, relative to emergency management powers. Finance Committee. Ought to Pass, Vote 6-0. Senator Sgambati for the committee.

Adopted.

Ordered to third reading.

SB 530-FN-A-L, relative to kindergarten aid. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator Larsen for the committee.

Senate Finance

March 12, 2008

2008-0992s

04/09

Amendment to SB 530-FN-A-LOCAL

Amend RSA 198:15-r, I as inserted by section 1 of the bill by replacing it with the following:

I. There is established in the department of education a kindergarten construction program ***to provide certain construction grants***. For the period beginning July 1, 1997, and ending June 30, ~~2008~~ **2013**, the commissioner of education shall make grants available to eligible districts that currently do not operate a public kindergarten program. ***Such eligible districts shall receive, at their election, either:***

(a) A construction grant to cover 75 percent of the actual cost of construction of kindergarten facilities, exclusive of site acquisition and core facilities[-] ; or

(b) A construction grant to cover 100 percent of the actual cost of the design and construction of a basic code compliant kindergarten facility, but shall not include site acquisition and core facilities. In this subparagraph, "basic code compliant kindergarten facility" means a new building or an addition to an existing building that the commissioner of the department of education determines satisfies the minimum standards for school approval for a kindergarten program and all applicable building code standards. The commissioner shall establish specifications pursuant RSA 198:15-s, IV for such a basic code compliant facility.

(c) A school district that displaces pupils from an existing classroom space in order to use such space to provide a kindergarten program shall be eligible for a construction grant under subparagraphs I(a) or (b) to cover the costs incurred in constructing or renovating new classroom space for the displaced pupils. Grants shall also cover the cost of initial ***furniture, fixtures, and*** equipment needed to operate a kindergarten program.

2008-0992s

AMENDED ANALYSIS

This bill:

I. Extends the kindergarten construction aid program through June 30, 2013.

II. Allows a school district to elect a construction grant to cover either 75 percent of the actual cost of construction of kindergarten facilities or 100 percent of the actual cost of design and construction of a basic code compliant kindergarten facility.

III. Requires that a school district providing a public kindergarten program as of September 2008 or September 2009 shall receive, in that same year, an additional adequate education grant amount based on the number of pupils attending kindergarten in the district as of the beginning of the school year.

IV. Requires certain school districts to submit a kindergarten implementation plan to the commissioner of the department of education detailing the district's plan to provide a public kindergarten program no later than September 2009.

Amendment adopted.

Senator Bragdon Rule #42 on SB 530-FN-A-L.

Senator Gottesman moved the question.

Without objection Senator Hassan moved to close debate.

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

Adopted.

Senator Bragdon Rule #42 on SB 530-FN-A-L.

Ordered to third reading.

Senator Downing is in favor of the amendment on SB 530-FN-A-L.

SB 304-FN-L, repealing a fee charged by the registry of deeds. Finance Committee. Inexpedient to Legislate, Vote 5-2. Senator Janeway for the committee.

MOTION TO TABLE

Senator Reynolds moved to have SB 304-FN-L laid on the table.

The question is on the motion to table.

A roll call was requested by Senator Gallus.

Seconded by Senator Kenney.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Larsen, DeVries, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Roberge, Clegg, Gatsas, Barnes, Letourneau, D'Allesandro, Downing.

Yeas: 15 - Nays: 9

Adopted.

LAIID ON THE TABLE

SB 304-FN-L, repealing a fee charged by the registry of deeds.

SB 313, relative to transfers to the revenue stabilization reserve account. Finance Committee. Inexpedient to Legislate, Vote 5-2. Senator Janeway for the committee.

The question is on the adoption of the committee report of Inexpedient to Legislate.

A roll call was requested by Senator Kenney.

Seconded by Senator Gatsas.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Committee report of Inexpedient to Legislate is adopted.

SB 321, relative to transfers to the revenue stabilization reserve account. Finance Committee. Ought to Pass with Amendment, Vote 7-0. Senator D'Allesandro for the committee.

Senate Finance
March 17, 2008
2008-1043s
10/04

Amendment to SB 321

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

AN ACT relative to construction or renovation of regional vocational centers, transferring certain positions from the pari-mutuel commission to the department of safety, and requiring certain operating budget reductions.

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

1 Regional Vocational Centers; Construction or Renovation. Amend RSA 188-E:3, II to read as follows:

II. Upon completion, the constructed or renovated facility shall become the property of the school district. ~~[Provisions]~~ **Provision** of the site, parking, and other related areas shall be the responsibility of the local community. ***Site work, including but not limited to cut and fill work, compaction, demolition, relocation of utilities, relocation of roadways and sidewalks, and similar work within an area extending to one foot beyond the outside edge of the exterior walls of the building, shall be eligible for grants under paragraph I.*** Nothing shall prohibit the inclusion of the site and related facilities which are not funded as part of construction cost by the state under this chapter from being included in a regular building aid application of the district as provided in RSA 198:15-b.

2 Operating Budget, Judicial Branch. Notwithstanding 2007, 262:1, the appropriations for the judicial branch for the fiscal year ending June 30, 2008 shall be reduced by \$1,789,765. The director of the administrative office of the courts shall submit to the general court and the commissioner of the department of administrative services an itemization of the reductions in expenditure classes made to implement this section on or before June 15, 2008.

3 Operating Budget, Legislative Branch. Notwithstanding 2007, 262:1, the appropriations for the legislative branch for the fiscal year ending June 30, 2008 shall be reduced by \$1,000,000. The legislative budget assistant shall submit to the fiscal committee of the general court an itemization of the reductions in expenditure classes made to implement this section on or before June 15, 2008.

4 Positions Transferred from Pari-Mutuel Commission Racing Laboratory to Department of Safety Urine Testing Laboratory. Effective April 1, 2008, classified positions number 14543, 14545, and 30541 are transferred from the pari-mutuel commission racing

laboratory, PAU 02-08-02, to the department of safety urine testing laboratory, PAU 02-15-04-11-02. The legislative budget assistant is authorized to adjust totals in 2007, 262 as made necessary by this section.

5 PAU 02-08-02; Pari-Mutuel Commission Racing Laboratory. Amend 2007, 262, PAU 02-08-02 as follows:

		Fiscal Year 2008	Fiscal Year
2009			
Strike out:	10 Personal Services – Permanent	\$280,007	\$285,196
Insert:	10 Personal Services – Permanent	\$247,525	\$153,362
Strike out:	60 Benefits	\$139,292	\$141,876
Insert:	60 Benefits	\$123,603	\$78,200
Strike out:	Total	\$639,293	\$646,993
Insert:	Total	\$591,122	\$451,483
Estimated Source of Funds for Racing Laboratory			
Strike out:	General Fund	\$519,575	\$528,684
Insert:	General Fund	\$471,404	\$333,174
Strike out:	Total	\$639,293	\$646,993
Insert:	Total	\$591,122	\$451,483

6 PAU 02-15-04-11-02; Department of Safety Urine Testing Laboratory. Amend 2007, 262, PAU 02-15-04-11-02 as follows:

		Fiscal Year 2008	Fiscal Year
2009			
Strike out:	10 Personal Services – Permanent	\$140,723	\$146,820
Insert:	10 Personal Services – Permanent	\$173,205	\$278,654
Strike out:	60 Benefits	\$73,294	\$76,722
Insert:	60 Benefits	\$88,983	\$140,398
Strike out:	Total	\$406,640	\$417,715
Insert:	Total	\$454,811	\$613,225
Estimated Source of Funds for Urine Testing Laboratory			
Strike out:	General Fund	\$406,640	\$417,715
Insert:	General Fund	\$454,811	\$613,225
Strike out:	Total	\$406,640	\$417,715
Insert:	Total	\$454,811	\$613,225

7 Effective Date. This act shall take effect upon its passage.
2008-1043s

AMENDED ANALYSIS

This bill:

I. Allows certain site work to be eligible for grants available for the construction or renovation of regional vocational centers.

II. Transfers certain positions from the pari-mutuel racing laboratory to the department of safety urine testing laboratory.

III. Directs the judicial branch and legislative branch to reduce budget appropriations by a specified amount for the fiscal year ending June 30, 2008.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 343-FN, making school building aid grants available to charter schools as reimbursement for annual lease costs. Finance Committee. Inexpedient to Legislate, Vote 4-3. Senator D'Allesandro for the committee.

MOTION TO TABLE

Senator D'Allesandro moved to have SB 343-FN laid on the table.

Adopted.

LAI D ON THE TABLE

SB 343-FN, making school building aid grants available to charter schools as reimbursement for annual lease costs.

SB 516-FN-L, relative to aid for county bridges. Finance Committee. Ought to Pass, Vote 7-0. Senator Sgambati for the committee.

Adopted.

Ordered to third reading.

SB 543, establishing a commission to study court security. Finance Committee. Ought to Pass with Amendment, Vote 5-0. Senator D'Allesandro for the committee.

Senate Finance
March 17, 2008
2008-1040s
09/10

Amendment to SB 543

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

- (g) The commissioner of the department of administrative services, or designee.
- (h) One public member with knowledge of court security issues, appointed by the governor

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall study issues related to security in New Hampshire courts.

Amend the bill by replacing section 5 with the following:

5 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, the chief justice of the supreme court, and the state library on or before November 1, 2008.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 308-FN-A, restoring certain foreign dividend deductions under the business profits tax. Finance Committee. Ought to Pass with Amendment, Vote 6-0. Senator Odell for the committee.

**Senate Finance
March 17, 2008
2008-1041s
09/01**

Amendment to SB 308-FN-A

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

AN ACT preventing potential double taxation on the identical gross business profits of related business organizations.

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

1 New Paragraph; Preventing Potential Double Taxation. Amend RSA 77-A:4 by inserting after paragraph IV the following new paragraph:

IV-a.(a) In the case of a parent business organization, a deduction equal to the apportioned amount of gross business profits of the parent as are derived from one or more actual distributions received from a subsidiary, which distributions have already been subject to taxation under this chapter during the same or an overlapping fiscal period.

(b) For this paragraph only:

(1) "Apportioned amount of gross business profits" means the product of the total amount of gross business profits as are derived from actual distributions received by the parent from the subsidiary, multiplied by the apportionment fraction of the subsidiary as determined pursuant to RSA 77-A:3, II(a) for the tax period of the subsidiary that includes the date on which actual distributions were paid.

(2) "Parent" means a business organization which is required to file a separate business profits tax return and which controls, not merely invests, in one or more business organizations each required to file a separate business profits tax return and that make actual distributions to the parent.

(3) "Subsidiary" means a business organization which is required to file a separate business profits tax return and which is controlled by a parent, as defined in this paragraph.

(c) The purpose of this deduction is solely to prevent double taxation on the identical gross business profits of related business organizations.

