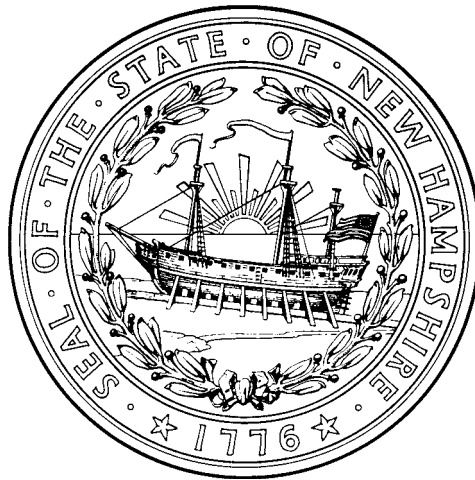


April 8, 2009
Nos. 10-11

STATE OF NEW HAMPSHIRE

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



161st Session of the New Hampshire General Court

Legislative Proceedings

SENATE JOURNAL

ADJOURNMENT – APRIL 1, 2009 SESSION

COMMENCEMENT – APRIL 8, 2009 SESSION

SENATE JOURNAL 10 *(continued)*

April 1, 2009

Out of Recess.

MOTION TO ADJOURN FROM LATE SESSION

Sen. Hassan moved that the Senate adjourn from the Late Session.

Motion adopted.

Adjournment from the Late Session.

SENATE JOURNAL 11

April 8, 2009

The Senate reconvened at 10 a.m., a quorum being present.

Rev. Jared A. Rardin, Pastor of South Congregational Church, Concord, guest chaplain to the Senate, offered the following meditative thoughts and prayer:

Thank you, Sen. Larsen, and thank you all. I want you to know I've traveled a really long distance from next door to be here with you, and it's a pleasure. And I would ask that we begin with just a moment of silence, let the worries of the day pass from you, take a deep breath, and then I'll offer a prayer. (Moment of silence observed.)

O God, during this season that is so holy for so many, grant to us this day an abiding sense, both of the extraordinary gift of grace that You give, and of the tremendous suffering that human beings have often experienced throughout time and even in our own time. You have created us in Your image, and we ask that you would give us eyes to see that image in one another here this morning and in all of our brothers and sisters. So help us today, we pray, to speak from the heart, to listen with the soul, and in all we do, to bear in mind the sacred responsibility that you have entrusted to us, to care for the people who call New Hampshire home. All of this we pray in your Holy Name.

Amen

Sen. Gilmour led the Pledge of Allegiance.

Sen. Downing is excused from today's session.

INTRODUCTION OF GUESTS

Senate Page: Claire Dickey, The Derryfield School, Manchester.

Senate Page: Kaitlyn Kane, The Derryfield School, Manchester.

COMMITTEE REPORTS

FINANCE REPORT

Sen. D'Allesandro reported that the following bills will come to the Finance Committee: HB 671, HB 685; the following bills will not come to the Finance Committee: HB 284, HB 545, HB 594, HB 633.

SPECIAL ORDER

Without objection, President Larsen moved to Special-Order SB 181-FN-A to the front of today's Calendar.

Ways and Means Committee

SB 181-FN-A, relative to the liquor commission and alcoholic beverages.

Without objection, President Larsen moved to Special-Order HB 56-FN to 2:30 p.m. or thereafter in today's session.

Transportation and Interstate Cooperation Committee

HB 56-FN, renaming a bridge to honor U. S. Navy Seal Daniel Healy.

SPECIAL ORDER

SB 181-FN-A, relative to the liquor commission and alcoholic beverages. Ways and Means Committee. Re-refer to committee, Vote 6-0. Senator Odell for the committee.

The question is on the adoption of committee recommendation of Re-refer to Committee on SB 181-FN-A.

Motion of Re-refer to Committee adopted.

SB 5, prohibiting retailers from disclosing private consumer information to foreign states in connection with the collection of certain sales and use taxes. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Hassan for the committee.

Commerce, Labor and Consumer Protection

April 2, 2009

2009-1200s

09/10

Amendment to SB 5

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

AN ACT prohibiting retailers from disclosing private customer information to foreign states in connection with the collection of certain sales and use taxes.

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

1 New Chapter; Protection of Private Customer Information in Connection with Retail Purchase Transactions. Amend RSA by inserting after chapter 78-C the following new chapter:

CHAPTER 78-D

**PROTECTION OF PRIVATE CUSTOMER INFORMATION
IN CONNECTION WITH RETAIL PURCHASE TRANSACTIONS**

78-D:1 Findings and Purpose. The general court finds:

I. Numerous states impose a sales tax on goods and services purchased by customers within their boundaries, and also impose an excise known as a "use tax" on use, storage, or consumption of goods and services purchased by their residents from a business located out of the taxing state. Many of these states require their residents to report and pay the use tax directly to the state.

II. The state of New Hampshire does not impose a sales tax on customers making purchases of goods and services in New Hampshire, nor on goods and services purchased by its residents out of state for use, storage, or consumption in New Hampshire. New Hampshire businesses are not required by law to determine where a person intends to use, store, or consume goods or services purchased within the state.

III. The state of New Hampshire is a year-round destination visited by hundreds of thousands of persons from numerous states that impose sales and use tax on their own residents. A requirement on businesses located in New Hampshire to determine, collect, and remit such taxes could be, in many instances, unreasonably burdensome given the variation in rates and exemptions of these taxes in other states, the magnitude of sales to residents of foreign taxing states, and the absence of uniform administrative systems to determine, collect, and remit such taxes. Unlike other states, New Hampshire has not adopted the Streamlined Sales and Use Tax Agreement because of its sovereign decision not to impose such taxes.

IV. New Hampshire has a strong governmental interest in protecting the privacy of an individual's personal information that may be used to facilitate the sale of goods and services within this state, while the general court can identify no governmental interest in requiring its businesses to make an affirmative inquiry concerning the location of the intended use of a good or service, or whether such good or service will be used by the purchaser or by another person.

V. The United States Supreme Court has unequivocally determined that only businesses that have an adequate physical presence in a state imposing a sales and use tax may be subject to a requirement to assess, collect, and remit a sales tax. New Hampshire businesses that have no physical presence in such a foreign state, such as through retail or wholesale locations, or sales personnel, have no obligation to assess, collect, or remit a sales tax with respect to purchases by foreign citizens in New Hampshire.

VI. The imposition by other states of obligations to collect use tax imposed on residents with respect to purchases occurring within this state results in fundamental discrimination between businesses selling items within the foreign state (who are subject only to the sales tax administrative burdens) and businesses selling

similar items within this state (who are subject to potentially highly burdensome and arbitrary administrative requirements to determine, in some manner, whether a customer will store, use, or consume such items within such foreign state even before the customer has in fact stored, used, or consumed the item within such foreign state). This discriminatory burden violates federal constitutional protections that create an area of trade that is free from interference by state laws and prohibit state laws that discriminate against interstate commerce by providing a direct commercial advantage to local businesses.

VII. Any foreign state that attempts to require an out-of-state business to collect a use tax imposed on citizens of such foreign state without first seeking actively to enforce such use tax against its own citizens shall have carefully developed information and documentation that demonstrates conclusively that a business knew, based on information provided by a customer, that such customer has stored, consumed, or used a purchased item within such foreign state. Any attempt by such foreign state to charge the business with use tax liability without satisfying these prior requirements is the effective equivalent of imposing a direct tax on the out-of-state business with respect to out-of-state transactions in a manner that unlawfully discriminates against such out-of-state transactions in violation of the Commerce Clause of the United States Constitution.

78-D:2 Qualifying Foreign Sales and Use Tax Statute.

I. In this section:

(a) "Adequate physical presence" means the presence of stores, offices, or other tangible locations within the foreign state at which the retailer or its affiliates engage in business within the foreign state through the activities of owners, officers, directors, partners, managers, employees, representatives, or agents, whether or not related to the activity of the retailer sought to be taxed.

(b) "Foreign state" means a foreign state or commonwealth which assesses sales or use tax on its residents with respect to the use, storage, and consumption of goods and services.

(c) "Goods" means tangible personal property intended for any use other than resale.

(d) "New Hampshire retail purchase transaction" means any sale of services or goods, or both, for any purpose other than resale in the regular course of business that is completed at a location within New Hampshire and where delivery or other first use of the services or goods occurs in New Hampshire.

(e) "Private customer information" means documents, records, and other information maintained in any form which contains the purchaser's name, address, telephone number, credit card, debit card or check number, a description of the goods or service purchased, the identity of any person for whom the goods or services were purchased, and the identification of the point of transfer of any goods or services that comprise a New Hampshire retail purchase transaction.

(f) "Retailer" means any individual, trust, estate, fiduciary, partnership, corporation, or other legal entity, located within the state that engages in New Hampshire retail purchase transactions.

II. No retailer shall provide to a foreign state any private customer information for use in the determination of sales or use tax liability of the customer in the foreign state or for use in the determination, collection, and remittance of sales or use tax by the retailer with respect to a New Hampshire retail purchase transaction, unless the foreign state has first provided to the retailer written confirmation that the foreign state provided prior written notice of its intent to collect a use tax on such retail transaction to the commissioner of revenue administration, and no later than 60 days following the commissioner's receipt of such notice by the foreign state, the department of justice has submitted to the commissioner its determination that the foreign state's sales and use tax statutes:

(a) Impose upon its residents a requirement to individually pay sales or use tax on the use, storage, or consumption of goods or services purchased in any other state;

(b) Specifically identify specifically the goods and services to which the use tax applies and exemptions to the use tax;

(c) Require that the retailer or its affiliates have adequate physical presence to establish nexus with the foreign state for the establishment of any obligation of the retailer to determine, collect, and remit a use tax with respect to a New Hampshire retail purchase transaction;

(d) Require every resident to submit annually to the foreign state a statement (i) identifying each and every item subject to such foreign state's sales and use tax purchased outside such foreign state for storage, use or consumption within such foreign state during an applicable period, (ii) stating the value of such items purchased, and (iii) including a statement under penalties of perjury that such resident complied with the requirement stated in this chapter;

(e) Require its residents or the foreign state to provide the retailer at the time of a New Hampshire retail purchase transaction with information establishing whether or not the goods or services purchased in the state are intended to be used, stored, or consumed within the foreign state, and provide that any information supplied by its residents is irrefutably presumed to be correct and complete, and that the retailer may rely on such information regardless of the accuracy or completeness of such information;

(f) Require that any agency of such foreign state responsible for enforcing such foreign state's sales or use tax shall annually audit, investigate, or examine not less than 10 percent of the total use tax returns filed by residents of such foreign state with respect to each year;

(g) Require that any agency of such foreign state responsible for enforcing such foreign state's use tax shall conduct its audit, investigation, or examination practices with respect to residents' use tax returns in a manner that ensures that such practices are applied equally regardless of the state in which the sales transaction occurs, and that requires any such agency to file a public report annually demonstrating compliance with this nondiscrimination requirement; and

(h) Create an irrebutable presumption that, in the absence of voluntary information by the resident, the goods or services purchased are intended to be used in the state in which they are purchased.

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

2009-1200s

AMENDED ANALYSIS

This bill prohibits retailers in New Hampshire from providing private customer information to any foreign state for purposes of enforcing collection of a sales or use tax, unless the foreign state has a qualifying sales and use tax statute.

The question is on the adoption of Committee Amendment 1200s.

Committee Amendment 1200s adopted.

Sen. Hassan offered Floor Amendment 1293s.

Sen. Cilley, Dist. 6

April 8, 2009

2009-1293s

01/03

Floor Amendment to SB 5

Amend the bill by replacing section 2 with the following:

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

The question is on the adoption of Floor Amendment 1293s.

Floor Amendment 1293s adopted

The question is on the motion of Ought to Pass as Amended on SB 5.

A roll call was requested by Sen. Hassan, seconded by Sen. Bragdon.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Houde, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gilmour, Lasky, Carson, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: (None)

Yeas: 22 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Recess/Out of Recess.

SB 40, relative to protecting workers and local governments with advance notice of impending plant closings and layoffs. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 3-2. Senator DeVries for the committee.

Commerce, Labor and Consumer Protection**April 2, 2009****2009-1206s****08/04****Amendment to SB 40**

Amend RSA 275-F:2, IV as inserted by section 1 of the bill by replacing it with the following:

IV. "Employer" means any individual or entity that directly or indirectly owns, or actively controls the management decisions of, a business enterprise in New Hampshire that employs:

(a) Seventy-five or more employees, excluding part-time employees; or

(b) Seventy-five or more employees who in the aggregate work at least 3,000 hours per week, exclusive of hours of overtime.

Amend RSA 275-F:2, VI(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Results in an employment loss at a single site of employment in New Hampshire during any 30-day period for at least 250 employees, excluding any part-time or seasonal employees, or at least 25 employees, excluding any part-time or seasonal employees, if they constitute 33 percent of the full-time employees of the employer.

Amend RSA 275-F:2 as inserted by section 1 of the bill by inserting after paragraph IX the following new paragraph:

X. "Seasonal employee" means an employee who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, or an employee hired with the understanding that their employment was limited to the duration of a particular project or undertaking.

Amend RSA 275-F:6 as inserted by section 1 of the bill by replacing it with the following:

275-F:6 Determinations with Respect to Employment Loss. In determining whether a plant closing or mass layoff has occurred or will occur, employment losses for 2 or more groups at a single site of employment, each of which is less than the minimum number of employees specified in RSA 275-F:2, VI or RSA 275-F:2, VIII but which in the aggregate exceed that minimum number, and which occur within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this chapter.

Amend RSA 275-F:7, I as inserted by section 1 of the bill by replacing it with the following:

I. The commissioner shall have the authority to determine any liabilities or civil penalties under RSA 275-F:8 and RSA 275-F:9 and the applicability of any exceptions under RSA 275-F:4.

Amend RSA 275-F:7 as inserted by section 1 of the bill by inserting after paragraph IV the following new paragraph:

V. The commissioner may hold in trust any proceeds from a lien filed under RSA 275-F:8 pending adjudication of any claims to the proceeds by an employer. Following the final adjudication of such claims, the commissioner shall distribute any proceeds from the lien on a pro rata basis to the employees of the employer or employers against whose business revenues and real and personal property the lien was obtained.

Amend RSA 275-F:8, I as inserted by section 1 of the bill by replacing it with the following:

I.(a) Any employer who fails to give notice under RSA 275-F:3 before ordering a mass layoff or plant closing is liable to each employee entitled to notice who lost his or her employment for:

(1) Back pay at the average regular rate of compensation received by the employee during the last 3 years of his or her employment, or the employee's final rate of compensation, whichever is higher; and

(2) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan; and

(3) Costs and reasonable attorney's fees.

(b)(1) The department shall have a lien upon the business revenues and all real and personal property of the employer for the employer's liability under subparagraph I(a). In order for such lien to be valid and effective against the employer's interest in real property, the department shall record a notice of lien in each county in which the employer holds an interest in real property.

(2) Upon recordation of a notice of such lien with the secretary of state, the lien shall be valid and perfected as of the date of the employer's failure to give notice as required by this chapter with priority over all prior liens and encumbrances except tax liens.

Amend RSA 275-F:8, VII as inserted by section 1 of the bill by replacing it with the following:

VII. Whenever the attorney general has reason to believe that an employer is violating or is about to violate this act, the attorney general may bring an action in the name of the state against such employer to restrain such violation by temporary or permanent injunction and may petition the court for an order of restitution of money or property to any person or class of persons injured thereby. The action may be brought in the superior court of the county in which the employer allegedly in violation of this act resides or in which the principal place of business is located, or in the superior court of Merrimack county. Under this chapter, no state court shall have authority to enjoin a plant closing or mass layoff except in cases of fraudulent misconduct on the part of an employer.

The question is on the adoption of Committee Amendment 1206s.

Committee Amendment 1206s failed.

Senators Gatsas, Barnes and Carson are in opposition to Committee Amendment 1206s.

Sen. Hassan offered Floor Amendment 1289s.

Sen. Hassan, Dist. 23

April 8, 2009

2009-1289s

06/10

Floor Amendment to SB 40

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

1 New Chapter; New Hampshire Worker Adjustment and Retraining Notification Act. Amend RSA by inserting after chapter 275-E the following new chapter:

CHAPTER 275-F NEW HAMPSHIRE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT

275-F:1 Statement of Purpose. The purpose of this chapter is to protect workers of the state by requiring advance notification of significant employment losses and by providing a means for workers to seek a remedy through administrative procedure. The legislature finds that advance notice of a major employment loss event allows all levels of government to prepare to help a sudden large number of affected workers. The legislature also finds that, while the United States already has a federal WARN Act, the state of New Hampshire should enforce its own program to allow quicker administrative determinations and enforcement. This purpose is enhanced by allowing the state of New Hampshire to pursue claims on behalf of employees affected by violations of RSA 275-F and asserting liens against the assets of employers who have liability under RSA 275-F.

