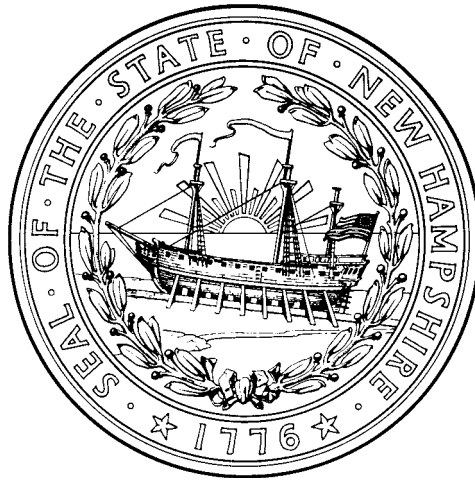


**March 30, 2011
Nos. 10-11**

STATE OF NEW HAMPSHIRE

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



**162nd Session of the New Hampshire General Court
Legislative Proceedings**

SENATE JOURNAL

**ADJOURNMENT – MARCH 23, 2011 SESSION
COMMENCEMENT – MARCH 30, 2011 SESSION**

SENATE JOURNAL 10 *(continued)*

March 23, 2011

INTRODUCTION OF HOUSE BILLS

Sen. Bradley offered the following Resolution:

RESOLVED, That in accordance with the list in the possession of the Senate Clerk, the following House legislation shall be by this Resolution read a first and second time by the therein listed titles and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 26-FN, relative to the definition of gross misconduct for purposes of unemployment compensation. (Commerce Committee.)

HB 27, relative to the classification of rivers, de minimis impact work in designated rivers, and protected instream flows, and extending the time for septage and sludge land application restrictions. (Energy and Natural Resources Committee.)

HB 31, relative to insurance payments for ambulance services. (Commerce Committee.)

HB 33, relative to the care of memorials in Franconia Notch state park. (Energy and Natural Resources Committee.)

HB 43, relative to the adoption of forms under the administrative procedures act. (Executive Departments and Administration Committee.)

HB 46, relative to the membership of the current use advisory board. (Energy and Natural Resources Committee.)

HB 52, relative to grounds for modification of parental rights and responsibilities. (Judiciary Committee.)

HB 58, relative to inter-facility transfers of critical access hospital patients. (Health and Human Services.)

HB 71, authorizing establishment of pharmaceutical drug take-back programs. (Health and Human Services.)

HB 109, relative to residential fire sprinklers. (Public and Municipal Affairs Committee.)

HB 133, relative to the minimum wage. (Commerce Committee.)

HB 134, relative to eligibility for walking disability plates. (Transportation Committee.)

HB 144, relative to energy efficiency and clean energy districts. (Energy and Natural Resources Committee.)

HB 145, permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties. (Judiciary Committee.)

HB 146, relative to the right of a jury to judge the application of the law in relationship to the facts in controversy. (Judiciary Committee.)

HB 149, designating segments of the Lamprey, North Branch, Pawtuckaway, North, Little, and Piscassic Rivers as protected rivers and exempting certain portions of the Lamprey River from the provisions of the comprehensive shoreland protection act. (Energy and Natural Resources Committee.)

HB 156-FN-A, reducing the rates of the tobacco tax. (Ways and Means Committee.)

HB 158, relative to the misuse of social security numbers. (Judiciary Committee.)

HB 175, relative to technical changes in life, accident, and health insurance. (Commerce Committee.)

HB 186-FN, relative to the definition of political communication. (Public and Municipal Affairs Committee.)

HB 191, relative to the community mental health system. (Health and Human Services Committee.)

HB 196, relative to the certificates of completion of a basic hunter education program or bow hunter education program. (Energy and Natural Resources Committee.)

HB 206-FN, establishing an apprentice hunting license. (Energy and Natural Resources Committee.)

HB 210-FN, relative to the use of deadly force to protect oneself. (Judiciary Committee.)

HB 211, relative to the review and approval of proposed agency rules under the administrative procedures act. (Executive Departments and Administration Committee.)

HB 218, repealing the New Hampshire rail transit authority. (Transportation Committee.)

HB 229-FN-A, repealing the tax on gambling winnings. (Ways and Means Committee.)

HB 231-FN, relative to payment of medical benefits for state retirees, their spouses, and dependents. (Executive Departments and Administration Committee.)