2 Applicability. Section 1 of this act shall apply for all actual distributions received on and after August 17, 2007.

3 Effective Date. This act shall take effect upon its passage.
2008-1041s

AMENDED ANALYSIS

This bill prevents potential double taxation on the identical gross business profits of related business organizations.

Amendment failed.

Senator Odell offered a floor amendment.

Sen. Odell, Dist. 8
March 20, 2008
2008-1095s
10/09

Floor Amendment to SB 308-FN-A

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

AN ACT preventing potential double taxation on the identical gross business profits of business organizations.

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

1 New Paragraph; Preventing Potential Double Taxation. Amend RSA 77-A:4 by inserting after paragraph IV the following new paragraph:

IV-a.(a) In the case of a business organization which owns an equity interest in a subsidiary business organization, a deduction equal to the “apportioned amount of gross business profits,” as defined in subparagraph (b), as are derived from one or more actual distributions received from the subsidiary business organization with respect to the equity interest, but only if the gross business profits of the subsidiary business organization has been subject to tax under this chapter in a business profits tax return that is separate from the return filed by or on behalf of the business organization claiming this deduction.

(b) For this paragraph only, the term “apportioned amount of gross business profits” means the product of the total amount of gross business profits as are derived from actual distributions received with respect to an equity interest in a subsidiary business organization, multiplied by the apportionment fraction of the subsidiary business organization as determined pursuant to RSA 77-A:3, II(a) for the tax period of the subsidiary business organization in which the income was subject to taxation. The business organization claiming this deduction must retain sufficient information to document the

amount of the subsidiary business organization's income that has been subject to tax, the period or periods in which such income has been subject to tax, and the apportionment fraction applicable for such periods.

(c) The purpose of the deduction in this paragraph is solely to prevent double taxation on the identical gross business profits of business organizations.

2 Applicability. Section 1 of this act shall apply for all actual distributions received on and after August 17, 2007.

3 Effective Date. This act shall take effect upon its passage.
2008-1095s

AMENDED ANALYSIS

This bill prevents potential double taxation on the identical gross business profits of business organizations.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

Senators Clegg and Gatsas are in opposition to SB 308-FN-A.

SB 539-FN-L, relative to the cost of an adequate education and provision of fiscal capacity disparity aid. Finance Committee. Ought to Pass with Amendment, Vote 5-2. Senator Janeway for the committee.

Senate Finance
March 19, 2008
2008-1077s
04/10

Amendment to SB 539-FN-LOCAL

Amend RSA 198:38, I as inserted by section 4 of the bill by replacing it with the following:

I. "Average daily membership in attendance" or "ADMA" means the aggregate half-day membership of pupils in kindergarten through grade 12 attending schools operated by a school district divided by the number of half-days of instruction offered. The average daily membership in attendance shall include any pupil who is a resident of New Hampshire educated at public expense.

Amend RSA 198:38, VI as inserted by section 4 of the bill by replacing it with the following:

VI. "English language learner" means a child who has a predominant language other than English or who is educationally disadvantaged by a limited English proficiency, and who is receiving regularly scheduled English language instruction.

Amend RSA 198:40-a, IV as inserted by section 5 of the bill by replacing it with the following:

IV.(a) The sum total calculated under paragraphs I-III of this section shall be used to determine the cost of an adequate education which shall be used in each year of the biennium.

(b) Prior to or coinciding with the first disbursement of each fiscal year under RSA 198:42, the department shall notify a school district of the total amount of funds that have been allocated for each school within its jurisdiction during the fiscal year based on the sum of the school district's adequate education grant amount plus the amount available to the school district from the education property tax. In addition, the department shall furnish to each municipality a report showing the municipality's cost of an adequate education sorted by a pupil's municipality of residence.

Amend the bill by inserting after section 7 the following and renumbering the original sections 8-15 to read as 9-16, respectively:

8 Transitional Education Aid; Biennium Ending June 30, 2011.

I. A municipality in which the estimated fiscal year 2010 adequate education grant is 85 percent or less than its fiscal year 2009 adequate education grant shall be eligible for transitional education aid for the fiscal year ending June 30, 2010 as follows:

(a) A municipality in the upper half of the first quartile with a median family income less than 125 percent of the state average median family income, shall receive transitional educational aid in the amount of 50 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(b) A municipality in the upper half of the first quartile with a median family income between 125 percent and 150 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(c) A municipality in the lower half of the first quartile with a median family income less than 110 percent of the state average median family income, shall receive transitional education aid in the amount of 50 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(d) A municipality in the lower half of the first quartile with a median family income between 110 percent and 125 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(e) A municipality in the upper half of the second quartile with a median family income less than 100 percent of the state average median family income, shall receive transitional education aid in the amount of 50 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

(f) A municipality in the upper half of the second quartile with a median family income between 100 percent and 110 percent of the state average median family income,

shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2010 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2010 fiscal year pursuant to RSA 198:40-c.

II. A municipality in which the estimated fiscal year 2011 adequate education grant is 85 percent or less than its fiscal year 2009 adequate education grant shall be eligible for transitional education aid for the fiscal year ending June 30, 2011 as follows:

(a) A municipality in the upper half of the first quartile with a median family income less than 125 percent of the state average median family income, shall receive transitional educational aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(b) A municipality in the upper half of the first quartile with a median family income between 125 percent and 150 percent of the state average median family income, shall receive transitional education aid in the amount of 12.5 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(c) A municipality in the lower half of the first quartile with a median family income less than 110 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(d) A municipality in the lower half of the first quartile with a median family income between 110 percent and 125 percent of the state average median family income, shall receive transitional education aid in the amount of 12.5 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(e) A municipality in the upper half of the second quartile with a median family income less than 100 percent of the state average median family income, shall receive transitional education aid in the amount of 25 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

(f) A municipality in the upper half of the second quartile with a median family income between 100 percent and 110 percent of the state average median family income, shall receive transitional education aid in the amount of 12.5 percent of the difference between its fiscal year 2009 adequate education grant and its fiscal year 2011 adequate education grant, less any fiscal capacity disparity aid received by the municipality in the 2011 fiscal year pursuant to RSA 198:40-c.

III. The procedure for calculating equalized valuation per pupil and the definition of terms set forth in RSA 198:40-c shall apply to the calculation of transitional educational aid in this section.

Amend the bill by replacing section 16 with the following:

16 Effective Date.

I. Section 15 of this act shall take effect June 30, 2009.

II. The remainder of this act shall take effect July 1, 2009.

2008-1077s

AMENDED ANALYSIS

This bill:

I. Determines the per pupil cost of the opportunity for an adequate education which includes differentiated aid distributed to schools based on the number of pupils receiving special education services, or eligible for a free or reduced-price lunch, or who are English language learners.

II. Requires schools receiving differentiated aid to use it to implement enhanced programs known to improve pupil achievement.

III. Establishes a joint legislative oversight committee on accountability for an adequate education.

IV. Provides fiscal capacity disparity aid, in addition to aid for the cost of the opportunity for an adequate education, based on a municipality's equalized valuation, including utilities, per pupil and median family income.

V. Provides transitional education aid for the biennium ending June 30, 2011 to certain municipalities in which the estimated fiscal year 2010 adequate education grant is 85 percent or less than its fiscal year 2009 adequate education grant.

Amendment adopted.

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

A roll call was requested by Senator Barnes.

Seconded by Senator Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Downing, Hassan.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Fuller Clark.

Yeas: 14 - Nays: 10

Adopted.

Ordered to third reading.

Senator Bragdon is in favor of the committee amendment on SB 539-FN-L.

MOTION TO REMOVE FROM THE TABLE

Senator Fuller Clark moved to have SB 348 removed from the table.

Adopted.

SB 348, relative to the certification of forensic counselors by the board of forensic counselors.

The question is on the adoption of the committee report of Interim Study.

Motion failed.

Senator Fuller Clark moved Ought to Pass.

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Downing moved to have SB 330-FN removed from the table.

Adopted.

SB 330-FN, relative to video lottery machines at certain pari-mutuel facilities.

The question is on the committee report of Inexpedient to Legislate

MOTION TO TABLE

Senator Gottesman moved to have SB 330-FN laid on the table.

Adopted.

LAIID ON THE TABLE

SB 330-FN, relative to video lottery machines at certain pari-mutuel facilities.

SB 365, relative to testing for lead toxicity in children 4 years of age or younger. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-0. Senator Janeway for the committee.

Sen. Estabrook, Dist. 21

March 11, 2008

2008-0975s

01/09

Amendment to SB 365

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

AN ACT relative to the commission to study childhood lead poisoning prevention laws, policies, and standards in New Hampshire.

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

1 Commission to Study Childhood Lead Poisoning Prevention Laws, Policies, and Standards in New Hampshire; Duty Modified. Amend subparagraph I(a) of 2007, 293:12 to read as follows:

(a) The efficacy of current laws, regulations, education and certification standards, and clinical protocols ***including statewide universal screening*** in reducing the exposure of children to lead hazards.

2 Effective Date. This act shall take effect upon its passage.
2008-0975s

AMENDED ANALYSIS

This bill modifies a duty of the commission to study childhood lead poisoning prevention laws, policies, and standards in New Hampshire.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Odell, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

Yeas: 14 - Nays: 10

Amendment adopted.

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

Adopted.

Ordered to third reading.

Senator Kenney is in favor of SB 365 as amended.

SB 450, requiring the New Hampshire Citizens Health Initiative to make an annual report to the general court and to explore the possibility of creating a public insurance commission. Health and Human Services Committee. Ought to Pass with Amendment, Vote 3-1. Senator Fuller Clark for the committee.

Sen. Fuller Clark, Dist. 24
March 11, 2008
2008-0964s
01/09

Amendment to SB 450

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

AN ACT requiring the New Hampshire Citizens Health Initiative to provide an annual summary to the general court.

Amend the bill by replacing section 1 with the following:

1 Summary Required. The New Hampshire Citizens Health Initiative shall provide an annual summary beginning on November 1, 2008 on the work of the Initiative and any important reports of the findings of the Initiative's work groups to the president of the senate, the speaker of the house of representatives, the chairpersons of the house commerce and health, human services and elderly affairs committees, and the chairpersons of the senate commerce, labor, and consumer protection and health and human services committees.
2008-0964s

AMENDED ANALYSIS

This bill requires the New Hampshire Citizens Health Initiative to provide an annual summary to the general court.

Amendment adopted.

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

Adopted.

Ordered to third reading.

Senator Kenney is in opposition to SB 450.

SB 527, relative to adult involvement for minors seeking abortions. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-1. Senator Sgambati for the committee.