275-F:2 Definitions. In this chapter:

I. "Affected employees" means employees who may reasonably be expected to experience employment loss as a consequence of a proposed plant closing or mass layoff by their employer.

II. "Commissioner" means the commissioner of labor acting through the powers and personnel of RSA 273.

III. "Department" means the department of labor.

IV.(a) "Employer" means any business enterprise that employs in New Hampshire:

(1) Seventy-five or more employees, excluding part-time employees; or

(2) Seventy-five or more employees who in the aggregate work at least 3,000 hours per week, exclusive of hours of overtime.

(b) For purposes of this chapter, any entity that directly or indirectly owns and operates a business enterprise in New Hampshire that satisfies the criteria in paragraph IV(a) is an employer, and any parent corporation is an employer as to any business enterprise directly owned and operated by its corporate subsidiary.

V.(a) "Employment loss" means:

(1) An employment termination, other than a discharge for cause, voluntary departure, or retirement; or

(2) A layoff exceeding 6 months; or

(3) A reduction in hours of work of more than 50 percent during each month of any 6-month period.

(b) "Employment loss" shall not mean a plant closing or layoff that is the result of the relocation or consolidation of part or all of the employer's business if, before the closing or layoff, the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a 6-month break in employment, or the employer offers to transfer the employee to any other site of employment, regardless of distance, with no more than a 6-month break in employment, and the employee accepts within 30 days of the offer, closing, or layoff, whichever is later.

VI. "Mass layoff" means a reduction in force which:

(a) Is not the result of a plant closing; and

(b) Results in an employment loss at a single site of employment in New Hampshire during any 30-day period for at least 250 employees, excluding any part-time or seasonal employees, or at least 25 employees, excluding any part-time or seasonal employees, if they constitute 33 percent of the full-time employees of the employer.

VII. "Part-time employee" means an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.

VIII. "Plant closing" means the permanent or temporary shutdown of a single site of employment in New Hampshire, or one or more facilities or operating units within a single site of employment in New Hampshire, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees, excluding any part-time employees.

IX. "Representative" means an exclusive representative of employees within the meaning of 29 U.S.C. section 159(a).

X. "Seasonal employee" means an employee who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required, or an employee hired with the understanding that their employment was limited to the duration of a particular project or undertaking.

275-F:3 Notice.

I. No employer shall order a mass layoff or plant closing unless 60 days before the order takes effect the employer gives written notice of the order to:

(a) Affected employees and representatives of affected employees;

(b) The commissioner, who shall notify additional governmental units as appropriate;

(c) The New Hampshire attorney general; and

(d) The chief elected official of each municipality in New Hampshire within which the plant closing or mass layoff occurs.

II. Any employer required to give notice of any mass layoff or plant closing under this chapter shall include in its notice the elements required by the Worker Adjustment and Retraining Notification Act, 29 U.S.C. section 2101 et seq.

III. The mailing of notice to an employee's last known address or inclusion of notice in the employee's paycheck shall be considered acceptable methods for notice to each affected employee under this chapter.

IV. If an employer sells all or part of its business, the seller shall be responsible for providing notice for any plant closing or mass layoff under this section, up to and including the effective date of the sale. After the effective date of the sale of part or all of an employer's business, the purchaser shall be responsible for providing notice for any plant closing or mass layoff under this section. Notwithstanding any other provision of this chapter, any person who is a full time employee of the seller, other than a part time employee, as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.

V. The rights and remedies of employees under this chapter are in addition to any other contractual, statutory, or common law rights and remedies of the employees, and are not intended to alter or affect such rights and remedies, except that the period of notification required by this chapter shall run concurrently with any period of notification required by contract or by any other law.

275-F:4 Exceptions.

I. In a mass layoff or plant closing, an employer is not required to comply with the notice requirement of RSA 275-F:3 if:

(a) The employer is a faltering company and at the time that notice would have been required, the employer was actively seeking capital in the form of loans, or the issuance of stocks, bonds, or other methods of internally generated financing, or additional money, credit, or business through a commercially reasonable method which opportunities were objectively realistic and;

(1) The capital or business sought, if obtained, would have enabled the employer to avoid or postpone the mass layoff or plant closing; and

(2) The employer reasonably and in good faith believed that giving the notice required by RSA 275-F:3 would have precluded the employer from obtaining the needed capital or business; or

(b) The need for notice was not reasonably foreseeable at the time the notice would have been required; or

(c) The plant closing is of a temporary facility or the plant closing or mass layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project, or undertaking; or

(d) A mass layoff or plant closing is necessitated by a physical calamity, natural disaster, or an act of terrorism or war; or

(e) The closing or layoff constitutes a strike or lockout not intended to evade the requirements of this chapter. Nothing in this chapter shall require an employer to serve written notice when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act, 29 U.S.C. section 151 et seq. Nothing in this chapter shall validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the National Labor Relations Act.

II. An employer relying on such exceptions shall provide as much notice as is practicable and at that time shall provide a complete statement of the basis for reducing the notification period.

275-F:5 Extension of Layoff Period. A layoff of more than 6 months which, at its outset, was announced to be a layoff of 6 months or less shall be treated as an employment loss under this chapter unless:

I. The extension beyond 6 months is caused by business circumstances, including unforeseeable changes in price or cost, not reasonably foreseeable at the time of the initial layoff; and

II. Notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

275-F:6 Determinations with Respect to Employment Loss. In determining whether a plant closing or mass layoff has occurred or will occur, employment losses for 2 or more groups at a single site of employment, each of which is less than the minimum number of employees specified in RSA 275-F:2, VI or RSA 275-F:2, VIII but which in the aggregate exceed that minimum number, and which occur within any 90-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this chapter.

275-F:7 Authority of the Commissioner.

I. The commissioner shall have the authority to determine any liabilities or civil penalties under RSA 275-F:8 and RSA 275-F:9 and the applicability of any exceptions under RSA 275-F:4.

II. The commissioner shall have the authority to examine the books and records of an employer, but only to the extent necessary to administer the provisions of this chapter.

III. To determine whether the employer was actively seeking capital or business, or that the need for notice was not reasonably foreseeable under RSA 275-F:4, I(b) the employer shall make available to the department, upon request:

(a) A written record of documents relevant to the determination of whether the employer was actively seeking capital or business, or that the need for notice was not reasonably foreseeable; and

(b) An affidavit verifying the contents of the documents contained in the record.

IV. Except as provided in this section, information obtained from any employer subject to this chapter regarding the material provided and the books, records, or wages paid to workers during the investigation of possible violations of this chapter, shall be confidential, shall not be disclosed to employees or their representatives, shall not be used in any court in any pending action or proceeding, and shall not be admissible in evidence in any action or proceeding other than one arising out of this chapter.

V. The commissioner shall adopt rules under RSA 541-A relative to the administration and enforcement of this chapter.

VI. The commissioner may hold in trust any proceeds from a lien filed under RSA 275-F:8 pending adjudication of any claims to the proceeds by an employer. Following the final adjudication of such claims, the commissioner shall distribute any proceeds from the lien on a pro rata basis to the employees of the employer or employers against whose business revenues and real and personal property the lien was obtained.

275-F:8 Liability.

I. Any employer who fails to give notice under RSA 275-F:3 before ordering a mass layoff or plant closing is liable to each employee entitled to notice who lost his or her employment for:

(a) Back pay at the average regular rate of compensation received by the employee during the last 3 years of his or her employment, or the employee's final rate of compensation, whichever is higher;

(b) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan;

(c) Costs and reasonable attorney's fees.

(d)(1) The department shall have a lien upon the business revenues and all real and personal property of the employer for the employer's liability under RSA 275-F:8, I. In order for such lien to be valid and effective against the employer's interest in real property, the department shall record a notice of lien in each county in which the employer holds an interest in real property. In order for such lien to be perfected and valid against business revenues, and personal property of the employer, the department shall record a notice of lien in the office designated in Article 9 of the Uniform Commercial Code as adopted in New Hampshire (RSA 382-A:9-101 et seq).

(2) The notice of lien shall be in the form of the following:

NOTICE OF LIEN PURSUANT TO NH RSA 275-F:8, I(d)

NOTICE is hereby given that the New Hampshire department of labor claims a lien against [name and address of employer] pursuant to NH RSA 275-F:8, I(d) for liabilities arising under NH RSA 275-F:8 I(d) in the aggregate amount of \$_____.

In accordance with NH RSA 275-F:8, I(d), this notice shall be recorded with _____ and shall constitute a lien against property of the employer identified above.

Dated this ____ day of _____, 20 .

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR

By:_____

(3) The notice of lien shall constitute a lien of the department that is effective as of the date and time of the recording or filing.

(4) The department shall send a copy of the notice of lien to the employer by certified mail, return receipt requested, postage prepaid.

II. Liability shall be calculated for the period of the employer's violation, up to a maximum of 60 days, or 1/2 the number of days that the employee was employed by the employer, whichever period is smaller.

III. The amount of an employer's liability under paragraph I shall be reduced by:

(a) Any wages, except vacation moneys accrued before the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation;

(b) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation;

(c) Any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution pension plan, on behalf of and attributable to the employee for the period of the violation; and

(d) Any liability paid by the employer to the employee under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. section 2101 et seq.

IV. Any liability incurred by an employer under paragraph I with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the violation.

V. The amount of an employer's liability under paragraph I shall not affect and is not affected by the employee's receipt of unemployment benefits administered by the New Hampshire department of employment security.

VI. If an employer proves to the satisfaction of the commissioner that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter, the commissioner may in his or her discretion reduce the amount of liability provided for in this section.

VII. Whenever the attorney general has reason to believe that an employer is violating or is about to violate this act, the attorney general may petition the court for an order of restitution of money or property to any person or class of persons injured thereby. The action may be brought in the superior court of the county in which the employer allegedly in violation of this act resides or in which the principal place of business is located, or in the superior court of Merrimack county. Under this chapter, the state courts shall not have authority to enjoin a plant closing or mass layoff.

VIII. In addition to asserting the lien as provided in RSA 275-F:8, I(d), the state of New Hampshire, through the department, shall be deemed to be a creditor under RSA 545-A for the liability of the employer as determined under RSA 275-F:8, I and may assert claims pursuant to RSA 545-A:4 and RSA 545-A:5, as applicable, and shall have the remedies set forth in RSA 545-A for such claims under RSA 545-A which are established by the state.

IX. An action to recover the back pay, benefits, costs, and attorneys fees and other moneys for which an employer may be liable under this chapter may be maintained against any employer by any one or more employees for and on behalf of the employee and any other employees similarly situated. Any labor organization may also maintain an action on behalf of its members. The action may be brought in the superior court of the county in which the employer allegedly in violation of the action resides or in which the principal place of business is located, or in the superior court of Merrimack county. Any action brought under this paragraph shall be consolidated with any action brought by the attorney general against the same employer or employers under RSA 275-F:8, VII.

275-F:9 Civil Penalty.

I. An employer who fails to give notice as required by RSA 275-F:3, I(b) may be assessed a civil penalty of up to \$2,500; in addition, such an employer may be assessed a civil penalty of up to \$100 per employee for each day of noncompliance. The employer is not subject to a civil penalty under this section if the employer pays to all applicable employees the amounts for which the employer is liable under RSA 275-F:8 within 3 weeks from the date the employer orders the mass layoff or plant closing. All such civil penalties collected shall be deposited in the state's general fund.

II. Any penalty amount paid by the employer under federal law shall be considered a payment under this chapter.

III. If an employer proves to the satisfaction of the commissioner that the act or omission that violated this chapter was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this chapter, the commissioner may in his or her discretion reduce the amount of the penalty provided for in this section.

275-F:10 Appeal. Any party may appeal a finding of employer liability or civil penalty under RSA 541.

275-F:11 Notice to Employers. Before September 30 of each year, the department, with the cooperation of the department of employment security, shall issue a written notice to each employer that the employer may be subject to this chapter and shall advise the employer of the requirements of this chapter and the remedies provided for violations.

275-F:12 Interpretation. Whenever possible, this chapter shall be interpreted in a manner consistent with the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. section 2101 et seq. and the federal regulations and court decisions interpreting that to the extent the provisions of federal and state law are the same.

2 Effective Date. This act shall take effect January 1, 2010.

The question is on the adoption of Floor Amendment 1289s.

A roll call was requested by Sen. Barnes, seconded by Sen. Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Houde, Cilley, Janeway, Kelly, Gilmour, Larsen, DeVries, Merrill, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Odell, Roberge, Bragdon, Lasky, Carson, Gatsas, Barnes, Letourneau, D'Allesandro.

Yeas: 12 - Nays: 10

Floor Amendment 1289s adopted.

Sen. Barnes is in opposition to Floor Amendment 1289s.

MOTION TO TABLE

Sen. Gatsas moved SB 40 be tabled.

The question is on the motion to table SB 40.

A roll call was requested by Sen. Bragdon, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Odell, Roberge, Bragdon, Carson, Gatsas, Barnes, Letourneau.

The following Senators voted No: Reynolds, Sgambati, Houde, Cilley, Janeway, Kelly, Gilmour, Lasky, Larsen, DeVries, D'Allesandro, Merrill, Hassan, Fuller Clark.

Yeas: 8 - Nays: 14

Motion to table failed.

The question is on the motion of Ought to Pass as Amended on SB 40.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Carson is in opposition to the Motion of Ought to Pass as Amended on SB 40.

Sen. Gatsas is in opposition to SB 40.

SB 61, relative to consumer credit report of satisfied debts. Commerce, Labor and Consumer Protection Committee. Re-refer to committee, Vote 3-0. Senator Roberge for the committee.

The question is on the adoption of committee recommendation of Re-refer to Committee on SB 61.

Motion of Re-refer to Committee adopted.

SB 78, relative to contractor accountability and disclosure in the public works construction procurement process. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 4-2. Senator Hassan for the committee.

Commerce, Labor and Consumer Protection

April 2, 2009

2009-1207s

10/04

Amendment to SB 78

Amend the bill by replacing section 1 with the following:

1 New Sections; Public Works Design and Construction; Subcontractor Bids; Worksite Accountability. Amend RSA 21-I by inserting after section 81 the following new sections:

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 as soon as is practicable after the contract award, but in any event prior to the date on which the subcontractor begins work on the project. This provision applies to all subcontractors engaged to work on the project, regardless of the date of their engagement.

II. This section provides minimum disclosure standards regarding subcontractors and shall not preclude an awarding agency or the community college or university system from setting more rigorous standards for construction work under their jurisdiction.

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 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. If it is determined that a subcontractor or independent contractor is present on a state construction site without the contractor's name and direct contracting relationship being posted in a visible location at the worksite, the general contractor or designated project manager shall require the contractor to provide the required information for posting within 24 hours. If the contractor fails to do so, the general contractor or designated contract manager shall suspend the contractor from the site until the information is provided and posted.

The question is on the adoption of Committee Amendment 1207s.

Committee Amendment 1207s adopted.

Sen. Hassan offered Floor Amendment 1258s.

Sen. Hassan, Dist. 23

April 7, 2009

2009-1258s

05/10

Floor Amendment to SB 78

Amend the bill by replacing section 1 with the following:

1 New Sections; Public Works Design and Construction; Subcontractor Bids; Worksite Accountability. Amend RSA 21-I by inserting after section 81 the following new sections:

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 as soon as is practicable after the contract award, but in any event prior to the date on which the subcontractor begins work on the project. This provision applies to all subcontractors engaged to work on the project, regardless of the date of their engagement.

II. This section provides minimum disclosure standards regarding subcontractors and shall not preclude an awarding agency or the community college or university system from setting more rigorous standards for construction work under their jurisdiction.

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 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 current list of all subcontractors and independent contractors that the general contractor has agreed to use 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 to reflect any new subcontractors or independent contractors and also posted on the agency website, to be updated weekly. If it is determined that a subcontractor or independent contractor is present on a state construction site without the contractor's name and direct contracting relationship being posted in a visible location at the worksite, the general contractor or designated project manager shall immediately suspend the contractor from the site until the information is provided and posted.

Recess/Out of Recess.

The question is on the adoption of Floor Amendment 1258s.

Floor Amendment 1258s adopted.

The question is on Motion of Ought to Pass as Amended on SB 78.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 153, relative to business practices between motor vehicle manufacturers, distributors, and dealers. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator DeVries for the committee.