HB 246, relative to prearranged funeral contracts or burial plans. (Commerce Committee.)

HB 251, relative to absentee ballots. (Public and Municipal Affairs Committee.)

HB 254, relative to offers of judgments. (Judiciary Committee.)

HB 257, relative to removal of political advertising. (Public and Municipal Affairs Committee.)

HB 258, eliminating certain unenforced election laws. (Public and Municipal Affairs Committee.)

HB 262-FN, relative to beverage manufacturers. (Commerce Committee.)

HB 276-FN, relative to wine manufacturers. (Commerce Committee.)

HB 277-FN, relative to the deposit of fees collected under the Unified Carrier Registration System into the highway fund. (Ways and Means Committee.)

HB 290, relative to staffing exceptions for small schools. (Education Committee.)

HB 298, requiring condominium management companies to make certain disclosures to the condominium board of directors. (Commerce Committee.)

HB 305, relative to the homestead right. (Judiciary Committee.)

HB 316, relative to penalties for failure to file a property tax inventory blank or for refusing inspection of property. (Public and Municipal Affairs Committee.)

HB 317, relative to fire warning devices and carbon monoxide detection devices in dwellings. (Commerce Committee.)

HB 322, relative to occupancy fees charged by manufactured housing park owners. (Commerce Committee.)

HB 329-FN, requiring parental notification before abortions may be performed on unemancipated minors. (Judiciary Committee.)

HB 333-FN, repealing certain provisions relating to the sale of oleomargarine. (Commerce Committee.)

HB 335-FN-A, establishing multi-use number plates. (Transportation Committee.)

HB 339-FN-A, allowing the state veterinarian to employ a meat inspection services administrator. (Executive Departments and Administration Committee.)

HB 341, relative to local spending caps. (Public and Municipal Affairs Committee.)

HB 347, exempting from nondisclosure the records of accidents involving and violations by county, city, and town employees and officials. (Transportation Committee.)

HB 348-FN, transferring the duties of the racing and charitable gaming commission to the lottery commission and abolishing the racing and charitable gaming commission, and prohibiting new electronic gaming devices without statutory authorization. (Ways and Means Committee.)

HB 355, enabling state and local fire and building officials to issue citations for violations of the fire code, and for fireworks, gas fitting, and electric code violations. (Executive Departments and Administration Committee.)

HB 358, relative to the maintenance, repair, and preservation of burial grounds. (Public and Municipal Affairs Committee.)

HB 368-FN-L, relative to workforce housing and the definition of community. (Public and Municipal Affairs Committee.)

HB 369-FN-L, relative to withdrawal from a school administrative unit or an authorized regional enrollment area school. (Education Committee.)

HB 370, making changes to the pupil safety and violence prevention act. (Education Committee.)

HB 378-FN, inserting an exception to the criminal threatening statute, relative to the minimum mandatory sentence for a felony conviction involving the possession, use, or attempted use of a firearm, and relative to the definition of “non-deadly” force. (Judiciary Committee.)

HB 381, authorizing net metering for micro-combined heat and power systems. (Energy and Natural Resources Committee.)

HB 382, relative to the maintenance of municipal public cemeteries. (Public and Municipal Affairs Committee.)

HB 386, adding Granite State college to the university system of New Hampshire corporate charter and adding a student trustee from Granite State college to the university system board of trustees. (Education Committee.)

HB 387, requiring providers of prepaid cellular telephone service to provide subscriber information to the enhanced 911 system. (Energy and Natural Resources Committee.)

HB 397, relative to image display devices in motor vehicles. (Transportation Committee.)

HB 401, relative to postsecondary training for workers with disabilities. (Education Committee.)

HB 404, relative to toilet facilities at recreational campgrounds or camping parks. (Energy and Natural Resources Committee.)

HB 405, relative to dissolving corporations. (Commerce Committee.)

HB 409, relative to planning board members. (Public and Municipal Affairs Committee.)

HB 411, relative to distributing campaign materials at the polling place. (Public and Municipal Affairs Committee.)

HB 419-FN, relative to language in insurance certificates. (Commerce Committee.)

HB 424, relative to surplus lines tax collection. (Commerce Committee.)

HB 426, adding certain entities to the unused prescription drug program. (Health and Human Services Committee.)

HB 429, permitting a child 16 years of age or older to withdraw from school with parental permission. (Education Committee.)

HB 431, relative to psychiatric evaluations. (Judiciary Committee.)