Sen. Sgambati, Dist. 4
February 21, 2008
2008-0756s
01/10

Amendment to SB 527

Amend RSA 132:30, I as inserted by section 1 of the bill by replacing it with the following:

I. "Counselor" means a psychiatrist licensed under RSA 329:12, a psychologist licensed under RSA 330-A:16, a clinical social worker licensed under RSA 330-A:18, a marriage and family therapist licensed under RSA 330-A:21, a registered nurse or practical nurse licensed under RSA 326-B, a guidance counselor certified under RSA 21-N:9, II(s), or a health care assistant who has been trained to provide counseling under the provisions of RSA 132:31 and who works under the supervision of a licensed or certified provider or counselor as specified in this paragraph or in paragraph III.

Amend section 1 of the bill by deleting RSA 132:32.

Amendment adopted.

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17
March 18, 2008
2008-1051s
01/09

Floor Amendment to SB 527

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

AN ACT relative to parental notification.

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

1 New Subdivision; Parental Notification Prior to Abortion. Amend RSA 132 by inserting after section 28 the following new subdivision:

Parental Notification Prior to Abortion

132:29 Definitions. In this subdivision:

I. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove an ectopic pregnancy or the products from a spontaneous miscarriage.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Department" means the department of health and human services.

IV. "Emancipated minor" means any minor female who is or has been married or has by court order otherwise been freed from the care, custody, and control of her parents.

V. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

VI. "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

VII. "Minor" means any person under the age of 18 years.

VIII. "Parent" means one parent of the pregnant girl if one is living or the guardian or conservator if the pregnant girl has one.

132:30 Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in paragraphs II and III.

II. The written notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

III. In lieu of the delivery required by paragraph II, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

132:31 Waiver of Notice.

I. No notice shall be required under RSA 132:30 if:

(a) The attending abortion provider certifies in the pregnant minor's medical record that there exists a medical emergency, as defined in RSA 132:29, VI; or

(b) The person or persons who are entitled to notice certify in writing that they have been notified.

II. If such a pregnant minor elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant minor is not mature, or if the pregnant minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize an abortion provider to perform the abortion without such notification if said judge concludes that the pregnant minor's best interests would be served thereby. Access to a judge for the purposes of this paragraph shall be afforded such a pregnant minor 24 hours a day, 7 days a week. All proceedings conducted pursuant to this section shall be confidential.

(a) Such a pregnant minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

(b) Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision

promptly and without delay so as to serve the best interest of the pregnant minor. In no case shall the court fail to rule within 7 calendar days from the time the petition is filed. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

(c) An expedited confidential appeal shall be available to any such pregnant minor for whom the court denies an order authorizing an abortion without notification. The court shall make a ruling within 7 calendar days from the time of the docketing of the appeal. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant minor at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant minor 24 hours a day, 7 days a week.

132:32 Penalty. Performance of an abortion in violation of this subdivision shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bone fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

132:33 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

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

2008-1051s

AMENDED ANALYSIS

This bill restores the parental notification law and adds a medical emergency exception to such law. The bill also affords the pregnant minor 24-hour access to a judge for waiver of notification.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Kenney.

The following Senators voted Yes: Gallus, Kenney, Roberge, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Downing.

The following Senators voted No: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Gottesman, Foster, Larsen, DeVries, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 9 - Nays: 15

Floor amendment failed.

Senator Gottesman moved the question.

Without objection Senator Larsen moved to close debate.

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

A roll call was requested by Senator Barnes.

Seconded by Senator Gottesman.

The following Senators voted Yes: Reynolds, Sgambati, Cilley, Odell, Bragdon, Gottesman, Foster, Clegg, DeVries, Hassan.

The following Senators voted No: Gallus, Kenney, Burling, Janeway, Roberge, Kelly, Larsen, Gatsas, Barnes, Letourneau, D'Allesandro, Estabrook, Downing, Fuller Clark.

Yeas: 10 - Nays: 14

Motion failed.

Senator Burling moved Interim Study.

Adopted.

Senator Gatsas moved Reconsideration.

Senator Gatsas withdrew his motion for reconsideration.

SB 527 is sent to Interim Study.

SB 541, relative to an expedited process for certificate of need review. Health and Human Services Committee. Ought to Pass with Amendment, Vote 4-0. Senator Sgambati for the committee.

Sen. Estabrook, Dist. 21
March 13, 2008
2008-1027s
01/09

Amendment to SB 541

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

AN ACT relative to an expedited process for certificate of need review and membership of the health services planning and review board.

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

2 New Paragraph; Certificate of Need; Expedited Process. Amend RSA 151-C:11 by inserting after paragraph II the following new paragraph:

III. Notwithstanding the provisions of RSA 151-C:8, on or before January 1, 2009 the board shall initiate rulemaking, pursuant to RSA 541-A, delineating projects that are eligible for expedited review, and establishing an expedited review process for such projects. At a minimum, such rules shall include the process and timeline for submitting expedited applications, the review schedule, and the content of an expedited application.

3 Health Services Planning and Review Board; Membership. Amend RSA 151-C:3, I(a)(2)(D) to read as follows:

(D) A ~~county official~~ **representative of county government nominated by the New Hampshire Association of Counties.**

4 Effective Date. This act shall take effect upon its passage.
2008-1027s

AMENDED ANALYSIS

This bill requires the health services planning and review board to initiate rulemaking relative to an expedited review process for certain projects.

This bill also changes criteria for the member representing county government on the health services planning and review board.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SCR 11, supporting the application of Taiwan for observer status at the World Health Organization. Health and Human Services Committee. Ought to Pass, Vote 5-0. Senator Janeway for the committee.

Adopted.

Ordered to third reading.

SB 302-FN, relative to parental notification. Judiciary Committee. Inexpedient to Legislate, Vote 3-2. Senator Foster for the committee.

MOTION TO TABLE

Senator Foster moved to have SB 302-FN laid on the table.

Adopted.

LAID ON THE TABLE

SB 302-FN, relative to parental notification.

Senator Barnes is in opposition to the motion to table SB 302-FN.

SB 379, relative to boating while intoxicated and transporting alcoholic beverages by a minor. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Letourneau for the committee.

Senate Judiciary

March 11, 2008

2008-0963s

03/04

Amendment to SB 379

Amend RSA 265-A:45, II as inserted by section 4 of the bill by replacing it with the following:

II. No person operating a boat while under the age of 21 shall, except when accompanied by a parent, legal guardian, or legal age spouse, transport any liquor or beverage in any part of a boat with an intent to consume such liquor or beverage. Anyone violating this paragraph may, following a hearing, have his or her privilege to operate a boat on the waters of the state suspended for 60 days and may additionally have his or her license or privilege to drive suspended for 60 days.

Amend the bill by replacing section 6 with the following:

6 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.

SB 378, establishing a committee to study the creation of a business court at the superior court level. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Letourneau for the committee.

Senate Judiciary

March 18, 2008

2008-1064s

03/01

Amendment to SB 378

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

AN ACT authorizing the supreme court to establish a business and commercial dispute docket in the superior court.

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

1 New Section; Business and Commercial Dispute Docket. Amend RSA 491 by inserting after section 7 the following new section:

491:7-a Business and Commercial Dispute Docket.

I. Without limiting the jurisdiction vested in any court in the state, and subject to the appointment of a presiding justice by the governor with the consent of the executive council as provided in this section, the supreme court may establish by court order not inconsistent with this section, a business and commercial dispute docket in the superior court which shall have jurisdiction to hear and determine business and commercial disputes, as described in this section, when:

(a) The parties have consented to the jurisdiction of the business and commercial dispute docket by agreement or stipulation;

(b) At least one party is a “business entity” as defined in paragraph II;

(c) No party is a consumer as that term is defined in paragraph II; and

(d) If money damages are sought, the amount in controversy exceeds \$50,000 or such other greater amount as the supreme court determines by rule.

II. In this section:

(a) A “business entity” means a corporation, a statutory trust, a business trust or association, a real estate investment trust, a common law trust, any other unincorporated business, including a partnership, whether a general or a limited liability partnership, or limited partnership, including a limited liability limited partnership, a limited liability company, a professional association, or a joint venture.

(b) A “consumer” means an individual who purchases or leases merchandise primarily for personal, family, or household purposes.

III. The governor with the consent of the executive council may appoint the first presiding justice of the business and commercial dispute docket, who shall be qualified by reason of such person’s knowledge and experience in business and commercial law matters. The chief justice of the superior court, following the appointment or designation of the initial presiding justice, may designate such additional justices to preside over business and commercial docket cases, as necessary, based upon caseload, disqualification of the presiding justice, or efficient allocation of judicial resources.

IV. The presiding justice of the business and commercial dispute docket shall be an associate justice of the superior court and shall be entitled to the compensation and benefits provided to all such justices under applicable law, including, but not limited to, RSA 491-A:1 and RSA 100-C.

V. The workload of the presiding justice of the business and commercial dispute docket shall be the matters before that docket. The presiding justice may be assigned to any other matter within the jurisdiction of the superior court or sit by designation on any other court in the same manner as any other associate justice of the superior court, as determined to be necessary by the chief justices of the superior and supreme courts.

VI. Subject to the provisions of this section, all civil actions in which the principal claim or claims arise from or involve the following shall be assigned to the business and commercial dispute docket for all purposes, including motion practice, discovery, injunctive relief, alternative dispute resolution, and hearing on the merits with or without a jury:

(a) Claims arising from breach of contract or fiduciary duties, fraud, misrepresentation, business tort, or statutory violations arising out of business dealings or transactions.

- (b) Claims arising from transactions under the Uniform Commercial Code.
- (c) Claims arising from the purchase, sale, and lease of commercial real or personal property or security interests therein.
- (d) Claims related to surety bonds.
- (e) Franchisee/franchisor relationships and liabilities.
- (f) Malpractice claims of non-medical professionals in connection with rendering services to a business enterprise.
- (g) Real estate title petitions.
- (h) Shareholder derivative actions.
- (i) Commercial class actions.
- (j) Commercial bank transactions.
- (k) Actions relating to the internal affairs or governance; dissolution or liquidation rights obligations between and among owners, including shareholders, partners, or members; or liability or indemnity of managers, including officers, directors, managers, trustees, or members or partners functioning as managers, of corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures, or other business enterprises.
- (l) Business insolvencies and receiverships.
- (m) Other complex disputes of a business or commercial nature.

2 Effective Date. This act shall take effect upon its passage.
2008-1064s

AMENDED ANALYSIS

This bill authorizes the supreme court to establish a business and commercial dispute docket in the superior court.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 389, relative to the protection of children's medical records in abuse and neglect and child custody cases. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Gottesman for the committee.

Sen. Sgambati, Dist. 4

March 10, 2008

2008-0945s

05/04

Amendment to SB 389

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

AN ACT authorizing the supreme court to establish a business and commercial dispute docket in the superior court.