Commerce, Labor and Consumer Protection

April 2, 2009

2009-1208s

10/04

Amendment to SB 153

Amend the bill by replacing sections 4-13 with the following:

4 New Subparagraphs; Prohibited Conduct. Amend RSA 357-C:3, III by inserting after subparagraph (o) the following new subparagraphs:

(p) Require a motor vehicle franchisee to agree to a term or condition in a franchise, or in any lease related to the operation of the franchise or agreement ancillary or collateral to a franchise, as a condition to the offer, grant, or renewal of the franchise, lease, or agreement, which:

(1) Requires the motor vehicle franchisor to waive trial by jury in actions involving the motor vehicle franchisor;

(2) Specifies the jurisdictions, venues, or tribunals in which disputes arising with respect to the franchise, lease, or agreement shall or shall not be submitted for resolution or otherwise prohibits a motor vehicle franchisee from bringing an action in a particular forum otherwise available under the law of this state;

(3) Requires that disputes between the motor vehicle franchisor and motor vehicle franchisee be submitted to arbitration or to any other binding alternate dispute resolution procedure; provided, however, that any franchise, lease, or agreement may authorize the submission of a dispute to arbitration or to binding alternate dispute resolution if the motor vehicle franchisor and motor vehicle franchisee voluntarily agree to submit the dispute to arbitration or binding alternate dispute resolution at the time the dispute arises;

(4) Provides that in any administrative or judicial proceeding arising from any dispute with respect to the aforesaid agreements that the franchisor shall be entitled to recover its costs, reasonable attorney's fees and other expenses of litigation from the franchisee; or

(5) Grants the manufacturer an option to purchase the franchise, or real estate, or business assets of the franchisee.

(q) Fail or refuse to sell or offer to sell to all motor vehicle franchisees of a line make, all models manufactured for that line make, or requiring a dealer to pay any extra fee, execute a separate franchise agreement, purchase unreasonable advertising displays or other materials, or relocate, expand, improve, remodel, renovate, recondition, or alter the dealer's existing facilities, or provide exclusive facilities as a prerequisite to receiving a model or series of vehicles. However, a manufacturer may require reasonable improvements to the existing facility that are necessary to service special or unique features of a specific model or line. The failure to deliver any such motor vehicle shall not be considered a violation of this subparagraph if the failure is due to a lack of manufacturing capacity, a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause over which the franchisor has no control.

(r) Provide any term or condition in any lease or other agreement ancillary or collateral to a franchise which term or condition directly or indirectly violates this title.

(s) In the event of a proposed sale or transfer of a new motor vehicle dealership involving the transfer or sale of all or substantially all of the ownership interest in, or all or substantially all of the assets of the dealership, where the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, then notwithstanding the terms of the franchise agreement, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the dealership's assets only if all of the following requirements are met:

(1) The manufacturer or distributor notifies the dealer in writing of its intent to exercise its right of first refusal within 45 days of receiving notice from the franchisee of the proposed sale or transfer.

(2) The exercise of the right of first refusal will result in the dealer and dealer's owners receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets. In that regard, the following shall apply:

(A) The manufacturer or distributor shall have the right to and shall assume the dealer's lease for, or acquire the real property on which the franchise is conducted, on the same terms as those on which the real property or lease was to be sold or transferred to the proposed new owner in connection with the sale of the franchise, unless otherwise agreed to by the dealer and manufacturer or distributor. The manufacturer or distributor shall have the right to assign the lease or to convey the real property.

(B) The manufacturer or distributor shall assume all of the duties, obligations, and liabilities contained in the agreements that were to be assumed by the proposed new owner and with respect to which the manufacturer or distributor exercised the right of first refusal, including the duty to honor all time deadlines in the underlying agreements, provided that the manufacturer or distributor has knowledge of such obligations at the time of the exercise of the right of first refusal. Failure by an assignee of the manufacturer or distributor to discharge such obligations shall be deemed a failure by the manufacturer or distributor under this subparagraph.

(3) The proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to any of the following:

(A) A designated family member or members including any of the following members of one or more dealer owners:

- (i) The spouse.
- (ii) A child.
- (iii) A grandchild.
- (iv) The spouse of a child or a grandchild.
- (v) A sibling.
- (vi) A parent.

(B) A manager:

- (i) Employed by the dealer in the dealership during the previous 2 years; and
- (ii) Who is otherwise qualified as a dealer operator.

(C) A partnership or corporation controlled by any of the family members described in subparagraph (A).

(D) A trust arrangement established or to be established:

(i) For the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or

(ii) To provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners.

(4) The manufacturer or distributor agrees in writing to pay all reasonable expenses, including reasonable attorney fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all or substantially all ownership or transfer of all or substantially all dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such an accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

(5) The manufacturer or distributor shall pay any fees and expenses of the motor vehicle dealer arising on and after the date the manufacturer or distributor gives notice of the exercise of its right of first refusal, and incurred by the motor vehicle dealer as a result of alterations to documents, or additional appraisals, valuations, or financial analyses caused or required of the dealer by the manufacturer or distributor to consummate the contract for the sale of the dealership to the manufacturer's or distributor's proposed transferee, that would not have been incurred but for the manufacturer's or distributor's exercise of its right of first refusal. These expenses and fees shall be paid by the manufacturer or distributor to the dealer and to the dealer's proposed purchaser or transferee on or before the closing date of the sale of the dealership to the manufacturer or distributor if the party entitled to reimbursement has submitted or caused to be submitted to the manufacturer or distributor, an accounting of these expenses and fees within 30 days after receipt of the manufacturer's or distributor's written request for the accounting.

(t) Require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing in this subparagraph shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles that are covered by the franchise agreement.

5 Warranty Obligations. Amend RSA 357-C:5, II(b) to read as follows:

(b)(1) In no event shall a schedule of compensation for parts, work, and service in connection with warranty services fail to include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In no event shall any manufacturer, **component manufacturer**, or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for non-warranty work of like kind. No claim which has been approved and paid by the manufacturer or distributor may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or that the dealer failed to reasonably substantiate that the claim was in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.

(2) In no event shall a manufacturer or component manufacturer fail to pay a dealer reasonable compensation for parts or components, including assemblies, used in warranty or recall repairs.

(3) The wholesale price on which a dealer's reimbursement is based for any parts used in a recall, service campaign, or other similar program, shall not be less than the highest wholesale price listed in the manufacturer's or distributor's wholesale price catalogue within 6 months prior to the start of the recall, service campaign, or other similar program. If the manufacturer or distributor does not have a wholesale price catalogue, or if the part is not listed in a wholesale price catalogue, the wholesale price on which a dealer's reimbursement is based in a recall, service campaign, or other similar program shall be the average price charged to dealers of similar line makes in the state for the part during one year prior to the start of the recall, service campaign, or other similar program.

6 Indemnification. Amend RSA 357-C:5, II(d)(3) to read as follows:

(3) A manufacturer, distributor, branch, or division shall retain the right to audit all incentive and reimbursement programs for a period of ~~[2 years]~~ **one year** after the date on which the claim is paid **or one year from the end of a program that does not exceed one year, whichever is later**, and charge back any amounts paid on claims that are false or unsubstantiated.

7 New Subparagraphs; Indemnification. Amend RSA 357-C:5, II(d) by inserting after subparagraph (6) the following new subparagraphs:

(7) If the franchise agreement between a manufacturer, distributor, branch, or division is terminated for any reason, any audit pursuant to this section shall be completed no later than 30 days after the effective date of the termination.

(8) Notwithstanding the terms of any franchise or agreement, a manufacturer, distributor, branch, or division shall not take or threaten to take any adverse action against a motor vehicle dealer, including charge backs, reducing vehicle allocations, or terminating or threatening to terminate a franchise or agreement because the dealer sold or leased a motor vehicle to a customer who exported the vehicle to a foreign country, unless the motor vehicle dealer knew or reasonably should have known that the customer intended to export the vehicle. There shall be a presumption that the motor vehicle dealer did not know or could not have reasonably known if the vehicle is titled or registered in any state in this country.

8 New Section; Prohibited Contractual Requirements Imposed by Manufacturer, Distributor, or Captive Finance Source. Amend RSA 357-C by inserting after section 6 the following new section:

357-C:6-a Prohibited Contractual Requirements Imposed by Manufacturer, Distributor, or Captive Finance Source.

I. In this section, “captive finance source” means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in New Hampshire and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor, or distributor branch.

II. It shall be unlawful for any manufacturer, factory branch, captive finance source, distributor, or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this state to agree to any terms, conditions, or requirements in subparagraphs (a)-(h) in order for any such dealer to sell to any captive finance source any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer’s customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of any consumer transaction incentive program payable to the consumer or the dealer and offered by or through any captive finance source:

(a) Require a dealer to grant such captive finance source a power of attorney to do anything on behalf of the dealer other than sign the dealer’s name on any check, draft, or other instrument received in payment or proceeds under any contract for the sale or lease of a motor vehicle that is made payable to the dealer but which is properly payable to the captive finance source, is for the purpose of correcting an error in a customer’s finance application or title processing document, or is for the purpose of processing regular titling of the vehicle.

(b) Require a dealer to warrant or guarantee the accuracy and completeness of any information, including but not limited to, personal, financial, purchasing, identity, or credit information, provided by the customer on the credit application, and/or in the course of applying for

credit other than to require that the dealer make reasonable inquiry regarding the accuracy and completeness of such information and represent that such information is true and correct to the best of the dealer’s knowledge.

(c) Require a dealer to repurchase, pay off, or guaranty any contract for the sale or lease of a motor vehicle or to require a dealer to indemnify, defend, or hold harmless the captive finance source for settlements, judgments, damages, litigation expenses, or other costs or expenses incurred by such captive finance source unless the obligation to repurchase, pay off, guaranty, indemnify, or hold harmless resulted directly from (i) the subject dealer’s material breach of the terms of a written agreement with the captive finance source or the terms for the purchase of an individual contract for sale or lease that the captive finance source communicates to the dealer before each such purchase, except to the extent the breached terms are otherwise prohibited under subparagraphs (a)-(h), or (ii) the subject dealer’s violation of applicable law.

(d) Notwithstanding the terms of any contract or agreement, treat a dealer’s breach of an agreement between the dealer and a captive finance source with respect to the captive finance source’s purchase of individual contracts for the sale or lease of a motor vehicle as a breach of such agreement with respect to purchase of other such contracts, nor shall such a breach in and of itself, constitute a breach of any other agreement between the dealer and the captive finance source, or between the dealer and any affiliate of such captive finance source.

(e) Require a dealer to waive any defenses that may be available to it under its agreements with the captive finance source or under any applicable laws.

(f) Require a dealer to settle or contribute any of its own funds or financial resources toward the settlement of any multiparty or class action litigation without obtaining the dealer’s voluntary and written consent subsequent to the filing of such litigation.

(g) Require a dealer to contribute to any reserve or contingency account established or maintained by the captive finance source, for the financing of the sale or lease of any motor vehicles purchased or leased by any of the dealer’s customers, in any amount or on any basis other than the reasonable expected amount of future finance reserve chargebacks to the dealer’s account. This section shall not apply to or limit:

(1) Reasonable amounts reserved and maintained related to the sale or financing of any products ancillary to the sale, lease, or financing of the motor vehicle itself;

(2) A delay or reduction in the payment of dealer's portion of the finance income pursuant to an agreement between the dealer and a captive finance source under which the dealer agrees to such delay or reduction in exchange for the limitation, reduction, or elimination of the dealer's responsibility for finance reserve chargebacks; or

(3) A chargeback to a dealer, or offset of any amounts otherwise payable to a dealer by the captive finance source, for any indebtedness properly owing from a dealer to the captive finance source as part of a specific program covered by this section, the terms of which have been agreed to by the dealer in advance, except to the extent such chargeback would otherwise be prohibited by this section.

(h) Require a dealer to repossess or otherwise gain possession of a motor vehicle at the request of or on behalf of the captive finance source. This section shall not apply to any requirements contained in any agreement between the dealer and the captive finance source wherein the dealer agrees to receive and process vehicles that are voluntarily returned by the customer or returned to the lessor at the end of the lease term.

III. Any clause or provision in any franchise or agreement between a dealer and a manufacturer, factory branch, distributor, or distributor branch, or between a dealer and any captive finance source, that is in violation of or that is inconsistent with any of the provisions of this section shall be deemed null and void and without force and effect to the extent it violates this section.

IV. The provisions of this section shall be applicable to all contracts and agreements existing between dealers and captive finance sources on the effective date of this section and to all such future contracts and agreements.

V. Any captive finance source who engages directly or indirectly in purposeful contacts within this state in connection with the offering or advertising the availability of financing for the sale or lease of motor vehicles within this state, or who has business dealings within this state, shall be subject to the provisions of this section and shall be subject to the jurisdiction of the courts of this state.

VI. The applicability of this section shall not be affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

VII. It shall be unlawful for a captive finance source to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the captive finance source.

9 Limitations on Cancellations, Terminations, and Nonrenewals. Amend RSA 357-C:7, I(d)(1) to read as follows:

(1) The New Hampshire motor vehicle industry board finds after a hearing and after ruling on any motion to reconsider that is timely filed in accordance with RSA 357-C:12, VII, that there is good cause for cancellation, termination, failure to renew, or refusal to continue any franchise relationship. The new motor vehicle dealer may file a protest with the board within 45 days after receiving the 90-day notice. A copy of the protest shall be served by the new motor vehicle dealer on the manufacturer, distributor, or branch or division thereof. ~~[When a protest is filed, the manufacturer, distributor, or branch or division thereof may not cancel, terminate, fail to renew, or refuse to continue dealing with the new motor vehicle dealer in the ordinary course of business until the board makes its findings; nor, thereafter if the board determines that there is no good cause for the cancellation, termination, failure to renew, or refusal to continue dealing]~~ ***When a protest is filed under this section, the franchise agreement shall remain in full force and effect and the franchisee shall retain all rights and remedies pursuant to the terms and conditions of such franchise agreement, including, but not limited to, the right to sell or transfer such franchisee's ownership interest prior to a final determination by the board and any appeal;*** or[-]

10 New Subparagraph; Limitations on Cancellations. Amend RSA 357-C:7, II by inserting after subparagraph (b) the following new subparagraph:

(c) For the purposes of this paragraph, good cause for terminating, canceling, or failing to renew a franchise shall be limited to failure by the franchisee to substantially comply with those requirements imposed upon the franchisee by the franchise, as set forth in subparagraphs II(a) and (b).

11 New Subparagraph; Limitations on Cancellations. Amend RSA 357-C:7, III by inserting after subparagraph (d) the following new subparagraph:

(e) The fact that the new motor vehicle dealer's dealership does not substantially meet the reasonable capitalization requirements of the manufacturer, distributor, branch, or division.

12 New Subparagraph; Limitations on Cancellations. Amend RSA 357-C:7, V by inserting after subparagraph (b) the following new subparagraph:

(c) Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of:

(1) Any change in ownership, operation, or control of all or any part of the business of the manufacturer, whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise;

(2) The termination, suspension, or cessation of a part or all of the business operations of the manufacturer; or

(3) Discontinuance of the sale of the product line make or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

13 Limitations on Cancellations. RSA 357-C:7, VI-VII are repealed and reenacted to read as follows:

VI. Within 90 days of the termination, cancellation, or nonrenewal of a motor vehicle franchise as provided for in this section, or the termination, cancellation, or nonrenewal of a motor vehicle franchise by the motor vehicle franchisee, the motor vehicle franchisor shall pay to the motor vehicle dealer:

(a) The dealer cost plus any charges by the manufacturer, distributor, or branch or division thereof for distribution, delivery, and taxes paid by the dealer, less all allowances paid to the dealer by the manufacturer, distributor, or representative, for new, unsold, undamaged and complete motor vehicles in the dealer's inventory that have original invoices bearing original dates within 24 months prior to the effective date of termination with less than 750 miles on the odometer, and insurance costs, and floor plan costs from the effective date of the termination to the date that the vehicles are removed from dealership or the date the floor plan finance company is paid, whichever occurs last. Vehicles with a gross vehicle weight rating over 12,000 shall be exempt from the 750 mile limitation. Motorcycles shall be subject to a 350 mile limitation. All vehicles shall have been acquired from the manufacturer or another same line-make vehicle dealer in the ordinary course of business.

(b) The dealer cost of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current parts catalog was purchased from the manufacturer or distributor or from a subsidiary or affiliated company or authorized vendor, and is still in the original, resalable merchandising package and in unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package may be used.

(c) The fair market value of each undamaged sign owned by the dealer which bears a trademark, trade name, or commercial symbol used or claimed by the manufacturer, distributor, or branch or division thereof if such sign was purchased from or at the request of the manufacturer, distributor, or branch or division thereof.

(d) At the dealer's option, the fair market value of all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment by the manufacturer, distributor, or branch or division thereof and purchased from or at the request of the manufacturer or distributor, if the tools and equipment are in usable and good condition, normal wear and tear excepted.

(e) The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools, and special equipment subject to repurchase by the manufacturer, distributor, or branch or division thereof.

(f) The amount remaining to be paid on any equipment or service contracts required by or leased from the manufacturer or a subsidiary or company affiliated with the manufacturer.