HB 439-FN-L, relative to claiming an invasive species as a habitat. (Energy and Natural Resources Committee.)

HB 442-FN, relative to the use of marijuana for medicinal purposes. (Health and Human Services Committee.)

HB 444-FN, relative to the commemoration of General John Stark Day. (Public and Municipal Affairs Committee.)

HB 450, relative to the regulatory authority of the board of barbering, cosmetology, and esthetics. (Executive Departments and Administration Committee.)

HB 451-FN, relative to prerecorded political messages. (Public and Municipal Affairs Committee.)

HB 457-FN, reducing the interest rate on late and delinquent property tax payments, subsequent payments, and other unpaid taxes. (Public and Municipal Affairs Committee.)

HB 461-FN, relative to repealing the authority for retirement system members to purchase service credit for certain out-of-state service. (Executive Departments and Administration Committee.)

HB 462-FN, relative to the determination of employer assessments for excess benefits paid by employers in the retirement system. (Executive Departments and Administration Committee.)

HB 464-FN, requiring the transfer of certain retirement system group II special account funds to the state annuity accumulation fund. (Executive Departments and Administration Committee.)

HB 478-FN-L, relative to testimony by video teleconference. (Judiciary Committee.)

HB 483-FN-L, relative to mosquito control. (Health and Human Services Committee.)

HB 489, establishing a health information organization corporation. (Commerce Committee.)

HB 491-FN, relative to divestiture of retirement system assets relating to Sudan. (Executive Departments and Administration Committee.)

HB 503, allowing a master electrician to have 2 apprentice electricians under his or her supervision. (Executive Departments and Administration Committee.)

HB 505-FN, making charter schools eligible for grants for leased space. (Education Committee.)

HB 508-FN, establishing a performance measurement system for state agencies. (Executive Departments and Administration Committee.)

HB 521, relative to meeting dates for county conventions. (Public and Municipal Affairs Committee.)

HB 524-FN, relative to the release of prisoners on probation or parole. (Judiciary Committee.)

HB 528-FN-L, requiring school districts to develop a facility maintenance and capital improvement program. (Education Committee.)

HB 532-L, relative to municipal liability for dog bites. (Judiciary Committee.)

HB 540-FN, relative to motor vehicle inspections. (Transportation Committee.)

HB 542-FN, prohibiting a school district from requiring that a parent send his or her child to any school or program to which the parent may be conscientiously opposed. (Education Committee.)

HB 544, relative to state authority over firearms and ammunition. (Judiciary Committee.)

HB 548, relative to boater safety education and relative to the minimum age for operation of motorized vessels. (Transportation Committee.)

HB 549, relative to driver's license reexaminations. (Transportation Committee.)

HB 557-FN-A, relative to the standards and burden of proof with respect to the business profits tax deduction for reasonable compensation attributable to owners of partnerships, limited liability companies, and sole proprietorships. (Ways and Means Committee.)

HB 558, relative to exchanging Haseltine Street in Plaistow for a section of NH 121A from the intersection of Haseltine and Main Streets to the border with Haverhill, Massachusetts. (Transportation Committee.)

HB 565, establishing a dental hygienists committee within the board of dental examiners. (Executive Departments and Administration Committee.)

HB 571-FN, relative to lobster and crab licenses issued by the fish and game department. (Energy and Natural Resources Committee.)

HB 579, exempting department of revenue administration guidelines from the right-to-know law. (Ways and Means Committee.)

HB 588, relative to polling hours and location of polling places. (Public and Municipal Affairs Committee.)

HB 589, repealing written majority authorization for an employee organization to be certified as the exclusive representative of public employees in a bargaining unit. (Commerce Committee.)

HB 594, relative to the application of procedures for discharge or suspension from county employment. (Public and Municipal Affairs Committee.)

HB 597, revising the child support guidelines based on an income shares model of calculating child support. (Judiciary Committee.)

HB 601-FN, relative to implementation of federal health care reform. (Commerce Committee.)

HB 609-FN, establishing the New Hampshire circuit court to replace the current probate courts, district courts, and judicial branch family division. (Judiciary Committee.)

HB 617, repealing the prohibitions on Sunday business activities. (Commerce Committee.)

HB 621-FN-L, relative to the authority of the department of transportation. (Transportation Committee.)

HB 623, prohibiting preferences in recruiting, hiring, promotion, or admission by state agencies, the university system, the community college system, and the postsecondary education commission. (Executive Departments and Administration Committee.)