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

1 Physicians and Surgeons; Confidential Communications. Amend RSA 329:26 to read as follows:

329:26 Confidential Communications. The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. ***The confidential relations and communications under this section apply to minor children who are patients of a physician or surgeon.*** This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying, or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A. This section shall also not apply to the release of blood samples and the results of laboratory tests for blood alcohol content taken from a person who is under investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

2 Mental Health Practitioners; Privileged Communications. Amend RSA 326-B:35, I to read as follows:

I. Confidential communications between licensees and their clients are privileged in the same manner as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a client of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the client. ***The confidential relations and communications under this section apply to minor children who are patients of a licensee.***

3 Nurses; Privileged Communications. Amend RSA 330-A:32 to read as follows:

330-A:32 Privileged Communications. The confidential relations and communications between any person licensed under provisions of this chapter and such licensee's client are placed on the same basis as those provided by law between attorney and client, and nothing in this chapter shall be construed to require any such privileged communications to be disclosed, unless such disclosure is required by a court order. Confidential relations and communications between a client and any person working under the supervision of a person licensed under this chapter which are necessary and customary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with the supervising person licensed under this chapter, unless such disclosure is required by a court order. ***The confidential relations and communications under this section apply to minor children who are clients of a licensee.*** This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A.

4 Effective Date. This act shall take effect 60 days after its passage.
2008-0945s

AMENDED ANALYSIS

This bill provides that confidential communications between a physician, nurse, or mental health practitioner and a minor child are privileged.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 411, relative to the confidentiality of health care records during the investigation of child abuse and neglect cases. Judiciary Committee. Ought to Pass, Vote 4-0. Senator Gottesman for the committee.

MOTION TO TABLE

Senator Gottesman moved to have SB 411 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 411, relative to the confidentiality of health care records during the investigation of child abuse and neglect cases.

SB 433, relative to confidential communications between a physician and a patient. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Clegg for the committee.

Senate Judiciary
March 18, 2008
2008-1065s
08/10

Amendment to SB 433

Amend RSA 329:26 as inserted by section 1 of the bill by replacing it with the following:

329:26 Confidential Communications. The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying, or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A. This section shall also not apply to the release of blood **or urine** samples and the results of laboratory tests for **drugs or** blood alcohol content taken from a person ~~[who]~~ **in connection with the offense for which the person** is under investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 495-FN, prohibiting Internet solicitation and exploitation of children. Judiciary Committee. Ought to Pass with Amendment, Vote 4-0. Senator Foster for the committee.

Senate Judiciary

March 18, 2008

2008-1066s

04/10

Amendment to SB 495-FN

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

1 Child Pornography; Definitions. RSA 649-A:2 and RSA 649-A:3 are repealed and reenacted to read as follows:

649-A:2 Definitions. In this chapter:

I. "Child" means any person under the age of 16 years.

II. "Disseminate" means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit, or display.

III. "Sexually explicit conduct" means human masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.

IV. "Visual representation" means any visual depiction, including any photograph, film, video, digital image, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) The production of such visual depiction involves the use of a child engaging in or being engaged in sexually explicit conduct; or

(b) Such visual depiction is a digital image, computer image, or computer-generated image of a child engaging in or being engaged in sexually explicit conduct; or

(c) Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in or being engaged in sexually explicit conduct.

V.(a) "Identifiable child" means a person:

(1) Who was a child at the time the visual depiction was created, adapted, or modified; or

(2) Whose image as a child was used in creating, adapting, or modifying the visual depiction; and

(3) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

(b) The term “identifiable child” shall not be construed to require proof of the actual identity of the identifiable child.

VI. “Previous conviction” or “previously convicted” means having been convicted by a jury or a judge, or having plead guilty prior to the commission of the current offense. For purposes of this paragraph, a previous conviction need not have been affirmed on appeal.

VII. The term “computer” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

649-A:3 Possession of Child Sexual Abuse Images.

I. No person shall knowingly:

(a) Buy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct; or

(b) Bring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct.

II. An offense under this section shall be a class A felony if such person has had no previous convictions in this state or another jurisdiction for the conduct prohibited by paragraph I. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum sentence.

III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:

(a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof –

(1) Took reasonable steps to destroy each such visual depiction; or

(2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

2 New Sections; Child Pornography; Distribution and Manufacture of Child Sexual Abuse Images. Amend RSA 649-A by inserting after section 3 the following new sections:

649-A:3-a Distribution of Child Sexual Abuse Images.

I. No person shall:

(a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell, exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually explicit conduct;

(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.

II.(a) If such person has had no previous convictions in this state or another state for the conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the minimum.

(b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under section I(b) with having less than three images or visual representations, the defendant will be guilty of a class B felony.

III. Nothing in this chapter shall be construed to limit any law enforcement agency from possessing or displaying or otherwise make available any images as may be necessary to the performance of a valid law enforcement function.

649-A:3-b Manufacture Of Child Sexual Abuse Images.

I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.

II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, a person may be sentenced to life imprisonment or for such term as the court may order.

3 New Sections; Child Pornography; Proving Age of Child; Discovery. Amend RSA 649-A by inserting after section 5 the following new sections:

649-A:6 Proving Age of Child. Whether a child depicted in a visual representation is a minor for the purposes of this section is a question of fact for the jury and may be found by expert or lay testimony, or by viewing the images.

649-A:7 Discovery.

I. In any criminal proceeding, any material that constitutes a visual representation of a child engaging in or being engaged in sexually explicit conduct shall remain in the care, custody, and control of the state or the court.

II. The state shall provide ample opportunity for the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial to inspect, view, and examine the property or material at a state facility.

III. Upon a defense motion establishing that it is necessary to copy, photograph, duplicate, or otherwise reproduce such material or property in order to prepare a defense, the court may authorize such action, provided that the court's order include a protective order prohibiting disclosure of the material or property to any one other than the defendant, his or her attorney, or any individual the defendant may seek to qualify to furnish expert testimony at trial, and requiring that all such materials and property provided to the defense be returned to the state at the end of the case.

3 Computer Pornography and Child Exploitation Prevention; Certain Uses of Computer Services Prohibited. RSA 649-B:4 is repealed and reenacted to read as follows:

649-B:4 Certain Uses of Computer Services Prohibited.

I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:

- (a) Any offense under RSA 632-A, relative to sexual assault and related offenses.
- (b) Indecent exposure and lewdness under RSA 645:1.
- (c) Endangering a child as defined in RSA 639:3, III.

II.(a) A person who violates the provisions of paragraph I shall be guilty of a class A felony if such person believed the child was under the age of 13, otherwise such person shall be guilty of a class B felony.

(b) A person convicted under paragraph I based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction shall be charged as a class A felony. If the indictment also alleges that the person believed that the child was under the age of 13, the person may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 10 years.

(c) If the person has been previously convicted 2 or more times for an offense under this section or a reasonably equivalent statute in another state, the person may be sentenced to a maximum term not to exceed 30 years.

III. It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.

4 Indecent Exposure and Lewdness. RSA 645:1 is repealed and reenacted to read as follows:

645:1 Indecent Exposure and Lewdness.

I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.

II. A person is guilty of a class B felony if:

(a) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.

(b) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.

(c) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.

III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.

5 New Section; Registration of Criminal Offenders; Online Identifiers Amend RSA 651-B by inserting after section 4 the following new section:

651-B:4-a Registration of Online Identifiers. In addition to any other information a person who is required to register is required to provide pursuant to RSA 651-B:4, such person shall report any online identifier such person uses or intends to use. For purposes of this section, "online identifier" includes all of the following: electronic mail address, instant message screen name, user identification, user profile information, and chat or other Internet communication name or identity information. Such person shall report any changes to an existing online identifier, or the creation of any new online identifier to law enforcement before using the online identifier.

6 New Subparagraph; Registration of Criminal Offenders; Availability of Information to the Public. Amend RSA 651-B:7, II by inserting after subparagraph (b)(1)(E) the following new subparagraph:

(F) Any online identifiers, as defined in RSA 651-B:4-a, used by the individual.

7 School Employee and Volunteer Background Investigations. Amend RSA 189:13-a, V to read as follows:

V. Any person who has been convicted of any violation or attempted violation of RSA 630:1; 630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; 639:2; 639:3; 645:1, ~~II~~ II[~~5~~] or III; 645:2; 649-A:3; **649-A:3-a; 649-A:3-b**; 649-B:3; or 649-B:4; or any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene; in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, or charter school. By decision of the appropriate governing body, a school administrative unit, school district, or charter school may deny a selected applicant a final offer of employment if such person has been convicted of any felony in addition to those listed above. The governing body may adopt a policy stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

8 Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1, V(b) to read as follows:

(b) RSA 169-B:41, II, 639:3, III, 649-A:3, **649-A:3-a, 649-A:3-b**, 649-B:3, 649-B:4, or 650:2, II; or

9 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6, I to read as follows:

I. Any sexual offender required to register as a result of a violation or attempted violation of RSA 632-A:2, 632-A:3, or 645:1, III, and any offender against children required to register as a result of a violation or attempted violation of RSA 169-B:41, II, 632-A:2, 633:1, 633:2, 639:2, 639:3, III, 645:2, II, 649-A:3, I, **649-A:3-a, 649-A:3-b**, 649-B:3, 649-B:4, or 650:2, II, or of an equivalent offense in an out-of-state jurisdiction, shall be registered for life.

10 New Paragraph; Registration of Criminal Offenders; Release of Certain Sexual Offenders Into the Community. Amend RSA 651-B:3 by inserting after paragraph III the following new paragraph:

IV. In the discretion of the local law enforcement agency or the department, such agency or the department may affirmatively verify the address of any offender within that agency's jurisdiction through in-person contact at the home or residence of the offender.

11 Effective Date. This act shall take effect January 1, 2009.
2008-1066s

AMENDED ANALYSIS

This bill:

I. Increases the penalties for possession of images of a child engaging in sexually explicit conduct.

II. Establishes penalties for manufacture and distribution of images of a child engaging in sexually explicit conduct.

III. Redefines "visual representation" of sexually explicit images.

IV. Increases the penalties for use of the Internet or other computer service to seduce, solicit, lure, or entice a child or a person believed to be a child to commit a sexual assault.

V. Requires sexual offenders and offenders against children to report any online identifiers used.

VI. Permits the department of safety or a local law enforcement agency to verify the address of a sex offender through in-person contact at the offender's home or residence.

Amendment adopted.

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

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Downing moved to have SB 323-FN removed from the table.

Adopted.

SB 323-FN, relative to terms of release and notice of hearings in the parole of prisoners.

The question is on the committee report of Ought to Pass.

Senator Downing offered a floor amendment.

Sen. Downing, Dist. 22

Sen. Clegg, Dist. 14

March 20, 2008

2008-1098s

04/05

Floor Amendment to SB 323-FN

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

AN ACT repealing a provision relative to the calculation of multiple concurrent or consecutive sentences of imprisonment.