(g) If the dealer leases the dealership facilities, then the manufacturer, distributor, or branch or division thereof shall be liable for 2 year's payment of the gross rent or the remainder of the term of the lease, whichever is less. If the dealership facilities are not leased, then the manufacturer, distributor, or branch or division thereof shall be liable for the equivalent of 2 years payment of gross rent. This subparagraph shall only apply when the termination, cancellation, or nonrenewed line was pursuant to RSA 357-C:7, V(c)(3) or was with good cause, other than good cause related to a conviction and imprisonment for a felony involving moral turpitude that is substantially related to the qualifications, function, or duties of a franchisee. Gross

rent is the monthly rent plus the monthly cost of insurance and taxes. Such reasonable rent shall be paid only to the extent that the dealership premises are recognized in the franchise and only if they are: (i) used solely for performance in accordance with the franchise, and (ii) not substantially in excess of those facilities recommended by the manufacturer or distributor. If the facility is used for the operations of more than one franchise, the gross rent compensation shall be adjusted based on the planning volume and facility requirements of the manufacturers, distributors, or branch or division thereof.

(h) This paragraph shall not apply to a termination, cancellation, or nonrenewal due to a sale of the assets or stock of the motor vehicle dealership.

VII.(a)(1) In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in subparagraph V(c), then the manufacturer shall be liable to the dealer for an amount at least equivalent to the fair market value of the motor vehicle franchise on:

(A) The date immediately preceeding the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or

(B) The day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher.

(2) Payment is due within 90 days of the effective date of the termination, cancellation, or nonrenewal.

(b) The manufacturer shall authorize the franchisee, or upon the franchisee's termination another authorized franchise dealership of the manufacturer in the area, to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor, for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than 5 years from the effective date of the termination, cancellation, or nonrenewal and shall continue to reimburse the franchisee for warranty parts and service in an amount and on terms no less favorable than those in effect prior to the termination, cancellation, or nonrenewal and in accordance with paragraph V.

(c) At the dealers option, the manufacturer may avoid paying fair market value of the motor vehicle franchise to the dealer under this subparagraph if the franchisor, or another motor vehicle franchisor pursuant to an agreement with the franchisor, offers the franchisee a replacement motor vehicle franchise with terms substantially similar to that offered to other same line-make dealers.

VIII. Within 90 days of a termination or nonrenewal, with good cause and in good faith, the manufacturer or distributor of any franchise, or any branch or division thereof, and notwithstanding any terms therein to the contrary, the manufacturer, distributor, or branch or division thereof shall pay to the new motor vehicle dealer the amount remaining to be paid on any leases of computer hardware or software that is used to manage and report data to the manufacturer or distributor for financial reporting requirements and the amount remaining to be paid on any equipment leases or service contracts, including but not limited to computer hardware and software leases.

IX. The payments required by paragraphs VI, VII, and VIII, and any other money owed the franchisee, shall be made within 90 days of the effective date of the termination. The manufacturer shall pay the franchisee an additional 5 percent per month of the amount due for any payment not made within 90 days of the effective date of the termination.

The question is on the adoption of Committee Amendment 1208s.

Committee Amendment 1208s adopted.

The question is on the Motion of Ought to Pass as Amended on SB 153.

A roll call was requested by Sen. Letourneau, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Houde, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gilmour, Lasky, Carson, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: (None)

Yeas: 22 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 172, relative to eligibility for state-federal extended unemployment benefits. Commerce, Labor and Consumer Protection Committee. Ought to Pass, Vote 4-0. Senator DeVries for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on SB 172.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 188, relative to hospital billing for professional services. Commerce, Labor and Consumer Protection Committee. Ought to Pass with Amendment, Vote 6-0. Senator Cilley for the committee.

Commerce, Labor and Consumer Protection

April 2, 2009

2009-1204s

06/10

Amendment to SB 188

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

AN ACT relative to establishing a commission to study hospital billing practices of health care providers.

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

1 Commission Established. There is established a commission to study the billing practices of health care providers and the impact of those practices on the cost and delivery of health care services.

2 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 commissioner of the department of health and human services, or designee.
- (d) The commissioner of the insurance department, or designee.
- (e) A representative of the New Hampshire Hospital Association, appointed by the association.
- (f) A representative of the New Hampshire Medical Society, appointed by the society.
- (g) A representative of a private for-profit insurance carrier doing business in New Hampshire, appointed by the governor.
- (h) A representative of a private nonprofit insurance carrier doing business in New Hampshire, appointed by the governor.
- (i) A representative of the New Hampshire Medical Group Management Association, appointed by the governor.
- (j) Two public members, appointed by the governor.
- (k) A representative of the New Hampshire Citizen's Health Initiative, appointed by the governor.

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

3 Duties. The commission shall study the billing practices of health care providers and the impact of those practices on the cost and delivery of health care services, including but not limited to the billing methods and procedures used by hospitals and hospital-owned facilities and practices.

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. Four 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, 2009.

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

2009-1204s**AMENDED ANALYSIS**

This bill establishes a commission to study the billing practices of health care providers and the impact of those practices on the cost and delivery of health care services.

The question is on the adoption of Committee Amendment 1204s.

Committee Amendment 1204s adopted.

The question is on the motion of Ought to Pass with Amendment on SB 188.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 194, relative to the negotiation of payroll checks. Commerce, Labor and Consumer Protection Committee. Re-refer to committee, Vote 4-0. Senator Reynolds for the committee.

The question is on the adoption of committee recommendation of Re-refer to Committee on SB 194.

Sen. D'Allesandro moved the question.

Without objection, President Larsen closed debate.

The question is on the adoption of committee recommendation of Re-refer to Committee on SB 194.

A roll call was requested by Sen. Gatsas, seconded by Sen. Letourneau.

The following Senators voted Yes: Reynolds, Sgambati, Houde, Cilley, Janeway, Kelly, Gilmour, Lasky, Larsen, DeVries, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Odell, Roberge, Bragdon, Carson, Gatsas, Barnes, Letourneau.

Yeas: 14 - Nays: 8

Motion of Re-refer to Committee adopted.

Recess/Out of Recess.

AFTERNOON SESSION**COMMITTEE REPORTS, RESUMED****MOTION TO REMOVE FROM TABLE**

Sen. Cilley moved SB 167-FN be removed from the table.

SB 167-FN, relative to employee leasing companies.

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

Motion adopted.

Sen. Gatsas asserts Rule 42 on SB 167-FN.

The question is on the committee recommendation of Ought to Pass.

Sen. Cilley offered Floor Amendment 1288s.

Sen. Hassan, Dist. 23

Sen. Cilley, Dist. 6

April 7, 2009

2009-1288s

06/10

Floor Amendment to SB 167-FN

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

1 Employee Leasing Companies; Definitions. RSA 277-B:2, III-IV are repealed and reenacted to read as follows:

III. "Client company" means a person who enters into an employee leasing arrangement with an employee leasing company.

IV. "Employee leasing arrangement" means an arrangement, under written contract, whereby:

(a) An employee leasing company assigns an individual, including an individual who was previously employed by the client company or its predecessor, affiliate, or subsidiary, to perform services for the client company; and

(b) The arrangement is intended to be, or is, on-going rather than temporary in nature, and not aimed at temporarily supplementing the work force.

2 Employee Leasing Companies; Definitions. Amend RSA 277-B:2, V(a) to read as follows:

(a) Engaged in providing the services of employees pursuant to one or more employee leasing arrangements; or

3 Employee Leasing Companies; Definitions. Amend RSA 277-B:2 by inserting after paragraph V the following new paragraph:

V-a. "Person" means any individual, partnership, corporation, limited liability company, association, or other legal entity.

4 License and Application Fees. RSA 277-B:5, IV-V are repealed and reenacted to read as follows:

IV. Every application for an original, renewal, or restricted license, shall be accompanied by evidence satisfactory to the commissioner that the leased employees are covered by workers' compensation insurance issued by a carrier admitted to write such coverage in this state. No unlicensed leasing company shall be provided workers' compensation coverage. An employee leasing company may meet its obligation to provide such insurance for leased employees through no more than 2 policies. When 2 policies are issued, one shall be issued in the voluntary market, and the other shall be issued in the residual market.

(a) An employee leasing company insured in the voluntary market shall, upon request, make available claims data on a client company basis to the National Council on Compensation Insurance.

(b) An employee leasing company insured in the residual market shall only be issued the National Council on Compensation Insurance Multiple Coordinated Policy as approved by the insurance commissioner.

(c) A client company shall be assigned its claims data upon terminating its relationship with an employee leasing company which data shall be used in calculating the client company's subsequent workers' compensation premium.

(d) An employee leasing company may meet its obligation to provide workers' compensation insurance coverage for leased employees through 2 carriers, provided that each client company's leased employees shall be covered by only one carrier and that such coverage shall clearly delineate such client company employees by client company name and federal identification number.

V. The application shall also be accompanied by evidence satisfactory to the commissioner that any health insurance benefits covering leased employees are provided pursuant to the provisions of RSA 277-B:11, II.

VI. Each application for an original, renewal or restricted license, shall be accompanied by a certification that the applicant does not conduct a temporary help service through the same entity as the applicant's employee leasing company and that both entities do not commingle any financial components of the operations.

5 Employee Leasing Company License; Financial Assurances Required. Amend RSA 277-B:6, I and II to read as follows:

277-B:6 Employee Leasing Company License; Financial Assurances Required.

I. Every application for issuance or renewal of a license as an employee leasing company shall be accompanied by ~~at a minimum, a reviewed~~ **an audited** financial statement prepared by an independent certified public accountant in accordance with generally accepted accounting principles. ***Such statement shall show a minimum working capital of \$100,000. At the time of application for a new license, the employee leasing company shall submit its most recent audit which may not be older than 13 months. Thereafter, an employee leasing company shall file a succeeding audit-performed*** within ~~[6] 12 months~~ ~~[prior to] before~~ the date of application or renewal, ~~and such statement shall show a minimum net worth of \$100,000~~ ***showing a minimum working capital of \$100,000. An employee leasing company with less than \$100,000 in working capital at renewal shall have 180 days to eliminate the deficiency. During that 180 days the employee leasing company shall submit quarterly financial statements to***

the department accompanied by an attestation of the chief executive officer that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the employee leasing company. As an alternative, an employee leasing company may provide a bond, irrevocable letter of credit, or securities with a minimum market value of \$100,000 to the department. For any employee leasing company whose annual financial statements do not indicate positive working capital, the amount of the bond shall be \$100,000 plus an amount sufficient to cover the deficit in working capital.

II. In addition to the requirement in paragraph I, the commissioner may require an employee leasing company to deposit in a depository designated by the commissioner, a bond or securities with a market value, deemed sufficient by the commissioner to assure payment of wages and benefits. The securities so deposited shall include authorization to the commissioner to sell any such securities in an amount sufficient to pay any wages, benefits or other entitlements due a leased employee, if the employee leasing company does not make such payments when due. The commissioner may require such bond or deposit only if the commissioner finds, although not limited to such instances, that the leasing company has had its license suspended, denied, or limited in any other jurisdiction; or that there have been instances where the leasing company has not paid employees' wages or benefits when due, or failed to make timely payment of any federal or state payroll taxes or unemployment compensation contributions when due. Any bond or securities deposited under this paragraph shall not be included for the purpose of the calculation of ~~[net worth]~~ **working capital** required by paragraph I.

6 Employee Leasing Company License; Financial Assurances Required. Amend RSA 277-B:6 by inserting after paragraph III the following new paragraph:

IV. The department shall to the extent practical permit by rule the acceptance of electronic filings in conformance with RSA 294-E. Such rule may provide for the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the commissioner that provides satisfactory assurance of compliance acceptable to the department consistent with or instead of the requirements of this chapter or the rules adopted under it. Such rule shall permit an employee leasing company to authorize an assurance organization approved by the commissioner to act on the employee leasing company's behalf in complying with the licensure requirements of this chapter, including the electronic filings of information and payment of fees. Use of such an approved assurance organization is optional. Nothing in this section shall limit the department's authority to license or terminate licensure of an employee leasing company or to investigate or enforce any provision of this chapter.

7 Renewal of License. Amend RSA 277-B:8 to read as follows:

277-B:8 Renewal of License. ~~[Every license]~~ **Licenses** issued pursuant to this chapter shall remain in force for one year from the date of issue, unless the license has been revoked under RSA 277-B:7. ***If an employee leasing company has been continuously licensed without revocation or suspension for a period of 5 years or more, a license shall remain in force for 2 years from the date of issue provided that financial information required under RSA 277-B:6 is submitted to the department on an annual basis.*** Every licensee shall file an application for renewal 60 days before expiration of its license. The commissioner shall act upon such application for renewal within such 60-day period. ***In the event that an applicant for renewal shall qualify for a 2-year license, the licensing fee shall be twice the annual amount.***

8 Employee Leasing Deemed Co-employment. RSA 277-B:9 is repealed and reenacted to read as follows:

277-B:9 Employee Leasing Deemed Co-employment. An employee leasing company and a client company shall be deemed co-employers and shall divide employment responsibilities as follows:

I. An employee leasing company shall be solely responsible for:

(a) Paying wages to leased employees. The employee leasing company may rely on initial hiring documentation of wages, ongoing pay change documentation, and reported payroll documentation regarding hours worked or other measured unit of employee compensation received from the client company. Notification shall be made in compliance with the signed notice as required by regulations issued by the department.

(b) Preparing and issuing of W-2 forms for leased employees.

(c) Calculating, collecting, and remitting all payroll taxes, including income tax and social security tax, as required by law with respect to leased employees.

(d) Complying with state and federal unemployment compensation requirements, including the reporting of wages paid, making required contributions, and processing claims for benefits on a timely basis as required by New Hampshire law.

- (e) Paying for workers' compensation insurance for the leased employees.
- (f) Making payments for health or other benefits for leased employees, to the extent the contract calls for the employee leasing company to provide such benefits.
- (g) Complying with all laws, rules, and regulations for employee leasing companies under their contract or as required by this state or the federal government.
- (h) Paying the tax imposed by RSA 77-E and inclusion in its compensation portion of the base tax those wages paid to its leased employees.
- (i) Providing to each employee an employee manual outlining the terms and conditions of employment with the leasing company.
- (j) Providing an employee grievance system for employees employed by the leasing company.

II. A client company shall be solely responsible for:

- (a) Directing and controlling the leased employees as necessary to conduct the client company's business, discharge any applicable fiduciary duty, or comply with any licensure or regulatory or statutory requirement.
- (b) The goods and services produced by the client company and its direct and leased employees.
- (c) The acts, errors, and omissions of the leased employees committed within the scope of the client company's business or under the direction and control of the client company.
- (d) Providing accurate personnel and payroll information, and a record of hours and wages to the employee leasing company and department of labor when requested, as a co-employer on all leased employees as required of employers under RSA 279:27.
- (e) Complying with all wage and hour laws, including recordkeeping requirements and determinations of exempt and non-exempt status.
- (f) Providing a safe workplace to the employees free of all hazards in compliance with the Occupational Safety & Health Act of 1970 and regulations or any similar law.
- (g) Complying with all laws prohibiting employment discrimination, harassment, and retaliation on the basis of any protected class or characteristic.
- (h) Paying all expenses arising from unionization, negotiating collective bargaining agreements and processing grievances and unfair labor practice charges related to the client company or the leased employees.
- (i) Complying with all applicable professional license or bonding requirements pertaining to the client company's business and maintaining professional liability coverage.
- (j) Assuming and accepting responsibility for all wages, bonus, or other compensation paid to any employee that are not paid through the employee leasing relationship or reported to the employee leasing company. Responsibility shall include but shall not be limited to all payroll taxes, federal and state taxes, additional premium for insurances including but shall not be limited to workers compensation insurance and additional matching contributions if any.
- (k) Assuming and accepting all responsibilities, as defined under New Hampshire law, of an employer when hiring or employing individuals separately and not included in the contract with the employee leasing company.

9 New Paragraph; Workers' Compensation Insurance; Certification. Amend RSA 277-B:11-a by inserting after paragraph III the following new paragraph:

IV. A client company retains the statutory obligation of providing workers' compensation coverage for employees that are not provided, supplied, or assigned by an employee leasing company under an employee leasing arrangement.

10 New Paragraphs; Penalties. Amend RSA 277-B:12 by inserting after paragraph III the following new paragraphs:

IV. Any such fines or penalties for violations of the labor law of New Hampshire shall be assessed either against the employee leasing company or the client company based upon the commensurate level of control of the worksite and each party's responsibility for compliance with the applicable violation.

V. Any such fines or penalties assessed by the state to an employee leasing company for violations of the labor law of New Hampshire shall specify at which client company the violation occurred. Unless successive labor law violations occur within the same client company, the state shall treat each violation assessed to an employee leasing company for violations at a specific client company as a first violation and shall not aggregate violations at separate client companies to assess additional and successive penalties.

11 Client List; Confidentiality. Amend RSA 277-B:15-a to read as follows:

277-B:15-a Client List; Confidentiality.