HB 627-FN, relative to “essential benefits” under federal health care reform. (Commerce Committee.)

HB 629-FN, relative to the uninsured health care database. (Commerce Committee.)

HB 632, relative to labeling requirements for dispensing of drugs by automated pharmacy systems. (Health and Human Services.)

HB 642-FN, requiring the departments of health and human services and administrative services to jointly issue a certain request for information. (Health and Human Services.)

HB 647, relative to withholding of wages. (Commerce Committee.)

HB 650-FN-L, authorizing a school district to call a special meeting in the event of changes in the amount of state education funding. (Education Committee.)

Out of Recess. Call Senate to Order.

MOTION TO ADJOURN FROM LATE SESSION

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

Adopted. Adjournment from the Late Session.

SENATE JOURNAL 11

March 30, 2011

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

The Reverend Canon Charles LaFond, chaplain to the Senate, offered the following meditation and prayer.

The thing is, that we’re all busy being saints; on our best days and on our worst days. And, when you’re doing what you’re doing as Senators in New Hampshire, it’s really quite simple: you are the people’s decision makers. And, it must be hard to be chosen to do that and then get yelled at all the time.

There’s a great politician-statesman named Dag Hammarskjöld; I don’t know if you know of him. He was a Swedish diplomat and economist and an author; he was the second Secretary General of the United Nations; he served in the ‘50s, and is generally considered to have been murdered because he was doing such good work for humanitarian efforts in the world. He was the only person ever to be given a posthumous Nobel Peace Prize.

He is famous for much of what he said, and this is one of the things he said, and I think it applies very much to you and very much to now.

As United Nations Secretary General, from the podium, he said to the people he served, “You know, everything will be all right. Do you know when? When people, just people, stop thinking of the United Nations as a weird Picasso abstraction and see it as a drawing that they have made themselves.”

After Hammarskjöld’s death, Kennedy said, “I realize now that in comparison to him, I’m a very small man.

Today, Dag Hammarskjöld is listed as a lesser saint in the Episcopal Church’s Book of Lesser Feasts and Fasts. He is celebrated in his life every June. Let us pray.

God of all silence, call us into that silence and self awareness which are the anvil and the hammer of good decision-making.
Amen.

Sen. Lambert led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Sen. Houde introduced Marissa Laro, and Sen. Larsen introduced Melissa Gifford, both students from Merrimack Valley High School in Penacook, serving as Senate Pages today.

Sen. Groen introduced his daughter and campaign manager, Deborah Groen.

FINANCE REPORT

Sen. Morse reported that the following bills will not come to Finance: HB 288-FN-L, HB 441-FN.

Without objection, President Bragdon has given Sen. Luther leave to use an electronic device to experiment with an online version of the Senators' Session Day binders.

COMMITTEE REPORTS**SPECIAL ORDER**

Without objection President Bragdon moved SB 54, SB 120, SB 129-FN, SB 88, and SB 197 be Special-Ordered to after lunch. He further Special-Ordered HB 525 to the front of the Calendar.

TRANSPORTATION

HB 525, naming a bridge in the town of Merrimack in honor of Corporal Timothy Gibson, U.S.M.C. Ought to Pass, Vote 5-0. Senator Kelly for the committee.

Sen. White introduced Tom and Elaine Gibson, parents of Corporal Timothy Gibson, U.S.M.C., as well as Rep. Jeanine Notter, guests in the Senate Chamber today.

The question is on the adoption of the Committee recommendation of Ought to Pass.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Sanborn, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes, De Blois, Rausch, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: (None.)

Yeas: 24 - Nays: 0

Adopted, bill ordered to Third Reading.

CAPITAL BUDGET

SB 61, relative to capital appropriations to the liquor commission. Ought to Pass, Vote 6-0. Senator Odell for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted.

Sen. Odell moved to Table SB 61.

The question is on the motion to Table. Adopted.

HB 91, relative to the reporting by state agencies with capital budget projects to the capital budget overview committee. Ought to Pass, Vote 5-0. Senator Rausch for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

COMMERCE

SB 50, making various changes to laws regulating trusts and trust companies. Ought to Pass with Amendment, Vote 3-0. Senator Houde for the committee.