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

1 Repeal. RSA 651-A:6, II, relative to multiple concurrent or consecutive sentences of imprisonment, is repealed.

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

2008-1098s

AMENDED ANALYSIS

This bill repeals a provision relative to the calculation of multiple concurrent or consecutive sentences of imprisonment.

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

SB 373, relative to dental insurance coverage for members of the Manchester employees' contributory retirement system. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 4-1. Senator Hassan for the committee.

Public and Municipal Affairs

March 12, 2008

2008-0983s

10/09

Amendment to SB 373

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

AN ACT relative to definitions for and the application of the civil unions law to the retirement system.

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

1 New Section; Civil Unions. Amend RSA 100-A by inserting after RSA 100-A:2-a, the following new section:

100-A:2-b Civil Unions.

I. In this chapter, the following additional definitions shall apply:

(a) "Civil union partner" shall mean an individual who is a party to a civil union recognized under RSA 457-A.

(b) "Civil union partner's acknowledgement" means a written recognition, signed by a member's civil union partner, of the benefit payment plan selected by the member under the provisions of RSA 100-A:5, , RSA 100-A:6, RSA 100-A:10, or RSA 100-A:19-a, through RSA 100-A:19-h that is filed with the retirement system on a form prescribed by the board of trustees at the time of retirement and when the member elects a change in benefit payment as allowed under RSA 100-A:13.

(c) "Decree of divorce" and "divorce" shall include the dissolution of a civil union pursuant to RSA 457-A:7.

(d) "Married" shall include entered into a civil union recognized under RSA 457-A which, as of the relevant date, has not been dissolved pursuant to RSA 457-A:7 or by death.

(e) "Remarriage" shall include establishment of a civil union recognized under RSA 457-A.

(f) "Spousal acknowledgement" shall include a civil union partner's acknowledgement.

(g) "Spouse" shall include a member's civil union partner except under RSA 100-A:52, RSA 100-A:52-a, and RSA 100:52-b.

(h) "Surviving spouse" shall include a member's surviving civil union partner, except under RSA 100-A:52, RSA 100-A:52-a, and RSA 100:52-b.

(i) "Widow" or "widower" shall include a member's surviving civil union partner.

II. RSA 457-A and this section shall not apply to this chapter to the extent that such application will violate the Internal Revenue Code of 1986, as amended, or other federal law.

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

2008-0983s

AMENDED ANALYSIS

The bill adds definitions clarifying the application of RSA 457-A, the civil unions law.

Amendment adopted.

Senator Foster Rule #42 on SB 373.

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

Adopted.

Senator Foster Rule #42 on SB 373.

Ordered to third reading.

Senator Barnes is in opposition to SB 373.

MOTION TO REMOVE FROM THE TABLE

Senator Hassan moved to have SB 342-FN-L removed from the table.

Adopted.

SB 342-FN-L, establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing.

The question is on the adoption of the committee amendment.

Public and Municipal Affairs

March 4, 2008

2008-0818s

06/09

Amendment to SB 342-FN-LOCAL

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

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to provide a simplified appeals mechanism for developments that propose the creation of workforce housing.

2 New Subdivision; Workforce Housing Opportunities. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 In this subdivision:

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing, which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multifamily workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable. Municipalities shall not use unreasonable requirements for inclusionary zoning to prevent the development of projects that include workforce housing supported by higher income

housing.

674:60 Appeals.

I. Any person whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse impact on the viability of the proposed workforce housing development may appeal the municipal action to the superior court. The appeal shall set forth how the municipal action violates the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval have a substantial adverse impact on the viability of the proposal. The appeal shall specifically describe the order or action requested of the court. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval have a substantial adverse impact on the viability of the proposal.

II. A hearing on the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause.

III. In order to expedite the appeal, either party may request the court to promptly appoint an impartial referee to hear the appeal. The parties shall bear the reasonable expenses of the referee.

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

Amendment adopted.

Senator Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 13, 2008

2008-1016s

06/10

Floor Amendment to SB 342-FN-LOCAL

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

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and

compelling public policy goal.

III. The purpose of this act is to provide a simplified appeals mechanism for developments that propose the creation of workforce housing.

2 New Subdivision; Workforce Housing Opportunities. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 In this subdivision:

I. “Affordable” means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household’s gross annual income.

II. “Multi-family workforce housing” means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.

III. “Reasonable and realistic opportunities for the development of workforce housing” means opportunities to develop economically viable workforce housing within the framework of a municipality’s ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic. If the ordinances and regulations of a municipality satisfy the obligation of the municipality under RSA 674:59, and such development is not unduly inhibited by natural features, no municipality shall be in violation of RSA 674:59 by virtue of economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development.

IV. “Workforce housing” means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. “Workforce housing” also means rental housing, which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities.

I. In every municipality that exercises the power to adopt land use ordinances and

regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multifamily workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable.

II. No municipality shall fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.

III. A municipality that adopts land use ordinances and regulations may allow workforce housing to be located in a majority of, but not necessarily all, land areas in districts zoned to permit residential uses within the municipality.

IV. The existing housing stock of a municipality shall be taken into consideration in determining compliance with this section. If the existing housing stock of a municipality is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with paragraph I.

V. Paragraph I shall not be construed to require municipalities to allow workforce housing that does not meet reasonable standards or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

674:60 Appeals.

I. Any person whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse impact on the viability of the proposed workforce housing development may appeal the municipal action to superior court under RSA 677:4 or RSA 677:15, seeking permission to develop the proposed workforce housing. The petition to the court shall set forth how the denial is due to the municipality's failure to comply with the workforce housing requirements of RSA 674:59 or how the conditions or restrictions of approval otherwise violate such requirements.

II. A hearing on the merits shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause. If the court determines that it will be unable to meet this requirement, at the request of either party it shall promptly appoint a referee to hear the appeal within 6 months. Referees shall be impartial, and shall be chosen on the basis of qualifications and experience in planning and zoning law.

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

2008-1016s

AMENDED ANALYSIS

This bill:

I. Requires municipalities that exercise the power to adopt land use ordinances to provide opportunities for the development of workforce housing.

II. Establishes a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing.

Floor amendment adopted.

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

A roll call was requested by Senator Hassan.

Seconded by Senator Foster.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: Roberge.

Yeas: 23 - Nays: 1

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator DeVries moved to have SB 421-L removed from the table.

Adopted.

SB 421-L, requiring municipal land use regulation to provide reasonable opportunities for the creation of workforce housing.

The question is on the adoption of the committee amendment.

Sen. Fuller Clark, Dist. 24

February 12, 2008

2008-0523s

06/03

Amendment to SB 421-LOCAL

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

AN ACT relative to workforce housing.

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

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to clarify the requirements of *Britton v. Chester*, 134 N.H. 434 (1991), and to provide guidance for complying with those requirements to local officials and the public.

IV. The subdivision enacted in section 2 of this act is intended to provide the maximum feasible flexibility to municipalities in exercising the zoning powers under RSA 674 consistent with their obligation to provide reasonable opportunities for the development of workforce housing, and is not intended to create a system of statewide land use regulation or a statewide zoning process.

2 New Subdivision: Workforce Housing. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 Definitions. In this subdivision

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce Housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multi-family workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable. Municipalities shall not use unreasonable requirements for inclusionary zoning to prevent the development of projects that include workforce housing supported by higher income housing.

3 Declaration of Purpose. Amend RSA 672:1, III-e to read as follows:

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing, including so-called cluster development and the development of multi-family structures, ~~[should]~~ **shall** not be prohibited or discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

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

2008-0523s

AMENDED ANALYSIS

This bill declares it to be the policy of planning and zoning regulation in the state that municipalities have an obligation to provide reasonable and realistic opportunities for the development of workforce housing.

Amendment adopted.

Senator Fuller Clark offered a floor amendment.

Sen. Fuller Clark, Dist. 24

March 13, 2008

2008-1015s

06/10

Floor Amendment to SB 421-LOCAL

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

AN ACT relative to workforce housing.

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

1 Findings and Statement of Purpose.

I. The state of New Hampshire is experiencing a shortage of housing that is affordable to working households. This housing shortage poses a threat to the state's economic growth, presents a barrier to the expansion of the state's labor force, undermines state efforts to foster a productive and self-reliant workforce, and adversely affects the ability of many communities to host new businesses.

II. Achieving a balanced supply of housing, which requires increasing the supply of workforce housing, serves a statewide public interest, and constitutes an urgent and compelling public policy goal.

III. The purpose of this act is to clarify the requirements of *Britton v. Chester*, 134 N.H. 434 (1991), and to provide guidance for complying with those requirements to local officials and the public.

IV. The subdivision enacted in section 2 of this act is intended to provide the maximum feasible flexibility to municipalities in exercising the zoning powers under RSA 674 consistent with their obligation to provide reasonable opportunities for the development of workforce housing, and is not intended to create a system of statewide land use regulation or a statewide zoning process.

2 New Subdivision: Workforce Housing. Amend RSA 674 by inserting after section 57 the following new subdivision:

Workforce Housing

674:58 Definitions. In this subdivision

I. "Affordable" means housing with combined rental and utility costs or combined mortgage and loan debt services, property taxes, and required insurance that do not exceed

30 percent of a household's gross annual income.

II. "Multi-family workforce housing" means a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.

III. "Reasonable and realistic opportunities for the development of workforce housing" means opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted pursuant to this chapter and consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic. If the ordinances and regulations of a municipality satisfy the obligation of the municipality under RSA 674:59, and such development is not unduly inhibited by natural features, no municipality shall be in violation of RSA 674: 59 by virtue of economic conditions beyond the control of the municipality that affect the economic viability of workforce housing development.

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce Housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than 2 bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

674:59 Workforce Housing Opportunities.

I. In every municipality that exercises the power to adopt land use ordinances and regulations, such ordinances and regulations shall provide reasonable and realistic opportunities for the development of workforce housing, including multi-family workforce housing. In order to provide such realistic opportunities, lot size and overall density requirements for workforce housing shall be reasonable.

II. No municipality shall fulfill the requirements of this section by adopting voluntary inclusionary zoning provisions that rely on inducements that render workforce housing developments economically unviable.

III. A municipality that adopts land use ordinances and regulations may allow workforce housing to be located in a majority of, but not necessarily all, land areas in

districts zoned to permit residential uses within the municipality.

IV. The housing stock of a municipality shall be taken into consideration in determining compliance with this section. If the existing housing stock of a municipality is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with paragraph I.