I. Employee leasing firms shall maintain a list of current and past clients which shall be available for inspection by the department of labor without notice. The list shall be submitted to the labor department on a quarterly basis. Failure to maintain an updated client list shall subject the licensee to a \$1,000 fine, and a \$2,500 fine and loss of license for a second or subsequent offense if deemed appropriate by the commissioner. [Client lists shall remain confidential except that the commissioner may share such information with other appropriate state agencies.] Funds generated from fines shall be deposited in the general fund as unrestricted revenue.

II. Client lists, license applications, and related materials submitted therewith shall remain confidential except that the commissioner may share such information with other appropriate state agencies on a confidential basis to the extent permitted by state law.

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

The question is on the adoption of Floor Amendment 1288s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Bragdon.

Recess/Out of Recess.

The question is on the adoption of Floor Amendment 1288s

A roll call had been requested and seconded.

The following Senators voted Yes: Reynolds, Sgambati, Houde, Cilley, Janeway, Kelly, Gilmour, Lasky, Larsen, DeVries, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Odell, Roberge, Bragdon, Carson, Gatsas, Barnes, Letourneau.

Yeas: 14 - Nays: 8

Floor Amendment 1288s adopted.

Sen. Gatsas asserts Rule 42 on SB 167-FN.

The question is on the motion of Ought to Pass as Amended on SB 167-FN.

Sen. Sgambati moved the question.

Without objection, President Larsen closed debate.

A roll call was requested by Sen. Gatsas, seconded by Sen. Bragdon.

The following Senators voted Yes: Reynolds, Sgambati, Houde, Cilley, Janeway, Kelly, Gilmour, Lasky, Larsen, DeVries, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Odell, Roberge, Bragdon, Carson, Gatsas, Barnes, Letourneau.

Yeas: 14 - Nays: 8

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Gatsas asserts Rule 42 on SB 167-FN.

SB 59, relative to the renovation and replacement of school buildings. Education Committee. Ought to Pass with Amendment, Vote 6-0. Senator Fuller Clark for the committee.

Education

March 31, 2009

2009-1145s

04/05

Amendment to SB 59

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

1 Schoolhouses; Location and Construction by District. Amend RSA 199:1 to read as follows:

199:1 Location and Construction by District. The district may decide upon the location of its schoolhouses by vote or by a committee appointed for the purpose, provided, however, that all plans, specifications, and the selection of site for any new school buildings for any school district within the state shall be approved by the school board of the district in which it is proposed to construct such a building. The provisions of this section shall apply to all new construction of public school buildings, including those constructed by grant or loans of funds from state, the federal government, or other sources. ***The district shall investigate all feasible options in the course of deciding to renovate or replace an existing school building. In considering such options, the district shall seek input from the public, the local planning board, and municipal authorities, including local elected officials, police, fire, and public works personnel. As part of their final recommendation on the chosen construction alternative, the school board of a school district considering a construction or renovation project shall demonstrate how the school building project conforms to the community master plan and local planning and zoning regulations.*** For the purposes of this chapter, in addition to their usual meanings, the words “schoolhouse” and “school building” also mean educational administration building, including school administrative unit facilities.

2 New Paragraph; School Building Aid; Amount of Annual Grant. Amend RSA 198:15-b by inserting after paragraph VII the following new paragraph:

VIII. For the purpose of receiving grants under this section, acquisition of additional land as part of any school renovation project shall not be required unless such additional land is necessary to ensure the safe flow of traffic for school buses or other vehicles entering or exiting school grounds, or the safe boarding or discharge of children using school buses or other vehicles.

3 School Building Aid; Approval of Plans. Amend RSA 198:15-c to read as follows:

198:15-c Approval of Plans, Specifications, and Costs of Construction or Purchase. A school district maintaining approved schools, desiring to avail itself of the grants herein provided shall have the plans, specifications, and cost estimates for school plant construction or proposals for the purchase of school buildings, or both, and the costs for them approved by the state board prior to the start of construction. For this purpose the district shall submit its plans, specifications, cost, and purchase estimates in writing to the department of education on such forms as the department prescribes. A school district shall also submit a copy of any application for energy efficiency reimbursement under RSA 374-F. The department of education shall coordinate with the public utilities commission to ensure that eligible school districts have submitted applications for funding reimbursement and technical assistance as available from energy utility companies to promote indoor air quality and energy efficiency in public schools. Application for school building aid shall be submitted before January 1 of each year in order to be eligible for school building aid in the fiscal year following the year of submittal. The department of education shall not approve the plans, specifications, cost, or purchase estimates, if in the department's judgment the facilities planned will not adequately meet the educational requirements, or if its cost estimates are excessive or unreasonable. The department of education shall not approve the plans, specifications, cost, or purchase estimates if in the department's judgment the proposed construction or purchase is in conflict with effective statewide planning ***or the principles of smart growth pursuant to RSA 9-B.*** Necessary costs of the purchase of school buildings may be determined by any recognized method of real estate appraisal with appropriate adjustments for remodeling or other expenditures. Upon approval of the construction or purchase, or both, by the department of education, the school district shall be entitled to receive an annual grant as provided herein.

4 Governmental Land Uses. Amend RSA 674:54, II to read as follows:

II. The state, university system, community college system of New Hampshire, county, town, city, school district, or village district shall give written notification to the governing body and planning board, if such exists, of a municipality of any proposed governmental use of property within its jurisdiction, which constitutes a substantial change in use or a substantial new use. Written notification shall contain plans, specifications, explanations of proposed changes available at the time, a statement of the governmental nature of the use as set forth in paragraph I, and a proposed construction schedule. Such notification shall be provided at least 60 days prior to the beginning of construction. Either the governing body or planning board of the municipality may conduct a public hearing relative to the proposed governmental use. Any such hearing shall be held within 30 days after receipt of notice by the governing body or planning board. A representative of the governmental entity which provided notice shall be available to present the plans, specifications, and construction schedule, and to provide explanations. The governing body or planning board may issue nonbinding written comments relative to conformity or nonconformity of the proposal with normally applicable land use regulations to the sponsor of the governmental use within [30] **10** days after the hearing.

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

The question is on the adoption of Committee Amendment 1145s.

Committee Amendment 1145s adopted.

The question is on the motion of Ought to Pass as Amended on SB 59.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 56, relative to financial responsibility for large groundwater withdrawals. Energy, Environment and Economic Development Committee, Re-refer to committee, Vote 6-0. Senator Cilley for the committee.

The question is on the adoption of committee recommendation of Re-refer to Committee on SB 56.

Motion of Re-refer to Committee adopted.

SB 85, extending the 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 4-1. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development

April 2, 2009

2009-1203s

09/10

Amendment to SB 85

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

AN ACT relative to the commission to develop a plan for the expansion of transmission capacity in the north country.

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

1 Purpose. The purpose of this act is to extend and expand the duties of the transmission commission created by 2008, 348. The transmission commission shall, wherever possible, seek to obtain federal funds to upgrade the 115 kilovolt transmission loop in Coos County and to establish an appropriate method for sharing costs and benefits of such an upgrade between ratepayers and the owners of generation facilities in order to develop renewable resources in northern New Hampshire. The transmission commission shall work with the congressional delegation, the office of the governor, and local and county officials to pursue all opportunities for the funding of the transmission upgrade needed to support renewable energy projects, including, but not limited to the benefits available under the American Recovery and Reinvestment Act of 2009.

2 New Subparagraph; Membership of the Commission. Amend 2008, 348:3, I by inserting after subparagraph (g) the following new subparagraph:

(h) The chairperson or designee of the energy efficiency and sustainable energy board established pursuant to RSA 125-O:5-a.

3 Duties of Transmission Commission. 2008, 348:4, I is repealed and reenacted to read as follows:

I. Shall:

(a) Coordinate and oversee efforts to upgrade the electric transmission system in the north country consistent with the responsibilities and findings contained in section 1.

(b) Retain a consultant to assist in developing a plan for the upgrade of the Coos county transmission loop no later than December 1, 2010, or such other date approved by the transmission commission. A 5 member subcommittee composed of the chair of the transmission commission, the chairperson or designee of the energy efficiency and sustainable energy board established pursuant to RSA 125-O:5-a, the 3 representatives of the north country serving on the transmission commission, and such other members as may be designated by the chair, shall have the authority, with the approval of the transmission commission, to retain and oversee the work of the consultant. The consultant's responsibilities shall include:

(1) Working with developers of proposed New Hampshire renewable generation projects which either have active applications in the ISO-NE Generator Interconnection Study Queue as of the effective date of this act or are subject to New Hampshire jurisdictional interconnection administration, electric transmission companies, the consumer advocate, the public utilities commission, this subcommittee, the congressional delegation, and state officials.

(2) Developing the framework for a proposal for the upgrade of the transmission system in the north country for filing with the Federal Energy Regulatory Commission that fairly balances the costs and benefits of the upgrade between developers and ratepayers. "Community benefits" shall be included as part of deliberation and as part of the final framework.

(3) Meeting periodically with the subcommittee of the transmission commission established under this subparagraph and the full transmission commission to report on the progress of the development of the proposal and taking direction from the commission.

4 Commission Extended. Amend 2008, 348:6 to read as follows:

348:6 Report. The *transmission* 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 *in the form of an interim report* on or before December 1, [2008] **2009 and a final report on or before December 1, 2010.**

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

2009-1203s

AMENDED ANALYSIS

This bill extends and expands the membership and duties of the commission to develop a plan for the expansion of transmission capacity in the north country.

The question is on the adoption of Committee Amendment 1203s.

Committee Amendment 1203s adopted.

Sen. Fuller Clark offered Floor Amendment 1294s.

Sen. Fuller Clark, Dist. 24

April 8, 2009

2009-1294s

09/04

Floor Amendment to SB 85

Amend the bill by inserting after section 3 the following and renumbering the original sections 4-5 to read as 5-6, respectively:

4 Duties of Transmission Commission. Amend 2008, 348:4, III to read as follows:

III. Is authorized to obtain the services of a consultant to complete any necessary engineering or economic studies to contribute to any such studies *and for developing the framework for a plan to upgrade the Coos county transmission loop.* 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.

Recess/Out of Recess.

The question is on the adoption of Floor Amendment 1294s.

Floor Amendment 1294s adopted.

The question is on the motion of Ought to Pass as Amended on SB 85.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 97, relative to customer information regarding energy sources and the environmental characteristics of their electric service. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 6-0. Senator Merrill for the committee.

Energy, Environment and Economic Development

April 2, 2009

2009-1198s

09/10

Amendment to SB 97

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

AN ACT establishing a committee to study the standards and procedures by which certain information should be provided to electrical service customers.

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

1 Committee Established. There is established a committee to study the standards and procedures by which information should be provided to electrical service customers, the legislature, state agencies involved in energy and environmental policy, and other interested parties regarding energy sources and environmental characteristics of electric service, in order for consumers and policymakers to make more informed decisions regarding selecting electrical service.

2 Membership and Compensation.

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

(a) One member 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.

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

3 Duties. The committee shall study the standards and procedures by which information should be provided to electrical service customers regarding energy sources and environmental characteristics of their electric service.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2009.

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

2009-1198s

AMENDED ANALYSIS

This bill establishes a study committee to study the standards and procedures by which information should be provided to electrical service customers regarding energy sources and environmental characteristics of their electric service.

The question is on the adoption of Committee Amendment 1198s.

Committee Amendment 1198s adopted.

The question is on the motion of Ought to Pass as Amended on SB 97.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 134-FN, relative to the comprehensive shoreland protection act. Energy, Environment and Economic Development Committee. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Energy, Environment and Economic Development

April 2, 2009

2009-1209s

06/04

Amendment to SB 134-FN

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

1 Definitions; Natural Ground Cover. Amend RSA 483-B:4, X-b to read as follows:

X-b. "Natural ground cover" means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall also include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, *landscaped areas, gardens*, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.

2 Definitions; Primary Building Line. Amend RSA 483-B:4, XIII to read as follows:

XIII. "Primary building line" means a setback *for primary structures of at least 50 feet* from the reference line.

3 Definitions; Public Waters. RSA 483-B:4, XVI(a) is repealed and reenacted to read as follows:

(a) All lakes, ponds, and artificial impoundments greater than 10 acres in size.

4 Definitions; Reference Line. RSA 483-B:4, XVII is repealed and reenacted to read as follows:

XVII. "Reference line" means:

(a) For all lakes, ponds, and artificial impoundments greater than 10 acres in size, the surface elevation as listed in the consolidated list of water bodies subject to the comprehensive shoreland protection act as maintained by the department.

(b) For coastal waters, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.

(c) For rivers, the ordinary high water mark

5 Definitions; Removal or Removed. Amend RSA 483-B:4, XVIII to read as follows:

XVIII. "Removal or removed" means [~~cut, sawed, pruned,~~] girdled, felled, [~~pushed over, buried, burned,~~] killed, or *cut, sawed, pruned, pushed over, buried, burned, or any other activity conducted to the extent that it* otherwise destructively *alters or* altered *the vegetation*.

6 Definitions; Repair. Amend RSA 483-B:4, XVIII-b to read as follows:

XVIII-b. "Repair" means work conducted to restore an existing, legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so [~~during~~] *at the conclusion of* construction.

7 Definitions; Structure. Amend RSA 483-B:4, XXII to read as follows:

XXII. "Structure" means anything [~~built~~] *constructed or erected* for the support, shelter or enclosure of persons, animals, goods, or property of any kind, [~~as well as anything constructed or erected~~] with a fixed location on or in the ground, exclusive of fences.

8 Definitions; Unaltered State; Urbanization. Amend RSA 483-B:4, XXIV-b and XXV to read as follows:

XXIV-b. "Unaltered state" means native vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing, or other similar activities *except as needed to maintain plant health*.

XXV. "Urbanization" means the concentrated development found in the sections of towns or cities where there has been an historic pattern of intensive building for *residential*, commercial [~~or~~], industrial [~~use, or mixed residential, commercial, and industrial use~~], *or mixed uses such that it contributes to or constitutes the municipality's downtown, community center, or central business district and wherein all vegetative buffers have been depleted, impervious surfaces are in excess of 50 percent, and residential uses are of at least 10 dwelling units per acre*.

9 Permit Required; Exemption. RSA 483-B:5-b, I(b)(1)-(3) is repealed and reenacted to read as follows:

(1) For projects that qualify for permit by notification under RSA 483-B:17, X, \$100 for restoration of water quality improvement projects and \$250 for all other permit by notification projects.

(2) For projects of 0-9,999 square feet, \$750.

(3) For projects of 10,000-24,999 square feet, \$1,875.

(4) For projects of 25,000 square feet or more, \$3,750.

10 Permit Required; Exemption. Amend RSA 483-B:5-b, III to read as follows:

III. Construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall be exempt from the permitting fees of paragraph I *and the abutter notification requirements of paragraph IV-a*.

11 Permit Required; Exemption. Amend RSA 483-B:5-b, IV-a and V to read as follows:

IV-a. At the time of the permit application, the applicant shall provide postal receipts or copies, verifying that the governing body of the municipality or municipalities in which the property is located ***and the local river management advisory committee, if the project is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15,*** and all abutters have been notified of the application by certified mail. ***Applicants for the construction of public roads, public utility lines and associated structures and facilities, and public water access facilities shall only be required to provide postal receipts or copies, verifying that the governing body of the municipality or municipalities in which the property is located, and the local river management advisory committee if the project is within a designated river corridor defined in RSA 483:4, XVIII and contains river and river segments designated in RSA 483:15, have been notified of the application by certified mail.***

V.(a) Within 30 days of receipt of an application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, the department shall request any additional information required to complete its evaluation of the application, and provide the applicant with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and notify the applicant that if all of the requested information is not received within 60 days of the request, the department shall deny the application.

(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:

- (1) Approve the application and issue a permit;
- (2) Deny the application, ***with written findings in support of the decision,*** in whole or in part; or
- (3) Extend the time for response for good cause and with the written agreement of the applicant.

(c) Where no request for additional information is made, the department shall, within 30 days of receipt of the application for a permit or 75 days of receipt of an application for a permit that will require a variance of the minimum standard of RSA 483-B:9, V or a waiver of the minimum standards of RSA 483-B:9, approve or deny the application, ***with written findings in support of the decision*** in whole or in part.

(d) If the department fails to render a decision in the time frame provided in this paragraph, the application shall be deemed to be approved and a permit shall be issued.

(e) All applications filed in accordance with the rules adopted by the department under RSA 483-B:17 and which meet the minimum standards established in RSA 483-B:9 shall be approved and a permit shall be issued.

12 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, II(d) to read as follows:

(d) No fertilizer, except limestone, shall be ~~[used]~~ ***applied to vegetation or soils located*** within 25 feet of the reference line of any ~~[property. Twenty-five feet beyond the reference line;]~~ ***public water.*** Low phosphate, slow release nitrogen fertilizer or limestone, may be used on ~~[lawns or areas with grass]~~ ***areas beyond 25 feet from the reference line.***

13 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a)(2)(A) to read as follows:

(A) No chemicals ~~[shall be applied]~~, including pesticides or herbicides of any kind ***shall be applied to ground, turf, or established vegetation*** except as allowed under special permit issued by the division of pesticide control under rules adopted by the pesticide control board under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-B:9, II(d).