Commerce

March 24, 2011

2011-1183s

08/04

Amendment to SB 50

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

2 New Section; Wills; Enforcement of No-Contest Provision. Amend RSA 551 by inserting after section 21 the following new section:

551:22 Enforcement of No-Contest Provision.

I. For the purposes of this section, a “no-contest provision” means a provision of a will that, if given effect, would reduce or eliminate the interest of any beneficiary of such will who, directly or indirectly, initiates or otherwise pursues:

(a) Any action to contest the admission or validity of such will;

(b) Any action to set aside or vary the terms of such will;

(c) Any action to challenge the acts of the executor of such will or other fiduciary of such will in the performance of such executor’s or other fiduciary’s duties as described in such will; or

(d) Any other act or proceedings to frustrate or defeat the testator’s intent as expressed in the terms of such will.

II. A no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the presence or absence of probable cause for, or the beneficiary’s good or bad faith in, taking the action that would justify the complete or partial forfeiture of the beneficiary’s interest in the will under the terms of the no-contest provision.

III. Paragraph II of this section shall not apply to:

(a) Any action brought by the executor or other fiduciary of any such will that incorporates a no-contest provision, provided that such executor or other fiduciary is not a person against whom the no-contest provision would be enforced for bringing the action;

(b) Any agreement among the beneficiaries under the will in settlement of a dispute or resolution of any other matter relating to such will;

(c) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(d) Any action brought by a beneficiary under a will or on behalf of any such beneficiary for a construction or interpretation of the will; or

(e) Any action brought by the attorney general for a construction or interpretation of a will containing a charitable trust or charitable bequests or if a provision exists in a will or trust purporting to penalize a charity or charitable interest for contesting the will or trust or instituting other proceedings relating to the estate or trust if probable cause exists for instituting proceedings.

IV. It is the intent of this section to enforce the testator’s intentions as reflected in a no-contest provision described in paragraph II of this section to the greatest extent possible. The provisions of this section shall be construed and applied in a manner consistent with such intent.

V. This section shall apply to all judicial proceedings concerning the enforcement or interpretation of a no-contest provision commenced on or after its effective date.

3 Testamentary Trusts; Bond and Surety Requirements for Trustees. Amend RSA 564:1 to read as follows:
564:1 Bonds.

I. Every trustee to whom any estate, real or personal, is devised in trust for any person shall give bond to the judge of probate, with sufficient sureties, or without sureties in estates of five thousand dollars or less where the judge finds it in the interest of the estate, in such sum as the judge may order, except as provided in RSA 564:2, conditioned:

[E:] (a) That [he] *the trustee* will make and file in the probate office a true inventory of the real estate, goods, chattels, rights and credits so devised, at such time as the judge shall order.

[H:] (b) That [he] *the trustee* will annually render an account to the judge of the annual income and profit thereof, unless excused by the judge of probate as provided by law.

[HH:] (c) That at the expiration of the trust [he] *the trustee* will adjust and settle his *or her* account with the judge, and pay and deliver over all balances, money, and property with which [he] *the trustee* has been intrusted.

[IV-] (d) That [he] *the trustee* will faithfully execute the trust according to the true intent of the devisor.

II. This section shall not apply with respect to any trust exempted from the accounting requirements under RSA 564:19, II and III.

4 Testamentary Trusts; Bonds of Banks. Amend RSA 564:5 to read as follows:

564:5 Bond of Banks. ***Except as otherwise provided in RSA 564:1,*** such trust company or national bank when appointed trustee shall give a surety company bond in such sum as the judge may order.

5 Testamentary Trusts; Filing Accounts. Amend RSA 564:19 to read as follows:

564:19 Filing Account.

I. Except as otherwise provided in paragraphs II and III, every trustee shall file in the probate court an annual account of administration, unless upon petition [he] *the trustee* is excused by the judge of probate; but in no event shall [he] *the trustee* be excused for a period longer than three years, except that in cases where such filing may be impractical and may work financial hardship to the trust estate the judge of probate upon written approval of the attorney general may extend said period not exceeding in the aggregate five years. Such annual account of administration provided for herein may be allowed by the judge of probate without publication unless he ***or she*** shall otherwise order. Before giving notice to settle a final account the trustee shall file it in the probate office and shall cause the fact of such filing to appear in the notice and shall at the same time file a statement of the names and residences of the beneficiaries in the trust estate.

II. The following trusts under will shall be exempt from the accounting requirements of paragraph I:

(a) A trust created under a will admitted to probate on or after January 1, 2012, under which the testator expressly waives the requirement for annual accountings under the terms of the will creating the trust.