V. Paragraph I shall not be construed to require municipalities to allow workforce housing that does not meet reasonable standards or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

3 Declaration of Purpose. Amend RSA 672:1, III-e to read as follows:

III-e. All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary, and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing, including so-called cluster development and the development of multi-family structures, ~~should~~ **shall** not be prohibited or discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

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

2008-1015s

AMENDED ANALYSIS

This bill:

I. Declares it to be the policy of planning and zoning regulation in the state that municipalities have an obligation to provide reasonable and realistic opportunities for the development of workforce housing.

II. Requires municipalities that exercise the power to adopt land use ordinances to provide reasonable opportunities for the development of workforce housing.

Floor amendment adopted.

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

A roll call was requested by Senator Hassan.

Seconded by Senator Burling.

The following Senators voted Yes: Gallus, Reynolds, Kenney, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas,

Barnes, DeVries, Letourneau, D'Allesandro, Estabrook, Downing, Hassan, Fuller Clark.

The following Senator voted No: Roberge.

Yeas: 23 - Nays: 1

Adopted.

Ordered to third reading.

SB 414, authorizing special elections to fill vacancies on local boards. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs
March 12, 2008
2008-0985s
03/09

Amendment to SB 414

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

AN ACT authorizing special elections to fill vacancies in elective town offices.

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

1 New Paragraph; Vacancies in Town Offices. Amend RSA 669:61 by inserting after paragraph III the following new paragraph:

IV. The legislative body of a town may adopt the optional procedure in this paragraph for filling vacancies in elective town offices. If the authorized person or body does not make an appointment to fill the vacancy pursuant to paragraph I within 45 days after at least one legally-qualified person has applied in writing for such appointment, then upon the filing of a petition with the selectmen signed by the number of voters required under RSA 39:3 for the warning of a special town meeting, presented not less than 90 days before the next annual town meeting, the selectmen shall call a special election to fill the vacancy. The special election shall be subject to the provisions of RSA 39:3 and other applicable provisions governing town elections. The person elected at the special election shall serve for a term ending upon the election and qualification of his or her successor. Unless otherwise provided, at the next annual town election, the voters of the town shall elect an officer for the full term provided by law or the balance of an unexpired term provided by law, as the case may be. If the town then refuses or neglects to fill the office, a vacancy shall be deemed again to exist.

2 Filling of Vacancies; Selectmen. Amend RSA 669:63 to read as follows:

669:63 Selectmen. Vacancies in the board of selectmen shall be filled by appointment made by the remaining selectmen. Whenever the selectmen fail to make such appointment, the superior court or any justice thereof, on petition of any citizen of the town, and after such notice as the court shall deem reasonable, may appoint a suitable person to fill the vacancy; ***provided, however, that if the town has adopted the provisions of RSA 669:61, IV, and a petition thereunder is submitted before the submission of a petition under this section, the provisions of RSA 669:61, IV, shall apply.***

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

2008-0985s

AMENDED ANALYSIS

This bill authorizes towns to hold special elections to fill vacancies in elective town offices when: (1) the town has adopted the special election procedure; (2) the person or body authorized to fill the vacancy does not do so within 45 days of a person applying for appointment to the vacant office; and (3) a sufficient number of voters petition the selectmen for a special election.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 457, extending the veterans' property tax credit to all honorably discharged veterans. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 5-0. Senator Barnes for the committee.

The question is on the adoption of the committee report of Inexpedient to Legislate.

A division vote was requested.

Yeas: 19 – Nays: 5

Committee report of Inexpedient to Legislate is adopted.

Senators Clegg and Kenney are in opposition to the motion of Inexpedient to Legislate on SB 457.

SB 462, limiting liability for overseers of public welfare when acting in the course of their official duties. Public and Municipal Affairs Committee. Ought to Pass, Vote 4-1. Senator Burling for the committee.

Adopted.

Ordered to third reading.

SB 471, allowing local building codes to add requirements for installation and inspection of heating and ventilation systems. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 4-1. Senator Burling for the committee.

Committee report of Inexpedient to Legislate is adopted.

SB 474, relative to registers of deeds and reports of county officers. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator DeVries for the committee.

Public and Municipal Affairs
March 12, 2008
2008-0984s
10/05

Amendment to SB 474

Amend the bill by deleting section 6 and renumbering the original sections 7-14 to read as 6-13, respectively.

Amend the bill by replacing section 8 with the following:

8 Office Hours; Registers of Deeds; Gender Neutral. Amend RSA 478:13 to read as follows:

478:13 Office Hours. Every register shall keep his ***or her*** office open daily except Sundays and state holidays. It may be closed on Saturday if not incompatible with public business; provided, however, that the register may keep his ***or her*** office open on Saturday mornings in the custody of a single custodian whenever he ***or she*** deems it necessary.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 542, relative to a mediated settlement dispute in the town of Rye. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Burling for the committee.

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Sgambati moved to have SB 489 removed from the table.

Adopted.

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Wolfeboro.

The question is on the adoption of the committee amendment.

Public and Municipal Affairs
March 4, 2008
2008-0825s

04/01

Amendment to SB 489

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

AN ACT establishing a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

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

1 Commission Established. There is established a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

2 Membership and Compensation.

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

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

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

(c) One member from the forest protection bureau, division of forests and lands, department of resources and economic development, appointed by the director of the division of forests and lands.

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

3 Duties. The commission shall study erecting a fire tower on Copple Crown mountain in Brookfield. The commission may solicit and receive information and testimony from any individual or organization with information relevant to the commission's objectives.

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

5 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, 2008.

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

2008-0825s

AMENDED ANALYSIS

This bill establishes a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

Amendment adopted.

Senator Sgambati offered a floor amendment.

Sen. Sgambati, Dist. 4
March 19, 2008
2008-1083s
04/09

Floor Amendment to SB 489

Amend paragraph I of section 2 of the bill by inserting after subparagraph (c) the following new subparagraph:

(d) One member from the Lakes Region Conservation Trust, appointed by that organization.

Amend the bill by replacing section 4 with the following:

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

Floor amendment adopted.

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

Adopted.

Ordered to third reading.

SB 416, relative to subdivision and site plan regulation waivers. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Burling for the committee.

Sen. Burling, Dist. 5
March 17, 2008
2008-1042s
03/04

Amendment to SB 416

Amend RSA 674:36, II(n)(2) as inserted by section 1 of the bill by replacing it with the following:

(2) The evidence before the planning board demonstrates that the granting of the waiver would better serve the public interest, and the granting of the waiver would not be contrary to the spirit and intent of the regulations.

Amend RSA 674:44, III(e) as inserted by section 2 of the bill by replacing it with the following:

(2) The evidence before the planning board demonstrates that the granting of the waiver would better serve the public interest, and the granting of the waiver would not be contrary to the spirit and intent of the regulations.

Amendment adopted.

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

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gottesman, Clegg, Larsen, Barnes, Letourneau, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Foster, Gatsas, DeVries, D'Allesandro, Estabrook, Downing.

Yeas: 16 - Nays: 8

Adopted.

Ordered to third reading.

SB 341, prohibiting digital advertising devices on certain highways. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 4-1. Senator Clegg for the committee.

Transportation and Interstate Cooperation

March 12, 2008

2008-0993s

06/09

Amendment to SB 341

Amend RSA 236:74, III as inserted by section 1 of the bill by replacing it with the following:

III. Lighting.

(a) Except as provided in subparagraph (b), advertising devices located in federal highway or turnpike adjacent areas may be lighted, subject ~~[only]~~ to such restriction with respect to devices to be erected as may from time to time be prescribed by the commissioner.

(b) Advertising devices which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving

public service information such as time, date, temperature, weather, public safety, or similar information.

The question is on the adoption of the committee amendment.

A division vote was requested.

Yeas: 5 – Nays: 17

Amendment failed.

Senator Gottesman moved the question.

Without objection Senator Larsen moved to close debate.

The question is on the motion of Ought to Pass.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Reynolds, Sgambati, Burling, Cilley, Janeway, Odell, Kelly, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, Letourneau, Estabrook, Downing, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Kenney, Roberge, Gatsas, DeVries, D'Allesandro.

Yeas: 18 - Nays: 6

Adopted.

Ordered to third reading.

SB 358, relative to mooring permits. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 5-0. Senator Letourneau for the committee.

Adopted.

Ordered to third reading.

SB 380, relative to petitions for boating rules. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 5-0. Senator Burling for the committee.

Transportation and Interstate Cooperation

March 12, 2008

2008-0990s

03/10

Amendment to SB 380

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

1 Operating Restrictions; Petitions. Amend RSA 270:12, I to read as follows:

I. The commissioner of safety shall, after receiving a petition signed by ~~[25 or more residents or property owners of each affected town or towns in which a]~~ **200 persons who are either owners of shorefront property on the lake, pond, or river or citizens of a town bordering the lake, pond, or river [is located], at least 50 of whom are not owners of shorefront property,** and after notice and hearing, at which it appears that the public interest requires, adopt rules under RSA 541-A governing the maximum horsepower of boat engines and outboard motors or prescribe maximum speed limits for the operation of such boats or outboard motors applicable to or upon all or any portion of the public waters of this state. The commissioner of safety shall, in like manner and after notice and hearing, prohibit the use of motorboats and outboard motors on bodies of public water having an area of 35 acres or less; provided, that said prohibition shall not be construed as affecting the bodies of water covered by RSA 270:75~~[499]~~ **through RSA 270:132.** Hearings under this section shall be held in the vicinity of the body of water under consideration during the months of June, July, August, and September following the date of the petition.

2 Ski Craft; Petitions. Amend RSA 270:74-a, II to read as follows:

II. Any group of ~~[10 or more residents or property owners of]~~ **voters in** a town in which a lake, pond, or river is located may petition the commissioner to prohibit or restrict the use of ski craft on the lake, pond, or river, or a portion thereof. **Such petition shall be by 200 persons who are either owners of shorefront property on the lake, pond, or river or citizens of a town bordering the lake, pond, or river, at least 50 of whom are not owners of shorefront property.** Once ski craft have been prohibited or restricted on a lake, pond, or river, or portion thereof, pursuant to this section for at least one year such a group of ~~[residents or property owners]~~ **voters** may not petition to allow the use of ski craft on the lake, pond, or river, or a portion thereof.

2008-0990s

AMENDED ANALYSIS

This bill requires petitions signed by 200 shorefront property owners or citizens in a town bordering a lake, pond, or river to request department of safety rules restricting the operation of boats or ski craft on a lake, pond, or river.

MOTION TO TABLE

Senator Foster moved to have SB 380 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 380, relative to petitions for boating rules.

Senator Letourneau is in opposition to the motion to table SB 380.

SB 388, relative to commercial driver license qualifications. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 4-1. Senator Burling for the committee.

Committee report of Inexpedient to Legislate is adopted.

SB 429, relative to driver education courses in other states. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 5-0. Senator Kelly for the committee.