14 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a)(2)(C) to read as follows:

(C) No natural ground cover shall be removed except as necessary for a foot path to water as provided under RSA 483-B:9, V(a)(2)(D)(viii), cutting those portions that have grown over 3 feet in height for the purpose of providing a view, or as specifically approved by the department, pursuant to RSA 482-A or ~~[483-B:11, H]~~ ***RSA 483-B.***

15 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(a)(2)(D)(iv)-(viii) to read as follows:

(iv) The department may approve applications pursuant to RSA 482-A *or RSA 483-B* that include the planting of native trees and saplings as necessary to at least maintain either the existing combined tree and sapling score or the minimum score required. The department shall not approve any application that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the combined tree and sapling score where the segment does not initially meet the minimum score.

(v) Owners of lots that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns ~~[and]~~, beaches, *and rights-of-way for public utilities, public transportation, and public access*, within the waterfront buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraphs (g)(2) or (g)(3), or RSA 483-B:11, II.

(vi) Normal trimming, pruning, and thinning of branches to the extent necessary to *promote the health of vegetation*, protect structures, maintain clearances, and provide views is permitted. ~~[Trimming, pruning, and thinning of branches]~~ *Limbing of trees or saplings* for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

(vii) When necessary for the completion of construction activities permitted in accordance with RSA 483-B:6, a temporary 12 foot wide access path shall be allowed. *On those properties accessible only by water, this access path may be maintained provided it is stabilized with a surface that will infiltrate stormwater. On other properties* the access path shall be completely restored and replanted with native vegetation upon completion of construction except as allowed under subparagraph (viii).

(viii) A permanent 6-foot wide foot path to *provide access to any beaches, structures, existing open areas, and* the water body, configured in a manner that will not concentrate storm water runoff or contribute to erosion, is allowed.

16 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(b)(2)(A)-(E) to read as follows:

(A)(i) For lots with one-half acre or less of land within the natural woodland buffer, the vegetation within at least 25 percent of the area outside the waterfront buffer shall be maintained in an unaltered state. Owners of lots legally developed *or landscaped* prior to July 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 unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.

(ii) For lots with greater than one-half acre of land within the natural woodland buffer, the vegetation within at least 50 percent of the area outside the waterfront buffer, exclusive of impervious surfaces, shall be maintained in an unaltered state. Owners of lots legally developed *or landscaped* prior to July 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 unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of *any areas of* the natural woodland buffer *in which impacts would occur*.

(C) Dead, diseased, or unsafe, trees, limbs, saplings, or shrubs that pose ~~[an imminent]~~ *a* hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer under this chapter. Such exemptions shall not be used to contravene the intent of the law.

(D) *Maintenance and* preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(E) ~~[Native species]~~ Planting efforts that *do not introduce exotic or invasive species and* are beneficial to wildlife are encouraged.

17 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(d)(1) to read as follows:

(1) All new structures, modifications to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in ~~[accordance with]~~ *a manner that incorporates appropriate protective practices which are substantially equivalent to those required under* rules adopted by the department under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

18 Minimum Shoreland Protection Standards. Amend RSA 483-B:9, V(g)(2) to read as follows:

(2) If the impervious surface area will exceed 20 percent, a stormwater management system shall be implemented and maintained which is designed to infiltrate increased stormwater from development occurring after the effective date of this paragraph in accordance with rules established by the department under RSA 485-A:17. ~~[In addition, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as provided by the minimum score and shall be maintained in accordance with RSA 483-B:9, V(a):]~~

19 Minimum Shoreland Protection Standards. RSA 483-B:9, V(g)(3) is repealed and reenacted to read as follows:

(3) If the impervious surface area will exceed 20 percent, if the natural tree and sapling cover in the waterfront buffer does not meet the 50-point minimum score of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with native trees, saplings, or natural ground cover in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as provided by the minimum score and shall be maintained in accordance with RSA 483-B:9, V(a).

20 Minimum Shoreland Protection Standards. Amend RSA 483-B:10, II to read as follows:

II. Building on nonconforming lots of record shall be limited to single family residential structures and related facilities, including, but not limited to, ***appurtenant accessory structures such as walkways and driveways, and water dependent structures such as*** docks, piers, ~~[boathouses, boat loading ramps, walkways,]~~ and ~~[other water dependent structures,]~~ ***breakwaters*** consistent with state law.

21 Minimum Shoreland Protection Standards. Amend RSA 483-B:12, I to read as follows:

I. The governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions ***as defined in RSA 483-B:4, XXV***, exist in the protected shoreland for which the exemption is sought.

II. If the governing body of a municipality requests such an exemption, it shall submit evidence of existing and historical patterns of building and development in the protected shoreland ***in demonstration of the special local urbanization conditions***. Such evidence shall address:

(a) Current and past building density.

(b) Commercial ~~[or]~~, industrial ~~[uses]~~, ***or residential uses***.

(c) Municipal or other public utilities.

(d) Current municipal land use regulations which affect the protected shoreland.

(e) ***Designation as a downtown, community center, central business district, or urbanized area or urban cluster as delineated by the U. S. Census Bureau.***

(f) Any other information which the commissioner may reasonably require.

22 Minimum Shoreland Protection Standards. Amend RSA 483-B:17, IV to read as follows:

IV. Procedures and criteria for the ***size, placement, and construction*** of small accessory structures such as storage sheds and gazebos, ~~[the size, placement, and construction of]~~ which is consistent with the intent of this chapter, between the reference line and the primary building line.

23 Repeal. The following are repealed:

I. RSA 483-B:4, III, relative to the definition of basal area.

II. RSA 483-B:9, V(e)(2), relative to minimum lots and residential development.

III. RSA 483-B:17, VIII, relative to rulemaking authority to define building envelopes.

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

The question is on the adoption of Committee Amendment 1209s.

Committee Amendment 1209s adopted.

Sen. Reynolds is in favor of Committee Amendment 1209s.

The question is on the motion of Ought to Pass as Amended on SB 134-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Reynolds is in favor of the motion of Ought to Pass as Amended on SB 134-FN.

SB 152, relative to an investigation by the public utilities commission to determine whether the scrubber installation at the Merrimack station is in the public interest of retail customers. Energy, Environment and Economic Development Committee. Inexpedient to Legislate, Vote 6-0. Senator Odell for the committee.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 152.

MOTION TO POSTPONE INDEFINITELY

Sen. Carson moved to postpone indefinitely.

Recess/Out of Recess.

Sen. Carson withdrew her motion to postpone indefinitely.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 152.

A roll call was requested by Sen. Barnes, seconded by Sen. Bragdon.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Houde, Cilley, Odell, Roberge, Kelly, Bragdon, Gilmour, Lasky, Carson, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: Janeway.

Yeas: 21 - Nays: 1

Motion of Inexpedient to Legislate adopted.

(Sen. Letourneau introduced family members of U.S. Navy SEAL Daniel Healy.)

SPECIAL ORDER

HB 56-FN, renaming a bridge to honor U. S. Navy Seal Daniel Healy. Transportation and Interstate Cooperation Committee. Ought to Pass with Amendment, Vote 5-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

March 26, 2009

2009-1089s

06/09

Amendment to HB 56-FN

Amend the bill by replacing section 3 with the following:

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

The question is on the adoption of Committee Amendment 1089s.

Committee Amendment 1089s adopted.

The question is on the motion of Ought to Pass with Amendment on HB 56-FN.

A roll call was requested by Sen. Barnes, seconded by Sen. Gatsas.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Houde, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gilmour, Lasky, Carson, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: (None)

Yeas: 22 - Nays: 0

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 633-FN, relative to eligibility for medical benefits payment by the retirement system for certain group I teacher and political subdivision employee members. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Fuller Clark for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 633-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 685-FN, relative to medical benefits payment by the retirement system for certain vested deferred group I members. Executive Departments and Administration Committee. Ought to Pass with Amendment, Vote 4-0. Senator Cilley for the committee.

Senate Executive Departments and Administration

April 1, 2009

2009-1180s

10/05

Amendment to HB 685-FN

Amend the bill by replacing section 1 with the following:

1 Retirement System; Medical Benefits Payment; Vested Deferred Group I Teachers and Political Subdivision Employees. RSA 100-A:52-a, I(b) is repealed and reenacted to read as follows:

(b) Any person who for reasons other than retirement or death ceases to be a group I teacher or political subdivision employee and retires with a vested deferred retirement allowance on or before July 1, 2009 if such person was eligible to retire as of July 1, 2008 either: (1) with no less than 20 years of group I creditable service and being at least 60 years old or subsequently attaining age 60; or (2) with no less than 30 years of group I creditable service and being at least 55 years of age or subsequently attaining age 55.

2009-1180s

AMENDED ANALYSIS

This bill allows certain group I teacher or political subdivision employee members of the retirement system who were eligible to retire with a vested deferred retirement allowance on July 1, 2008 and who retire by July 1, 2009 to be included in the payment of medical benefits by the retirement system.

The question is on the adoption of Committee Amendment 1180s.

Committee Amendment 1180s adopted.

The question is on the motion of Ought to Pass as Amended on HB 685-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Committee on Finance (Rule 26).

MOTION OF RECONSIDERATION

Sen. Hassan, having voted on the prevailing side, moved to reconsider SB 132, the bill having been passed and adopted on April 1, 2009.

SB 132, establishing a commission to study combining state agencies and programs to enhance efficiency and lower costs.

The question is on the motion of reconsideration.

Motion adopted.

Sen. Hassan offered Floor Amendment 1280s.

Sen. Hassan, Dist. 23

April 7, 2009

2009-1280s

05/01

Amendment to SB 132

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

AN ACT establishing a commission to develop implementation plans for merging state agencies and programs to enhance efficiency and lower costs.

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

1 Commission Established. There is established a commission to develop implementation plans for merging state agencies and programs to enhance efficiency and lower costs.

2 Membership and Compensation.

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

- (a) Two members of the senate, appointed by the senate president.
- (b) Two members of the house of representatives, appointed by the speaker of the house of representatives.
- (c) Two at large members, appointed by the governor.
- (d) The commissioner of administrative services, or designee.
- (e) The commissioner of resources and economic development, or designee.
- (f) The commissioner of the department of employment security, or designee.
- (g) The commissioner of safety, or designee.
- (h) The commissioner of cultural resources, or designee.
- (i) The commissioner of agriculture, markets and food, or designee.
- (j) The executive director of fish and game, or designee.
- (k) The attorney general, or designee.
- (l) Two members representing state employees, appointed by the governor.

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

3 Duties.

I. The commission shall develop implementation plans for, and identify necessary legislative and rules changes for:

- (a) Merging the department of resources and economic development, excluding the division of parks and recreation and the division of forests and lands, with the department of employment security;
- (b) Merging the department of cultural resources, the department of agriculture, markets and food, the department of fish and game, the division of parks and recreation, and the division of forests and lands into a newly established department of natural and cultural resources; and
- (c) Merging all law enforcement functions under the department of safety.

II. The commission shall identify any additional state agencies and programs that could be combined or consolidated in order to enhance efficiency and lower costs.

III. The commission shall solicit information and testimony from such individuals, agencies, and organizations as may be of assistance to the commission in the performance of its duties.

IV. The commission may create subcommittees to develop implementation plans.

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. Seven 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, 2009.

6 Gifts.

I. The commissioner of the department of administrative services may apply for and accept gifts, donations of money, federal, municipal, or private grants, or other funds or incentives from any source for the purposes of this act. The funds accepted under this paragraph shall be continually appropriated to the department for the purposes of this act.

II. The commissioner may expend any funds received under paragraph I for the purposes of this act.

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

2009-1280s

AMENDED ANALYSIS

This bill establishes a commission to develop implementation plans for merging state agencies and programs to enhance efficiency and lower costs.

The question is on the adoption of Floor Amendment 1280s.

Floor Amendment 1280s adopted.

The question is on the motion of Ought to Pass as Amended on SB 132.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 483, establishing the developmental services quality council. Health & Human Services Committee. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 483.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 594-FN, relative to the medicaid pharmacy benefits management program. Health & Human Services Committee. Ought to Pass, Vote 5-0. Senator Sgambati for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 594-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

SB 90, establishing a private right of action for pharmacies against health maintenance organizations. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Roberge for the committee.

Senate Judiciary

April 1, 2009

2009-1178s

10/09

Amendment to SB 90

Amend RSA 420-B:14-a, I as inserted by section 1 of the bill by replacing it with the following:

I. In addition to the sanctions provided in RSA 420-B:13, a pharmacy injured by a health maintenance organization's violation of RSA 420-B:12, V, may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages or \$1,000, whichever is greater. If the court finds that the health maintenance organization's violation was a willful or knowing violation of RSA 420-B:12, V, it shall award up to 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court.

The question is on the adoption of Committee Amendment 1178s.

Committee Amendment 1178s adopted.

The question is on the motion of Ought to Pass as Amended on SB 90.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 113, authorizing the electronic enforcement of traffic signal violations. Judiciary Committee. Inexpedient to Legislate, Vote 4-1. Senator Lasky for the committee.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 113.

Motion of Inexpedient to Legislate adopted.

SB 120, relative to nonemergency involuntary admissions and permitted condition of conditional discharge from a mental health facility. Judiciary Committee. Re-refer to committee, Vote 5-0. Senator Lasky for the committee.

The question is on the adoption of committee recommendation of Re-refer to Committee on SB 120.

Motion of Re-refer to Committee adopted.

SB 125, relative to proof of age for an underage drug or alcohol house party. Judiciary Committee. Inexpedient to Legislate, Vote 3-2. Senator Reynolds for the committee.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 125.

A roll call was requested by Sen. Barnes, seconded by Sen. Gatsas.

The following Senators voted Yes: Reynolds, Sgambati, Houde, Cilley, Janeway, Kelly, Gilmour, Lasky, Larsen, DeVries, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Odell, Roberge, Bragdon, Carson, Gatsas, Barnes, Letourneau.

Yeas: 14 - Nays: 8

Motion of Inexpedient to Legislate adopted.

SB 126, relative to the use of audio and video recording devices by law enforcement officers. Judiciary Committee. Inexpedient to Legislate, Vote 4-1. Senator Reynolds for the committee.

The question is on the adoption of committee recommendation of Inexpedient to Legislate on SB 126.

Motion of Inexpedient to Legislate adopted.

SB 142, relative to registration of criminal offenders. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Letourneau for the committee.

Senate Judiciary

April 1, 2009

2009-1161s

04/01

Amendment to SB 142

Amend the bill by inserting after section 6 the following and renumbering the original sections 7-8 to read as 8-9, respectively:

7 New Paragraph; Registration of Criminal Offenders; Hearing. Amend RSA 651-B:10 by inserting after paragraph II the following new paragraph:

III. Any individual required to be registered as a result of any violation or attempted violation of RSA 632-A:3, II in effect prior to January 1, 2009, or RSA 632-A:2, III if the acts constituting the pattern were in violation of RSA 632-A:3, II in effect prior to January 1, 2009, provided that the age difference between the individual required to register and the victim was less than 4 years at the time of the offense and the person has no other adjudications requiring registration under RSA 651-B:2, may file with the clerk of the superior court for the county in which the judgment was rendered an application for review of the registration requirement. No application shall be granted without a hearing, during which the prosecuting attorney and the victim or victim's family shall have an opportunity to be heard. Notice of the hearing shall be provided no less than 30 days prior to the hearing. The victim may appear personally or through a representative, and may reasonably express his or her views concerning the offense, the offender, and the need for continuing the registration requirement. If the court denies the application, the offender shall not file another application for 5 years from the date of the denial.

Amend the bill by replacing section 8 with the following:

8 Repeal. The following are repealed:

I. 2008, 323:7, relative to online identifiers of criminal offenders.

II. 2008, 323:10, relative to duration of registration for certain criminal offenders.

III. RSA 651-B:7, VI, relative to review of the public registration requirement for criminal offenders.

The question is on the adoption of Committee Amendment 1161s.

Recess/Out of Recess.

The question is on the adoption of Committee Amendment 1161s.

Committee Amendment 1161s adopted.

Sen. Reynolds offered Floor Amendment 1295s.

Sen. Reynolds, Dist. 2

April 8, 2009

2009-1295s

04/10

Floor Amendment to SB 142

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

AN ACT relative to registration of criminal offenders and relative to involuntary commitment of sexually violent predators.