(b) A trust created under a will admitted to probate on or after January 1, 2012, that is not exempt from the accounting requirement under subparagraph (a) with respect to which one or more interested parties, including the director of charitable trusts if the director is a “qualified beneficiary” of the trust under RSA 564-B:1-110(c) have petitioned the court having jurisdiction over the trust for approval of the interested parties’ nonjudicial settlement agreement under RSA 564-B:1-111 seeking a waiver of the requirement of future accountings. The presiding judge shall grant such petition and approve the nonjudicial settlement agreement unless the presiding judge finds that doing so would (i) jeopardize a material purpose of the testator of the will under which the trust was created, based on the language of the will clearly indicating the intention of the testator that the trust be subject to full judicial supervision, including the accounting requirement; or (ii) adversely affect the interests of any stakeholder who is not a signatory to the nonjudicial settlement agreement.

(c) A trust, if (i) the court grants a petition for the acceptance of jurisdiction over that trust with respect to which a court of another state has released its jurisdiction, and (ii) the court releasing jurisdiction did not require the trustee or trustees of that trust to file accounts with that court, or required that the trustees of the trust file accounts less frequently than annually, then the court accepting jurisdiction over such trust shall not require accountings whatsoever, or shall require accountings less frequently than annually, as the case may be, on the same basis as may have been required by the court releasing jurisdiction.

III. A trust under will described in paragraph II, with respect to which no judicial accountings will be required, shall in all respects be subject to the beneficiary reporting and information requirements of RSA 564-B, the Uniform Trust Code, and all other pertinent provisions of such Code, except to the extent that a contrary provision appears in the will under which the trust was created, provided that such contrary provision does not violate any of the mandatory rules of RSA 564-B:1-105. For these purposes, the pertinent terms of the will shall have the same meaning as “terms of a trust” and the “will creating the trust” shall have the same meaning as “trust instrument”, as defined in RSA 564-B:1-103(19) and (20), respectively. Nothing in this paragraph shall be interpreted to limit the ability of persons with standing to petition the probate court having jurisdiction over a trust under will to require any trustee of that will to make a judicial accounting, or the jurisdiction of any such court to require an accounting on its own initiative.

IV. Nothing in this section shall limit the authority of the attorney general otherwise provided by common law or other statute.

6 New Section; Uniform Trust Code; Application to Testamentary Trusts. Amend RSA 564 by inserting after section 24 the following new section:

564:25 Application of the Uniform Trust Code. The provisions of RSA 564-B, the Uniform Trust Code, shall apply to all trusts under will governed by this chapter, except to the extent that any provisions of the Uniform Trust Code conflict with the express provisions of this chapter, in which case the provisions of this chapter shall control.

7 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-105(b)(3) to read as follows:

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries ***as their interests are defined under the terms of the trust***, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

8 Uniform Trust Code; Clarifying Terms of Trust Instrument Control. Amend RSA 564-B:1-112 to read as follows:

564-B:1-112 Rules of Construction. The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. ***For the purposes of determining the benefit of the beneficiaries, the settlor's intent as expressed in the terms of the trust shall be paramount.***

9 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:2-201(b) to read as follows:

(b) A trust~~[, other than a trust created by a will,]~~ is not subject to continuing judicial supervision unless ordered by the court.

10 Uniform Trust Code; Application of Judicial Supervision of Trusts. Amend RSA 564-B:4-404 to read as follows:

564-B:4-404 Trust Purposes. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries, ***as their interests are defined under the terms of the trust.***

11 Uniform Trust Code; Trust Purposes. Amend RSA 564-B:4-412(b) to read as follows:

(b) The court may modify the administrative terms of a trust if ~~[continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration]~~ ***modification will further the purposes of the trust.***

12 Uniform Trust Code; Limitation of Action Against Trustee. Amend RSA 564-B:10-1005 to read as follows:

564-B:10-1005 Limitation of Action Against ***a Trustee by a Beneficiary.***

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 3 years after the first to occur of:

- (1) The removal, resignation, or death of the trustee;
- (2) The termination of the beneficiary's interest in the trust; ~~[or]~~
- (3) The termination of the trust~~[-];~~ ***or***

(4) The date on which the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(d) The periods of limitation under this section shall not be tolled for any reason, except by a written agreement of the trustees and qualified beneficiaries or a court order. Without limiting the circumstances under which a court may issue an order tolling the period of limitations, a court may issue an order tolling the period of limitations under this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).