Transportation and Interstate Cooperation

March 12, 2008

2008-0995s

03/10

Amendment to SB 429

Amend the bill by replacing section 1 with the following:

1 Driver Education; Reciprocity. Amend RSA 263:20 to read as follows:

263:20 Driver Education; Reciprocity. The provisions of RSA 263:19 shall not prevent the issuance of a driver's license to any individual who can produce satisfactory evidence of completion of an equivalent course of driver education, approved by the issuing state, provided that the ~~[commissioners of safety and education acting jointly shall determine that such course is equivalent to New Hampshire's driver education course and provided that such course meets or exceeds]~~ ***driver training curriculum is equal to or more stringent than New Hampshire's and that the number of hours of classroom, behind-the-wheel, and observation instruction provided to the student is equal to or greater than*** the state's minimum standards.

2008-0995s

AMENDED ANALYSIS

This bill eliminates the requirement that the commissioners of safety and education determine that a driver education course in another state is equivalent to a New Hampshire course in order for persons taking the course to be issued New Hampshire licenses.

Amendment adopted.

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

Adopted.

Ordered to third reading.

SB 476, relative to operation of OHRVs on state highways in Coos county. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 3-2. Senator Burling for the committee.

Committee report of Inexpedient to Legislate is adopted.

SB 535, relative to exceptions to highway surveillance prohibitions. Transportation and Interstate Cooperation Committee. Inexpedient to Legislate, Vote 4-1. Senator Letourneau for the committee.

Committee report of Inexpedient to Legislate is adopted.

Recess.

Senator Hassan in the Chair.

SB 396, relative to the establishment of a statewide transportation policy. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 3-1. Senator Kelly for the committee.

Transportation and Interstate Cooperation

March 18, 2008

2008-1056s

06/09

Amendment to SB 396

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

1 New Chapter; Statewide Transportation Policy. Amend RSA by inserting after chapter 240 the following new chapter:

CHAPTER 241

STATEWIDE TRANSPORTATION POLICY

241:1 Findings and Public Purpose. The general court finds that:

I. It is essential to the well-being of New Hampshire's citizens and to the economic health of the state that New Hampshire have and maintain a sustainable, balanced, and effective transportation system that is capable of efficiently transporting people and goods, and that is well-integrated with the regional transportation system spanning New England.

II. The cost of maintaining New Hampshire's transportation system and infrastructure has increased substantially, greatly outpacing the state's transportation funding resources. The widening gap between transportation costs and available revenues impedes the ability of the state to meet the urgent need to maintain and repair existing infrastructure, including bridges and roads. Under these circumstances, it is essential that New Hampshire plan and develop a balanced transportation system that is sustainable for the long-term and that represents a wise investment of public funds.

241:2 Statewide Transportation Policy. The statewide transportation policy for all future projects shall be as follows:

I. To maximize the value of its limited transportation funds, New Hampshire must invest in a transportation system that:

- (a) Is integrated with the land use goals and policies of the state;
- (b) Is balanced, including multiple means of travel;
- (c) Meets the diverse needs of the citizens of the state, including rural, urban and low-income populations, the growing elderly population, and people with disabilities;
- (d) Minimizes the effects of unforeseeable natural or economic conditions that could otherwise cripple a predominantly single-mode transportation system.

II. To spend its limited transportation funds wisely, the state must ensure that its transportation investments protect New Hampshire's quality of life by strengthening communities and the economy, protecting the natural environment, advancing the state's comprehensive development plan and smart growth policy, and reducing the greenhouse gases.

III. Relative to the planning, funding, and development of New Hampshire's transportation system, the department of transportation shall consider and advance proposals that, taken in the aggregate:

- (a) Ensure the repair and maintenance of roads, bridges, rail, and other transportation infrastructure throughout the state to provide a safe, efficient, intermodal transportation network.

(b) Are integrated with and support an effective and balanced regional transportation system that strengthens New Hampshire's economic position within the New England region.

(c) Support the goal of achieving a balanced transportation system, including multiple transportation options, that serves the diverse needs of rural, urban, low-income, and elderly populations, and that is adaptable and resilient to meet New Hampshire's future needs.

(d) Consider the full range of reasonable transportation alternatives for all significant highway projects and all projects of substantial public interest, and prioritize the following alternatives before increasing highway capacity:

- (1) Transportation system management.
- (2) Transportation demand management.
- (3) Public transit, including but not limited to buses and trains.

(e) Require corridor studies from which significant highway projects and projects of substantial public interest are developed to encourage integration and coordination of such projects with local and regional land use planning that is consistent with RSA 9-B, and to ensure the coordination of local land use plans that preserve the capacity of the transportation infrastructure at issue and maximize the value of transportation investments.

(f) Increase the energy efficiency of the transportation system.

(g) Reduce the global warming effects of the transportation sector and minimize the impacts of transportation on public health, air and water quality, open spaces, and other natural resources.

(h) Achieve effective intermodal connections with the state's major airports to enhance access for the citizens of the state, and to better integrate the state's major airports within the region's transportation system to enhance access to and from major population centers in New England.

(i) Promote context-sensitive solutions that are consistent with the unique character of communities.

(j) Coordinate with and advance the comprehensive state development plan, under RSA 9-A.

(k) Are consistent with and advance the state's smart growth policy as established in RSA 9-B.

(l) Incorporate a public participation process in which municipalities, regional planning commissions, metropolitan planning organizations, and the public have timely notice and opportunity to identify and comment on concerns related to transportation planning decisions, capital investment decisions, and project decisions. The department shall take the comments and concerns of local citizens into account and shall be responsive to them.

241:3 Compliance with Statewide Transportation Policy. Capital investment decisions, transportation planning decisions, and project decisions of the department of transportation shall comply with the statewide transportation policy under this chapter. Appeals from such decisions may be taken in accordance with RSA 541:6. The department of transportation shall report on its decision-making processes at least semi-annually by filing a written review thereof with the president of the senate, the speaker of the house of representatives, and the chairpersons of the senate transportation and interstate cooperation and capital budget committees and the house transportation and public works and highways committees.

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

A roll call was requested by Senator Barnes.

Senator Barnes withdrew his request for a roll call.

Senator Gottesman moved the question.

Without objection Senator Hassan moved to close debate.

Amendment adopted.

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

Adopted.

Ordered to third reading.

Senator Letourneau is in opposition to SB 396.

SB 452, relative to transportation planning. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 3-2. Senator Burling for the committee.

Transportation and Interstate Cooperation

March 18, 2008

2008-1060s

03/01

Amendment to SB 452

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

1 Comprehensive Plan; Transportation. Amend RSA 9-A:1, III(b)(3) to read as follows:

(3) A transportation section which considers all pertinent modes of transportation and provides a framework of policies and actions which will provide for a safe, ~~[and]~~ adequate, **and sustainable** transportation system **that is coordinated with, supports, and is supported by land use planning at the local, regional, and state levels** to serve the needs of the state **and its citizens, and which advances other elements of the comprehensive state development plan.**

2 Comprehensive Plan; Land Use. Amend RSA 9-A:1, III(b)(7) to read as follows:

(7) A natural resources section which identifies trends in land protection, open space, **and** farm land preservation and protection, and proposes policies and actions necessary at the state level, **including but not limited to policies and actions that integrate land use and transportation planning**, to protect those resources which are perceived to be of statewide significance.

3 Comprehensive Plan; State Departments. Amend RSA 9-A:1, IV to read as follows:

IV. The comprehensive development plan shall serve as the basis for policy and program development **and implementation** by the various departments of state government. State agencies shall develop and regional planning commissions and local planning boards are encouraged to develop plans which are consistent with the policies and priorities established in the comprehensive development plan.

4 Office of Energy and Planning; Coordination. Amend RSA 9-A:2, III to read as follows:

III. Coordinate and monitor the planning efforts of various state agencies and departments, **including but not limited to agencies involved in the planning and development of transportation infrastructure**, to ensure that program plans published by such agencies are consistent with the policies and priorities established in the comprehensive development plan.

5 Comprehensive Regional Development Plan. Amend RSA 36:47, III to read as follows:

III. In preparing a comprehensive plan for the development of the region within its jurisdiction, each regional planning commission may use the framework for the state's comprehensive development plan in RSA 9-A:1, III as the basis for its plan. Such plan shall be updated every 5 years, or sooner if desired by the regional planning commission, **and each such plan shall include a transportation section which addresses the transportation needs of the region in a manner that is integrated with, supports, and is supported by the land use planning objectives of the region and the comprehensive state development plan.** Prior to its adoption, the plan shall be distributed to every library, planning board, and board of selectmen/aldermen/city council in each of the communities within the region, and to the office of energy and planning. The regional planning commission shall address in writing all comments received prior to the publication of a final draft. A public hearing shall be held by the regional planning commission with 30 days' notice published in all newspapers of general circulation in the region, and shall state where the document can be viewed[,] **and** the time and place of the public hearing, and shall allow for written comments. For each regional plan, the office of energy and planning shall offer comments as to its consistency with the state plan. The first regional development plans affected by this statute shall be adopted within 5 years of the effective date of this paragraph [~~and renewed at least every 5 years thereafter~~].

6 Relationship to Local Planning Boards. Amend RSA 36:50 to read as follows:

36:50 Relationship To Local Planning Boards. A regional planning commission may assist the planning board of any municipality within the delineated region to carry out any regional plan or plans developed by said commission. A regional planning commission may also render assistance on local planning problems. A regional planning commission may make recommendations on the basis of its plans and studies to any planning board, to the legislative body of any city and to the selectmen of any town within its region, to the county commissioners of the county or counties in which said region is located, and to any state or federal authorities. Upon completion of a comprehensive master plan for the region or any portion of said comprehensive master plan, a regional planning commission [~~may~~] **shall** file certified copies of said comprehensive master plan or portion thereof with the planning board of any member municipality. Such planning boards may adopt all or any part of such comprehensive master plan which pertains to the areas within its jurisdiction as its own master plan, subject to the requirements of RSA 674:1[~~4~~] **through RSA 674:4.**

7 Additional Powers and Duties of Regional Planning Commissions. Amend RSA 36:53 to read as follows:

36:53 Additional Powers and Duties of Regional Planning Commissions. In order to implement any of the provisions of a regional plan, which has been adopted or is in preparation, a regional planning commission may, in addition to its powers and duties under RSA 36:47, undertake studies and make specific recommendations on economic, industrial, and commercial development within the region. [~~and~~] **Such studies and recommendations shall address the manner in which economic, industrial, and commercial development within the region affect, may best be served by, and may best preserve the capacity of transportation systems within the region. A regional planning commission may** carry out, with the cooperation of municipalities and/or counties within the region, economic development programs for the full development, improvement, protection, and preservation of the region's physical and human resources. **Such programs shall be implemented to further the transportation and land use objectives of the comprehensive state development plan and the regional planning commission.**

8 Statewide Transportation Improvement Program. Amend RSA 228:99 to read as follows:

228:99 Statewide Transportation Improvement Program (STIP). The governor shall develop a statewide transportation improvement program (**STIP**) as required by 23 U.S.C.

sections 134 and 135, as amended. The governor shall revise and update the program every 2 years. Adoption of the STIP and revised STIP shall be as follows:

I. Each metropolitan planning organization and rural regional planning commission shall reach agreement with the department of transportation relative to funding unified planning work programs consistent with 23 U.S.C. sections 134 and 135 no later than December 1 of each even-numbered year. Each metropolitan planning organization and rural regional planning commission shall provide a regional transportation improvement program (TIP) to the department of transportation no later than April 1 of each odd-numbered year. Such plans shall include a public involvement plan and education initiative to ensure early and adequate input from residents, municipalities, and any other interested parties in New Hampshire *relative to the TIP and its consistency with local and regional land use plans and the comprehensive state development plan. Each metropolitan planning organization and regional planning commission shall, in its TIP, describe how the TIP is coordinated with and furthers local and regional land use planning objectives and is consistent with the comprehensive state development plan.*

II. *The department, upon receipt of the TIPs, shall determine whether the TIPs are consistent with the comprehensive state development plan and shall identify in the tentative STIP aspects of any TIPs that are not consistent.* The commissioner shall submit the tentative STIP, *with the department's analysis of its consistency with the comprehensive state development plan*, in accordance with the state planning process as required in 23 U.S.C. section 135 to the governor's advisory commission on intermodal transportation no later than July 1 of each odd-numbered year.