Amend the bill by inserting after section 7 the following and renumbering the original sections 8-9 to read as 10-11, respectively:

8 Involuntary Commitment of Sexually Violent Predators; Release. Amend RSA 135-E:4, IV to read as follows:

IV. A person shall be released if the multidisciplinary team or the county attorney or attorney general do not comply with the time limitations in this section. ~~[The provisions of this section, however, are not jurisdictional, and]~~ Failure to comply with the time limitations, which results in the release of a person who has been convicted of a sexually violent offense, is not dispositive of the case and does not prevent the county attorney or attorney general from filing a petition against a person otherwise subject to the provisions of this chapter. ~~[However]~~ **Notwithstanding RSA 135-E:24, II**, the court shall not consider any petition filed more than 6 months after the person's release from incarceration unless the timing of the petition is due to newly discovered material facts, which shall be alleged in the petition.

9 New Section; Involuntary Commitment of Sexually Violent Predators; Time Limits. Amend RSA 135-E by inserting after section 23 the following new section:

135-E:24 Time Limits.

I. A court may extend any time limit set forth in this chapter, upon request, for good cause shown.

II. The time limits set forth in this chapter are not intended to be jurisdictional. Failure to comply with a time limit prior to the expiration of the person's incarcerative sentence shall not constitute a basis for dismissal of a petition.

III. If the proceedings under this chapter have not been completed by the expiration of the person's incarcerative sentence, the court shall make a probable cause determination no later than 2 days after the expiration date, pursuant to RSA 135-E:7. If no such determination is made, the person shall be released. The county attorney or attorney general may file an emergency petition for a probable cause determination. Upon receipt of the emergency petition, the court shall immediately schedule a probable cause hearing. If the court determines that there is probable cause to believe that the person is a sexually violent predator, the person shall be held in an appropriate secure facility for further proceedings under RSA 135-E:9.

IV. Notwithstanding paragraph III, except as provided in RSA 135-E:4, no petition shall be filed later than 60 days prior to the person's release from incarceration, except for good cause shown.

2009-1295s

AMENDED ANALYSIS

This bill:

I. Corrects certain conflicts in RSA 651-B, the registration of criminal offenders statute.

II. Clarifies the procedural time limits for establishing probable cause to hold a sexually violent predator in custody.

III. Is a request of the department of justice.

The question is on the adoption of Floor Amendment 1295s.

A roll call was requested by Sen. Gatsas, seconded by Sen. Barnes.

The following Senators voted Yes: Gallus, Reynolds, Sgambati, Houde, Cilley, Janeway, Odell, Roberge, Kelly, Bragdon, Gilmour, Lasky, Carson, Larsen, Gatsas, Barnes, DeVries, Letourneau, D'Allesandro, Merrill, Hassan, Fuller Clark.

The following Senators voted No: (None)

Yeas: 22 - Nays: 0

Floor Amendment 1295s adopted.

The question is on the motion of Ought to Pass as Amended on SB 142.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 151, relative to quorum requirements for public bodies for which a quorum is not expressly declared. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Houde for the committee.

Senate Judiciary

April 1, 2009

2009-1163s

04/10

Amendment to SB 151

Amend the bill by replacing section 1 with the following:

1 Joint Authority. Amend RSA 21:15 to read as follows:

21:15 Joint Authority. *Unless otherwise expressly declared:*

I. Words purporting to give a joint authority to 3 or more public officers shall give such authority to a majority of them[; unless otherwise expressly declared].

II. The authority of any board, commission, or other body whose members are approved exclusively by the governor and council to conduct official business shall be vested in a majority of those members who have been approved by the governor and council.

2009-1163s

AMENDED ANALYSIS

This bill provides that, unless otherwise specified, a quorum would be calculated based on a majority of the number of filled positions, rather than the total number of positions created by statute.

This bill is a request of the department of justice.

The question is on the adoption of Committee Amendment 1163s.

Committee Amendment 1163s adopted.

The question is on the motion of Ought to Pass as Amended on SB 151.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 203, relative to liability protection for railroad operators operating alongside recreational trails. Judiciary Committee. Ought to Pass with Amendment, Vote 3-2. Senator Reynolds for the committee.

Senate Judiciary

April 1, 2009

2009-1179s

06/09

Amendment to SB 203

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

1 Duty of Care. Amend RSA 212:34 to read as follows:

I. An owner, lessee, or occupant of premises, or railroad operator who owns, leases, occupies, or maintains a right-of-way that is used as part of a designated recreational trail, owes no duty of care to keep such premises safe for entry or use by others for hunting, fishing, trapping, camping, horseback riding,

water sports, winter sports, snowmobiling, or OHRVs as defined in RSA 215-A, hiking, **bicycling**, sightseeing, [or] removal of fuel wood, **or other similar activities**, or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in paragraph III hereof.

II. An owner, lessee, or occupant of premises, **or railroad operator who owns, leases, occupies, or maintains a right-of-way that is used as part of a designated recreational trail**, who gives permission to another to hunt, fish, trap, camp, ride horseback, hike, **bicycle**, use snowmobiles as defined in RSA 215-C, use OHRVs as defined in RSA 215-A, sightsee upon, or remove fuel wood from, such premises, [or] use said premises for water sports, [or] winter sports **or other similar activities** does not thereby:

(a) Extend any assurance that the premises are safe for such purpose, or

(b) Constitute the person to whom permission has been granted the legal status of an invitee to whom a duty of care is owed, or

(c) Assume responsibility for or incur liability for ~~[an injury to person or property]~~ **personal injury or property damage** caused by any act of such person to whom permission has been granted except as provided in paragraph III hereof.

III. This section does not limit the liability which otherwise exists:

(a) For willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or

(b) For **personal injury or property damage** suffered in any case where permission to hunt, fish, trap, camp, ride horseback, hike, **bicycle**, use for water sports, winter sports, use [of] snowmobiles as defined in RSA 215-C, or use [of] OHRVs as defined in RSA 215-A, sightsee, [or] remove fuel wood, **or other similar activities** was granted for a consideration other than the consideration, if any, paid to said landowner by the state; or

(c) [The] **For personal injury or property damage** caused by acts of persons to whom permission to hunt, fish, trap, camp, ride horseback, hike, **bicycle**, use for water sports, winter sports, use [of] snowmobiles as defined in RSA 215-C, or use [of] OHRVs as defined in RSA 215-A, sightsee, [or] remove fuel wood, **or other similar activities** was granted, to third persons [as] to whom the person granting permission, or the owner, lessee or occupant of the premises, **or railroad operator who owns, leases, occupies, or maintains a right-of-way that is used as part of a designated recreational trail**, owed a duty to keep the premises safe or to warn of danger.

IV. Except as provided in paragraph III, a person using the premises as provided in paragraph I or given permission as provided in paragraph II, shall not maintain an action against the owner, occupant, or lessee of the premises, **or railroad operator who owns, leases, occupies, or maintains a right-of-way that is used as part of a designated recreational trail**, for any **personal injury or property damage** which resulted while on the premises.

2 Liability Limited. Amend RSA 231-A:8, I to read as follows:

I. All trails established under this chapter shall be deemed to constitute land open without charge for recreational or outdoor educational purposes pursuant to RSA 212:34 and RSA 508:14, I, and the liability of owners, lessees, or occupants of land affected by a trail, **railroad operators who own, lease, occupy, or maintain a right-of-way that is used as part of a designated recreational trail**, and of the municipality establishing the trail, shall be limited as set forth in those statutes.

3 Landowner Liability Limited. Amend RSA 508:14, I to read as follows:

I. An owner, occupant, or lessee of land, including the state or any political subdivision, **or a railroad operator who owns, leases, occupies, or maintains a right-of-way that is used as part of a designated recreational trail**, who without charge permits any person to use land for recreational purposes or as a spectator of recreational activity, shall not be liable for personal injury or property damage in the absence of intentionally caused injury or damage.

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

The question is on the adoption of Committee Amendment 1179s.

Committee Amendment 1179s adopted.

Sen. Reynolds is in favor of Committee Amendment 1179s.

The question is on the motion of Ought to Pass as Amended on SB 203.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Sen. Reynolds is in favor of the motion of Ought to Pass as Amended on SB 203.

Senators Gatsas and Carson are in opposition to the motion of Ought to Pass as Amended as SB 203.

SB 205-FN, making various changes to the criminal statutes. Judiciary Committee. Ought to Pass with Amendment, Vote 5-0. Senator Houde for the committee.

Senate Judiciary

April 1, 2009

2009-1166s

04/03

Amendment to SB 205-FN

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

1 Criminal Mischief. Amend RSA 634:2, II and II-a to read as follows:

II. Criminal mischief is a class B felony if the actor purposely causes or attempts to cause:

- (a) Pecuniary loss in excess of [~~\$1,000~~] **\$3,500**; or
- (b) A substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service; or
- (c) Discharge of a firearm at an occupied structure, as defined in RSA 635:1, III; or
- (d) Damage to private or public property, real or personal, when the actor knows that the property has historical, cultural, or sentimental value that cannot be restored by repair or replacement.

II-a. Criminal mischief is a class A misdemeanor if the actor purposely causes or attempts to cause pecuniary loss in excess of [~~\$100~~] **\$1,750** and not more than [~~\$1,000~~] **\$3,500**.

2 Unauthorized Entries; Criminal Trespass. Amend RSA 635:2, II to read as follows:

II. Criminal trespass is a misdemeanor for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of [~~\$1,000~~] **\$3,500** to the value of the property of another.

3 Theft; Penalties. Amend RSA 637:11 to read as follows:

637:11 Penalties.

I. Theft constitutes a class A felony if:

- (a) The value of the property or services exceeds [~~\$1,000~~] **\$3,500**, or
- (b) The property stolen is a firearm, or
- (c) The actor is armed with a deadly weapon at the time of the theft, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

II. Theft constitutes a class B felony if:

- (a) The value of the property or services is more than [~~\$500~~] **\$1,750** but not more than [~~\$1000~~] **\$3,500**, or
- (b) The actor has been twice before convicted of theft of property or services, as a felony or class A misdemeanor, or
- (c) The theft constitutes a violation of RSA 637:5, II(a) or (b), or
- (d) The property or services stolen are from 3 separate business establishments within a 72-hour period.

III. Theft constitutes a misdemeanor if the value of the property or services does not exceed [~~\$500~~] **\$1,750**.

4 Fraud; Issuing Bad Checks. Amend RSA 638:4, IV(a) to read as follows:

IV.(a) Issuing a bad check is:

(1) A class A felony if the face amount of the check exceeds [~~\$1,000~~] **\$3,500**;

(2) A class B felony if the face amount of the check exceeds [~~\$500~~] **\$1,750** but is not more than [~~\$1,000~~] **\$3,500**;

(3) A class A misdemeanor if the face amount of the check does not exceed [~~\$500~~] **\$1,750** and the actor has been convicted of an offense under this section within the previous 12 months;

(4) A class B misdemeanor in all other cases.

5 Fraud; Fraudulent Use of Credit Card. Amend RSA 638:5, III to read as follows:

III.(a) Fraudulent use of a credit card is:

(1) A class A felony if property or services are obtained which exceed the value of [~~\$1,000~~] **\$3,500**;

(2) A class B felony if property or services are obtained which exceed the value of [~~\$500~~] **\$1,750** but are not more than the value of [~~\$1,000~~] **\$3,500**;

(3) A misdemeanor in all other cases.

(b) The value may be determined according to the provisions of RSA 637:2, V.

6 Fraud; Commercial Bribery. Amend RSA 638:7, III to read as follows:

III.(a) Commercial bribery is:

(1) A class A felony if the value of the benefit referred to in paragraphs I and II is more than [~~\$1,000~~] **\$3,500**;

(2) A class B felony if the value of the benefit referred to in paragraphs I and II is more than [~~\$500~~] **\$1,750**, but is not more than [~~\$1,000~~] **\$3,500**;

(3) A misdemeanor in all other cases.

(b) The value shall be determined according to the provisions of RSA 637:2, V.

7 Fraud; Sports Bribery. Amend RSA 638:8, II to read as follows:

II.(a) Sports bribery is:

(1) A class A felony if the benefit referred to in subparagraphs I(a), (b) or (d), or the value of the benefit gained or to be gained from influencing the outcome of a contest as referred to in subparagraph I(c), exceeds [~~\$1,000~~] **\$3,500** or if the injury threatened in subparagraphs I(a) or (b) is a serious bodily injury;

(2) A class B felony in all other cases.

(b) The value shall be determined according to the provisions of RSA 637:2, V.

8 Fraud; Fraud on the Women, Infants, and Children (WIC) Program. Amend RSA 638:15, II to read as follows:

II. Fraud on the women, infants, and children program is:

(a) A class A felony where the value of the funds, assets, or property exceeds [~~\$1,000~~] **\$3,500**;

(b) A class B felony where the value of the funds, assets, or property exceeds [~~\$100~~] **\$1,750**, but is not more than [~~\$1,000~~] **\$3,500**;

(c) A misdemeanor in all other cases.

9 Fraud; Computer Crime Penalties. Amend RSA 638:18, I-III to read as follows:

I. Computer crime constitutes a class A felony if the damage to or the value of the property or computer services exceeds [~~\$1,000~~] **\$3,500**, or if the person has previously been convicted of violating RSA 638:17, II, IV, or VI, or any other statute prohibiting the same conduct in another state, territory, or possession of the United States.

II. Computer crime constitutes a class B felony if:

(a) The damage to or the value of the property or computer services exceeds [\$500] **\$1,750 but is not more than \$3,500**;

(b) The person recklessly engages in conduct which creates a risk of serious physical injury to another person; or

(c) The person is guilty of violating RSA 638:17, II, IV, or VI.

III. Computer crime is a misdemeanor if the damage to or the value of the property or computer services, if any, is [\$500] **\$1,750** or less.

10 Fraud; Computer Crime Penalties. Amend RSA 638:18, V(c) to read as follows:

(c) When the value of the property or computer services or damage thereto cannot be satisfactorily ascertained, the value shall be deemed to be [\$250] **\$1,750**.

11 Fraud; Insurance Fraud. Amend RSA 638:20, IV(a) to read as follows:

IV.(a) Insurance fraud is:

(1) A class A felony if the value of the fraudulent portion of the claim for payment or other benefit pursuant to an insurance policy is more than [\$1,000] **\$3,500**.

(2) A class B felony if the value of the fraudulent portion of the claim for payment or other benefit pursuant to an insurance policy is more than [\$500] **\$1,750**, but not more than [\$1,000] **\$3,500**.

(3) A misdemeanor in all other cases.

12 Presentence Investigation. Amend RSA 651:4 to read as follows:

651:4 Presentence Investigation.

I. ~~[No person convicted of a felony shall be sentenced before a written report of a presentence investigation has been presented to and considered by the court, unless waived by defendant and the state, or by the court.]~~ The court may, in its discretion, order a presentence investigation for a defendant convicted of a **felony or a** misdemeanor; provided that, upon the recommendation of the prosecution, the court shall order a presentence investigation report where the **felony or** misdemeanor was violent and the court has reason to believe that the defendant committed a similar act within the past year. The report shall include a recommendation as to disposition, together with reference to such material disclosed by the investigation as supports such recommendation.

II. Before imposing sentence, the court shall take such steps as may be necessary so that the defendant is advised, by [his] counsel or otherwise, as the situation warrants, of the factual contents of any presentence investigation, and afforded a fair opportunity to ~~[controvert]~~ **contest** them. The sources of confidential information need not, however, be disclosed.

13 Effective Date. This act shall take effect January 1, 2010.

2009-1166s

AMENDED ANALYSIS

This bill:

I. Increases the statutory damage amounts for theft, criminal trespass, criminal mischief, willful concealment, and shoplifting, and for certain crimes involving fraud.

II. Allows the court the discretion to order a presentence investigations in felony cases.

The question is on the adoption of Committee Amendment 1166s.

Committee Amendment 1166s adopted.

Sen. Houde offered Floor Amendment 1281s.

Sen. Houde, Dist. 5

April 7, 2009

2009-1281s

04/10

Floor Amendment to SB 205-FN

Amend RSA 634:2, II-a as inserted by section 1 of the bill by replacing it with the following:

II-a. Criminal mischief is a class A misdemeanor if the actor purposely causes or attempts to cause pecuniary loss in excess of \$100 and not more than [\$1,000] **\$3,500**.

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

II. Criminal trespass is a misdemeanor for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of [\$1,000] **\$1,750** to the value of the property of another.

The question is on the adoption of Floor Amendment 1281s.

Floor Amendment 1281s adopted.

The question is on the motion of Ought to Pass as Amended on SB 205-FN.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Recess/Out of Recess.

SB 123, relative to agricultural restricted covenants. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator DeVries for the committee.

Public and Municipal Affairs

April 2, 2009

2009-1191s

08/01

Amendment to SB 123

Amend the bill by replacing the title with the following:

AN ACT relative to agricultural restricted grants.