III. The governor's advisory commission on intermodal transportation shall conduct at least one public hearing in each executive council district to present the tentative STIP to the public and to receive the public's comments and recommendations regarding the program. The governor's advisory commission on intermodal transportation shall submit such program along with the commission's recommendations to the governor no later than December 1 of each odd-numbered year. Each metropolitan planning organization and rural regional planning commission ~~[should]~~ **shall** conduct an informational meeting after the commission submits its recommendations to receive the public's final comments and recommendations regarding the proposed programs before adoption by the governor. *Each metropolitan planning organization and regional planning commission shall, during such informational meeting, discuss the manner in which the proposed program furthers and is coordinated with the land use planning objectives of the region and the municipalities located therein and the comprehensive state development plan.*

IV. *Before adopting the STIP, the governor, with the assistance of the department of transportation and the office of energy and planning, shall issue a report on the consistency of the STIP with the comprehensive state development plan and shall amend the STIP as necessary to achieve such consistency.* The governor shall submit the *report and the STIP* to the general court to be acted on no later than January 15 of each even-numbered year. After an enactment by the general court of the STIP or by June 1 of each even-numbered year, whichever is earlier, each metropolitan planning organization and rural regional planning commission should continue its public involvement program by conducting at least one informational meeting concerning the STIP. *Such meetings shall address how programs within the STIP will be coordinated with local land use planning within the region and the municipalities located therein.*

9 Project Priority. Amend RSA 240:2 to read as follows:

240:2 Project Priority. To the extent practicable, *and subject to the requirements of RSA 228:99 relative to the consistency of the statewide transportation improvement*

program with the comprehensive state development plan and regional and local land use planning, the projects shall be implemented in the order shown in the report.

10 New Section; Procedural Requirements for the State 10-Year Transportation Improvement Plan. Amend RSA 240 by inserting after section 3 the following new section:

240:4 Procedural Requirements. The department of transportation shall be subject to the following procedures regarding the state 10-year transportation improvement plan:

I. Funding for projects shall be prioritized based on a project's level of readiness to improve the rate at which projects in the 10-year plan are completed.

II. Projects that are fiscally constrained for 4 years and can be readily completed shall be on a separate list titled the statewide transportation improvement plan (STIP). The STIP shall be prioritized by level of readiness.

III. The 10-year plan shall be divided into 3 separate lists: large projects, small projects, and maintenance and repair.

IV. The 10-year plan shall be divided into categories by funding source or function.

V. At least one hearing shall be held by the governor's advisory commission on intermodal transportation (GACIT) for every regional planning commission. Hearings shall be held beginning in July of the first fiscal year of the biennium.

VI. The general court shall receive the 10-year plan by January 15.

VII. Every 2 years, the department of transportation shall propose to the general court a list of projects to be removed from the 10-year plan because they:

(a) Have significantly changed in scope.

(b) Are no longer feasible.

(c) Lack the necessary permits and are unlikely to receive the necessary permits in the foreseeable future.

(d) Are inconsistent with the comprehensive state development plan or regional and local land use planning.

(e) For other reasons are unnecessary or unlikely to proceed.

VIII. Inflation shall be included in both the costs calculated in the 10-year plan and shall also be included in calculating the necessary revenues.

11 Master Plan; Transportation. Amend RSA 674:2, III(a) to read as follows:

(a) A transportation section which considers all pertinent modes of transportation and provides a framework for both adequate local needs and for coordination with regional and state transportation plans ***and local land use planning objectives***. Suggested items to be considered may include but are not limited to public transportation, park and ride facilities, and bicycle routes, or paths, or both. ***The transportation section should address the manner in which transportation and local land use planning may:***

(1) Preserve the capacity of local roads and state highways by reducing and managing traffic demand.

(2) Make transportation and land uses mutually supportive of one another.

(3) Achieve the principals of smart growth described in RSA 9-B, sound planning, and wise resource protection.

12 Master Plan Preparation. Amend RSA 674:3, I to read as follows:

I. In preparing, revising, or amending the master plan, the planning board may make surveys and studies, and may review data about the existing conditions, probable growth demands, and best design methods to prevent sprawl growth in the community and the region. The board ***should consider the goals, policies, and guidelines of the comprehensive state development plan and the comprehensive master plan developed by the pertinent regional planning commission and*** may also consider the goals, policies, and guidelines of any ***other*** regional or state plans, as well as those of abutting communities.

13 Purposes of Zoning Ordinances. Amend RSA 674:17, I(a) to read as follows:

(a) To lessen congestion in the streets ***and coordinate transportation and land use planning***;

14 Purposes of Zoning Ordinances. Amend RSA 674:17, II to read as follows:

II. Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality, ***and coordinating transportation and land use planning to preserve the capacity of highways and roads***.

15 New Subparagraphs; Innovative Land Use Controls. Amend RSA 674:21, I by inserting after subparagraph (n) the following new subparagraphs:

(o) Transportation demand management.

(p) Transit-oriented development.

16 New Subparagraph; Innovative Land Use Controls. Amend RSA 674:21, IV by inserting after subparagraph (b) the following new subparagraph:

(c) "Transportation demand management" means regulations that require, or provide incentives for, land use activities that generate substantial traffic to include measures that help preserve the traffic capacity of existing road and highway infrastructure.

17 Effective Date. This act shall take effect January 1, 2009.

Amendment adopted.

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

Adopted.

Ordered to third reading.

Senator Letourneau is in opposition to SB 452.

RESOLUTION

Senator Foster moved that the Senate 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 308-FN-A, preventing potential double taxation on the identical gross business profits of business organizations.

SB 312-FN, relative to insurance coverage for obesity and morbid obesity.

SB 321, relative to construction or renovation of regional vocational centers, transferring certain positions from the pari-mutuel commission to the department of safety, and requiring certain operating budget reductions.

SB 323-FN, repealing a provision relative to the calculation of multiple concurrent or consecutive sentences of imprisonment.

SB 327-FN, relative to compensation for state employees injured in the line of duty.

SB 329, relative to payment of members of screening panels for medical injury claims.

SB 331-FN, establishing new positions and realigning functions at the department of corrections.

SB 341, prohibiting digital advertising devices on certain highways.

SB 342-FN-L, establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing.

SB 348, relative to the certification of forensic counselors by the board of forensic counselors.

SB 358, relative to mooring permits.

SB 365, relative to the commission to study childhood lead poisoning prevention laws, policies, and standards in New Hampshire.

SB 373, relative to definitions for and the application of the civil unions law to the retirement system.

SB 378, authorizing the supreme court to establish a business and commercial dispute docket in the superior court.

SB 379, relative to boating while intoxicated and transporting alcoholic beverages by a minor.

SB 383, establishing a commission to develop a plan for the expansion of transmission capacity in the north country.

SB 384, relative to the repair of septic systems prior to the sale of waterfront property.

SB 389, relative to privileged communications between health care providers and minor children.

SB 396, relative to the establishment of a statewide transportation policy.

SB 412, establishing the office of technology development and telecommunications planning and the position of director of telecommunications in the department of resources and economic development.

SB 414, authorizing special elections to fill vacancies in elective town offices.

SB 416, relative to subdivision and site plan regulation waivers.

SB 419, relative to the duties of the energy planning and advisory board and restructuring policy principles.

SB 421-L, relative to workforce housing.

SB 429, relative to driver education courses in other states.

SB 433, relative to confidential communications between a physician and a patient.

SB 438, relative to contractor accountability and disclosure in the public works construction procurement.

SB 449, relative to the status of emergency services volunteers.

SB 450, requiring the New Hampshire Citizens Health Initiative to provide an annual summary to the general court.

SB 451, authorizing rate recovery for electric public utilities investments in distributed energy resources.

SB 452, relative to transportation planning.

SB 462, limiting liability for overseers of public welfare when acting in the course of their official duties.

SB 465, relative to the laws regulating trusts and trust companies in New Hampshire.

SB 474, relative to registers of deeds and reports of county officers.

SB 482, relative to ethical standards for volunteer service in the executive branch.

SB 489, establishing a commission to study erecting a fire tower on Copple Crown mountain in Brookfield.

SB 495-FN, prohibiting Internet solicitation and exploitation of children.

SB 502-FN, relative to unemployment compensation.

SB 512-FN, relative to emergency management powers.

SB 516-FN-L, relative to aid for county bridges.

SB 523, relative to requirements for the estuary alliance for sewage treatment to take and hold land.

SB 525, establishing the first Saturday in May as Emergency Medical Services Provider Recognition Day.

SB 530-FN-A-L, relative to kindergarten aid.

SB 539-FN-L, relative to the cost of an adequate education and provision of fiscal capacity disparity aid.

SB 540-FN, relative to New Hampshire HealthFirst, an affordable, wellness-based health insurance plan for small employers.

SB 541, relative to an expedited process for certificate of need review and membership of the health services planning and review board.

SB 542, relative to a mediated settlement dispute in the town of Rye.

SB 543, establishing a commission to study court security.

SCR 10, urging the New Hampshire delegation to actively seek an increase in federal funding for wastewater treatment facility improvements.

SCR 11, supporting the application of Taiwan for observer status at the World Health Organization.

**ANNOUNCEMENTS
RESOLUTION**

Senator Foster moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Adopted.

In recess to the Call of the Chair.