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

1 Agricultural Preservation Restrictions. Amend RSA 432:18, I-II to read as follows:

I. "Agricultural land development rights" means the rights of the fee simple owner of agricultural land to construct on, sell, lease or otherwise improve the agricultural land for uses that result in rendering such land no longer suitable for agricultural use. Such development rights may be severed from the fee simple right to constitute a restriction for the preservation of the agricultural land ***as defined in paragraphs II and II-a.***

II. "Agricultural preservation restriction" means the restraint placed on the development rights of agricultural land, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining land or water areas predominantly in their agricultural use, to prohibit or limit (1) construction or placement of buildings except those used for agricultural purposes ~~[or for dwellings used for family living by the landowner, his immediate family or employees]~~; (2) excavation, dredging, or removal of loam, sod, peat, gravel, soil, rock, or other mineral substance in such a manner as to adversely affect the land's future agricultural potential; or (3) other acts or uses detrimental to such retention of the land for agricultural use. ***Agricultural preservation restriction does not include agricultural restricted grants as defined in paragraph II-a.***

2 New Paragraph; Agricultural Restricted Grants; Definition. Amend RSA 432:18 by inserting after paragraph II the following new paragraph:

II-a. "Agricultural restricted grant" means a grant given to a landowner by the department of agriculture, markets, and food for a limited time set by the parties with financial or technical assistance provided by the department in return for guarantees of continued farm use of the property for a minimum specified time period.

3 Site; Agricultural Restricted Grants Added. Amend RSA 432:18, IX to read as follows:

IX. "Site" means a specific land area for agricultural purposes in which agricultural land development rights ***including agricultural restricted grants*** are acquired in order to preserve land suitable for agricultural production.

4 New Paragraph; Duties of the Commissioner. Amend RSA 432:21 by inserting after paragraph V the following new paragraph:

VI. Adopt rules relative to procedures for granting financial or technical assistance for aid for the creation of agricultural restricted grants.

5 Administration; Agricultural Restricted Grants. Amend RSA 432:22, I to read as follows:

I. Acquisition of agricultural land development rights shall be conducted in cooperation with a landowner upon review pursuant to this section. Any proposal for designating a site as an agricultural preservation restriction area ***or a site for an agricultural restricted grant*** shall be submitted by the landowner to the committee for approval. ***Notwithstanding RSA 432:23, approval of a site for an agricultural restricted grant shall not be the only cause for a current use valuation as described in RSA 79-A.***

6 Administration; Agricultural Restricted Grant. Amend RSA 432:22, V to read as follows:

V. The committee shall view each parcel subject to agricultural preservation restriction ***or an agricultural restricted grant*** not less than once every 2 years to assure that its use complies with law and the rules of the committee. The committee may delegate responsibility for monitoring of the agricultural preservation restriction ***or the agricultural restricted grant to the department of agriculture, markets, and food***, to the conservation commission in the municipality, or to the conservation district, in which the parcel is situated. Such commission or district shall submit a report of its inspection to the committee in a timely manner.

7 Release; Agricultural Restricted Grants. Amend RSA 432:24, I-II to read as follows:

I. Agricultural preservation restrictions shall be in perpetuity except as released pursuant to this section and RSA 432:25. ***Agricultural restricted grants shall run in accordance with the agreement between a landowner and the department of agriculture, markets, and food except as released pursuant to this section and RSA 432:25.*** All customary rights and privileges of ownership shall be retained by the owner including the right to privacy and the right to carry out all regular agricultural practices which are not prohibited by RSA 432:18, II.

II. Agricultural preservation restrictions ***and agricultural restricted grants*** may be released by the committee if the site is no longer suitable for agricultural purposes. An owner of an agricultural preservation site may request the committee's approval to release the restriction for the public good. Prior to the release of the agricultural land development rights by the committee, a public hearing shall be conducted in the municipality in which the site is located. A notice of said hearing shall specify the grounds for the hearing as well as the date, time, and place, and at least 14 days' notice of the time and place of such hearing shall be published in a paper of general circulation in the municipality. A legal notice of the hearing shall also be posted in at least 3 public places in such city or town. The 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays, and legal holidays within said period. At least 2 committee members shall sit on the hearing panel.

8 Easement Restriction. For all agricultural easements acquired under RSA 432 after July 1, 2009, the construction or placement of any building is prohibited except those used solely for agricultural purposes.

9 Effective Date. This act shall take effect July 1, 2009.

2009-1191s

AMENDED ANALYSIS

This bill creates agricultural restricted grants.

This bill also restricts construction and building on agricultural easements.

The question is on the adoption of Committee Amendment 1191s.

Committee Amendment 1191s adopted.

The question is on the motion of Ought to Pass as Amended on SB 123.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 195, relative to procedures for the trimming, cutting, or removal of trees by utilities. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0.

Senator Houde for the committee.

Public and Municipal Affairs

April 2, 2009

2009-1192s

06/01

Amendment to SB 195

Amend the bill by replacing section 1 with the following:

1 Cutting Trees. RSA 231:172 is repealed and reenacted to read as follows:

231:172 Cutting Trees.

I. No licensee shall have the right to cut, prune, or remove any shade or ornamental tree, for the purpose of erecting or maintaining poles or structures or installing wires or other attachments or appurtenances thereto, without obtaining the consent of the owner of the land on which such tree grows. The receipt of a license to erect and maintain such equipment pursuant to RSA 231:160 and RSA 281:160-a includes consent to cut, prune, or remove shade or ornamental trees growing on land located within the public right of way that poses a danger to the reliability of equipment installed at or upon licensed utility facilities.

II. A licensee shall provide notice in writing at least 45 days in advance of any non-emergency cutting, pruning, or removal of shade or ornamental trees that is scheduled to take place on a landowner's property. The notice shall, at the option of the licensee, be given in person, or sent by ordinary mail, or by electronic mail to owners of affected land using the name and address that appears on municipal tax records for the property. The notice shall provide the name and contact information of a representative of the licensee who may be contacted to schedule personal consultation regarding the activities. For the purposes of this section, the owner shall consent to the activities if he or she fails to affirmatively request personal consultation within 45 days of the mailing of such notice.

III. If, following personal consultation, the owner objects to such cutting, the selectmen, upon petition from the affected licensee, after notice to the owner and hearing, shall determine whether the cutting, pruning, or removal is necessary. If the licensee shows, by a preponderance of the evidence, that a shade or ornamental tree poses a danger to the reliability of equipment installed at or upon utility facilities, the selectmen shall grant permission to cut, prune, or remove such tree. If they grant permission, the selectmen shall assess the damages to the owner.

IV. Upon highways which have been designated scenic roads pursuant to RSA 231:157 and RSA 231:158, cutting, pruning, or removal shall be further restricted as set forth in those sections or any local provisions adopted thereunder.

The question is on the adoption of Committee Amendment 1192s.

Committee Amendment 1192s adopted.

The question is on the motion of Ought to Pass as Amended on SB 195.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

SB 202-FN-L, relative to employee candidate background checks by municipalities. Public and Municipal Affairs Committee. Ought to Pass with Amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

April 2, 2009

2009-1190s

06/05

Amendment to SB 202-FN-LOCAL

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

1 Employee Candidate Background Checks. Amend RSA 41:9-b, I to read as follows:

I. The governing body of a town, or a town manager in a town which has adopted the provisions of RSA 37, may require a background investigation and a criminal history records check on any candidate for employment in a position in the town that requires the employee to work with or around children or elderly persons, enter the homes of citizens, or collect or manage money, prior to a final offer of employment. ***A town may request only a state records check or both a federal and state records check, to be conducted through the division of state police.*** The town may extend a conditional offer of employment to a candidate, with a final offer of employment subject to a successfully completed criminal history records check.

2 Employee Candidate Background Checks. Amend RSA 41:9-b, III to read as follows:

III. ***To obtain a state records check only, the town shall submit a state criminal history records release form to the division of state police. To obtain both the federal and the state records check,*** the town shall submit the criminal history records release form and applicant finger print card to the division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police

shall report any criminal conviction information to the town governing body or town manager. The town may submit *fingerprint* information electronically, in accordance with procedures established by the division of state police. The town shall maintain the confidentiality and security of all criminal history records information received pursuant to this paragraph.

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

2009-1190s

AMENDED ANALYSIS

This bill permits a criminal history records check by a municipality to be only a state records check or both a federal and state records check.

The question is on the adoption of Committee Amendment 1190s.

Committee Amendment 1190s adopted.

The question is on the motion of Ought to Pass as Amended on SB 202-FN-L.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

HB 162, relative to recycled and rebuilt vehicles. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 4-0. Senator Letourneau for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 162.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 284-FN, increasing the contract amount that triggers the bond requirement on public projects. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 4-0.

Senator Kelly for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 284-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 671-FN, amending the motorist service signing program to allow the department of transportation to charge a fee for attraction signs. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 4-0. Senator Gilmour for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 671-FN.

Motion of Ought to Pass adopted, bill ordered to Committee on Finance (Rule 26).

HB 41, allowing the executive director of fish and game to donate certain hunting and fishing permits to the wildlife heritage foundation of New Hampshire. Wildlife, Fish and Game and Agriculture Committee. Ought to Pass with Amendment, Vote 5-0. Senator Janeway for the committee.

Wildlife, Fish and Game and Agriculture

April 1, 2009

2009-1167s

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Amendment to HB 41

Amend RSA 206:33-e as inserted by section 1 of the bill by replacing it with the following:

206:33-e Wildlife Heritage Foundation; Donation of Permits.

I. The executive director may donate up to 5 fishing licenses and hunting licenses along with any necessary permits to take up to 5 moose, up to 5 deer, up to 5 bear, and up to 5 turkeys, each calendar year to the wildlife heritage foundation of New Hampshire, the official nonprofit partner of the department pursuant to RSA 206:33-c. The donated permits shall be used by the foundation to assist in its corporate mission. The donation of permits shall not affect the number of permits to be made available to the public by the department.

II. The licenses and permits donated under paragraph I shall be valid anywhere in the state open to the taking of the species selected, and shall be valid to take moose, deer, bear, or turkey of either sex during the established hunting season for that species. Prior to being issued a hunting license under this section, a person shall meet the hunting education requirements under RSA 214:23-a.

III. The wildlife heritage foundation of New Hampshire shall submit an annual report to the fiscal committee of the general court and the policy committees responsible for wildlife issues in the senate and house of representatives. The report shall identify funds received and expended by the foundation and projects supported by the foundation during the year.

The question is on the adoption of Committee Amendment 1167s.

Committee Amendment 1167s adopted.

Sen. Gatsas and Barnes are in opposition to Committee Amendment 1167s.

The question is on the motion of Ought to Pass as Amended on HB 41.

Motion of Ought to Pass as Amended adopted, bill ordered to Third Reading.

Senators Roberge, Gatsas and Barnes are in opposition to the Motion of Ought to Pass as Amended on HB 41.

HB 182, relative to fish and game department authorization to administer programs involving federal aid, and relative to biennial reports of the department. Wildlife, Fish and Game and Agriculture Committee. Ought to Pass, Vote 2-0. Senator Gallus for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 182.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 451, authorizing a transaction fee for license agents electronically issuing fish and game licenses. Wildlife, Fish and Game and Agriculture Committee. Ought to Pass, Vote 3-0. Senator Janeway for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 451.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 526, changing certain references in fish and game laws to river herring. Wildlife, Fish and Game and Agriculture Committee. Ought to Pass, Vote 4-0. Senator Gilmour for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 526.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 545-FN, relative to the wildlife damage control program in the fish and game department. Wildlife, Fish and Game and Agriculture Committee. Ought to Pass, Vote 5-0. Senator Janeway for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 545-FN.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HB 612, relative to the suspension or revocation of fish and game licenses. Wildlife, Fish and Game and Agriculture Committee. Ought to Pass, Vote 5-0. Senator Gilmour for the committee.

The question is on the adoption of committee recommendation of Ought to Pass on HB 612.

Motion of Ought to Pass adopted, bill ordered to Third Reading.

HOUSE MESSAGE

The Clerk read the following House Message:

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

SB 39-FN-L, relative to municipal deposits and special meetings for considering an appropriate response to the American Recovery and Reinvestment Act of 2009.

SENATE CONCURS WITH HOUSE AMENDMENT

Sen. DeVries recommends concurrence.

The question is on the concurrence with the adoption of House Amendment 0793h on SB 39-FN-L.

Motion of concurrence adopted, SB 39-FN-L adopted.

HOUSE MESSAGE

The Clerk read the following House Message:

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

SB 77, renaming the Christa McAuliffe planetarium the McAuliffe-Shepard discovery center.

SENATE CONCURS WITH HOUSE AMENDMENT

Sen. Cilley recommends concurrence.

The question is on the concurrence with the adoption of House Amendment 0783h on SB 77.

Motion of concurrence adopted, SB 77 adopted.

MOTION TO ADJOURN FROM EARLY SESSION

Sen. Hassan 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.

Motion adopted.

Adjournment from the Early Session.

LATE SESSION**Third Reading and Final Passage**

SB 5, prohibiting retailers from disclosing private customer information to foreign states in connection with the collection of certain sales and use taxes.

SB 40, relative to protecting workers and local governments with advance notice of impending plant closings and layoffs.

SB 59, relative to the renovation and replacement of school buildings.

SB 78, relative to contractor accountability and disclosure in the public works construction procurement process.

SB 85, relative to the commission to develop a plan for the expansion of transmission capacity in the north country.

SB 90, establishing a private right of action for pharmacies against health maintenance organizations.

SB 97, establishing a committee to study the standards and procedures by which certain information should be provided to electrical service customers.

SB 123, relative to agricultural restricted grants.

SB 132, establishing a commission to develop implementation plans for merging state agencies and programs to enhance efficiency and lower costs.

SB 134-FN, relative to the comprehensive shoreland protection act.

SB 142, relative to registration of criminal offenders and relative to involuntary commitment of sexually violent predators.

SB 151, relative to quorum requirements for public bodies for which a quorum is not expressly declared.

SB 153, relative to business practices between motor vehicle manufacturers, distributors, and dealers.

SB 167-FN, relative to employee leasing companies.

SB 172, relative to eligibility for state-federal extended unemployment benefits.

SB 188, relative to establishing a commission to study hospital billing practices of health care providers.

SB 195, relative to procedures for the trimming, cutting, or removal of trees by utilities.

SB 202-FN-L, relative to employee candidate background checks by municipalities.

SB 203 relative to liability protection for railroad operators operating alongside recreational trails.

SB 205-FN, making various changes to the criminal statutes.

HB 41, allowing the executive director of fish and game to donate certain hunting and fishing permits to the wildlife heritage foundation of New Hampshire.

HB 56, renaming a bridge to honor U. S. Navy Seal Daniel Healy.

HB 162, relative to recycled and rebuilt vehicles.

HB 182, relative to fish and game department authorization to administer programs involving federal aid, and relative to biennial reports of the department.

HB 284-FN, increasing the contract amount that triggers the bond requirement on public projects.

HB 451, authorizing a transaction fee for license agents electronically issuing fish and game licenses.

HB 483, establishing the developmental services quality council.

HB 526, changing certain references in fish and game laws to river herring.

HB 545-FN, relative to the wildlife damage control program in the fish and game department.

HB 594-FN, relative to the medicaid pharmacy benefits management program.

HB 612, relative to the suspension or revocation of fish and game licenses.

HB 633-FN, relative to eligibility for medical benefits payment by the retirement system for certain group I teacher and political subdivision employee members.

ANNOUNCEMENTS

SENATOR LETOURNEAU (Rule 44): Thank you, Madam President. On a day when we dedicated a bridge to a soldier who was killed in Afghanistan, I'm sad to report to you that Derry has lost another soldier in Afghanistan, a young man who grew up in Derry, went to Pinkerton High School. Adam Kuligowski, 21 years old, member of the Special Troops Battalion, 101st Airborne, was killed in noncombat activities in Afghanistan. While it was a noncombat activity that killed him, we know, and everybody knows, that once a soldier signs on the dotted line and heads down to boot camp they have pledged their life to the protection of the United States and its citizens and to the Constitution thereof. Everything that goes on in a war zone is dangerous; you can be killed by many different things. So we mourn this soldier today from Derry. And I just want to mention one thing, what a Airborne soldier from Londonderry had to say about this to the paper this morning in a blog, he says: *"These kids are all heroes at the moment they get on the bus and go to basic training. Adam's sacrifice is the epitome of the meaning of the Airborne saying, 'All the way and then some.' May God bless you, Adam, and may He comfort you and your family knowing you are now by His side."* Thank you.

Without objection, President Larsen moved that the Rule 44 shall be entered into the permanent *Journal of the Senate*.

MOTION TO RECESS TO CALL OF THE CHAIR

Sen. Hassan moved that the business of the day being completed, that the Senate recess to the Call of the Chair for the purposes of introducing legislation, referring bills to committee, scheduling hearings, sending and receiving messages, and processing enrolled bill reports and amendments.

Motion adopted.

The Senate is in recess to the Call of the Chair.