(e) Nothing in this section shall limit the authority of the attorney general otherwise provided by common law or other statute.

13 New Section; Uniform Trust Code; Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust Protector. Amend RSA 564-B by inserting after section 10-1005 the following new section:

564-B:10-1005A Limitation of Action Against a Trustee by a Trustee, Trust Advisor, or Trust Protector.

(a) A trustee shall commence a proceeding against a cotrustee or a former trustee for breach of trust within 3 years after the earlier of the date on which the trustee was sent a report that adequately disclosed the existence of a potential claim for breach of trust or the removal, resignation, or death of the cotrustee or former trustee. A trustee, however, shall not commence a proceeding against a cotrustee or a former trustee if, under RSA 564-B:10-1005, none of the beneficiaries may commence a proceeding against the cotrustee or former trustee for such breach of trust.

(b) A trust advisor or trust protector shall commence a proceeding against a trustee for breach of trust within 3 years after earlier of the date on which the trust advisor or trust protector was sent a report that adequately disclosed the existence of a potential claim for breach of trust or the removal, resignation, or death of the trustee. A trust advisor or trust protector, however, shall not commence a proceeding against a trustee for breach of trust if, under RSA 564-B:10-1005, none of the beneficiaries may commence a proceeding against the trustee for such breach of trust.

(c) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the recipient knows of the potential claim or should have inquired into its existence.

(d) The periods of limitation under subsection (a) shall not be tolled except by either a written agreement of the trustees or, in the case of a possible claim against a former trustee, the trustees and the former trustee or a court order. The periods of limitation under subsection (b) shall not be tolled except by a written agreement of the trust advisors, trust protectors, and trustees or a court order. Without limiting the circumstances under which a court may issue an order tolling the period of limitations, a court may issue an order tolling the period of limitations under this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).

14 New Section; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B by inserting after section 10-1013 the following new section:

564-B:10-1014 Enforcement of No-Contest Provision.

(a) For the purposes of this section, a “no-contest provision” of a trust instrument means a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such trust who, directly or indirectly, initiates or otherwise pursues:

(1) Any action to contest the validity of the trust or the terms of the trust;

(2) Any action to set aside or vary the terms of the trust;

(3) Any action to challenge the acts of the trustee or other fiduciary of the trust in the performance of the trustee’s or other fiduciary’s duties as described in the terms of the trust; or

(4) Any other act or proceedings to frustrate or defeat the settlor’s intent as expressed in the terms of the trust.

(b) A no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the presence or absence of probable cause for, or the beneficiary’s good or bad faith in, taking the action that would justify the complete or partial forfeiture of the beneficiary’s interest in the trust under the terms of the no-contest provision.

(c) Subsection (b) shall not apply to:

(1) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, provided that the trustee or other fiduciary is not a person against whom the no-contest provision would be enforced for bringing such action;

(2) Any agreement among the beneficiaries and other interested parties in settlement of a dispute or resolution of any other matter relating to the trust, including without limitation any nonjudicial settlement agreement;

(3) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(4) Any action brought by a beneficiary or on behalf of any such beneficiary for a construction or interpretation of the terms of the trust; or

(5) Any action brought by the attorney general for a construction or interpretation of a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting to penalize a charity or charitable interest for contesting the trust if probable cause exists for instituting proceedings.

(d) It is the intent of this section to enforce the settlor's intent as reflected in a no-contest provision to the greatest extent possible. The provisions of this section shall be construed and applied in a manner consistent with such intent.

(e) This section shall apply to all judicial proceedings concerning the enforcement or interpretation of a no-contest provision commenced on or after its effective date.

15 New Section; Uniform Trust Code; Limitation of Action Against a Trust Advisor or Trust Protector. Amend RSA 564-B by inserting after section 12-1205 the following new section:

564-B:12-1206 Limitation of Action Against a Trust Advisor or Trust Protector.

(a) A beneficiary shall commence a proceeding against a trust advisor or trust protector for breach of trust within the earlier of:

(1) One year after the date on which the beneficiary or the beneficiary's representative was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding; or

(2) Three years after the date on which the beneficiary or the beneficiary's representative was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A fiduciary shall commence a proceeding against a trust advisor or trust protector for breach of trust within 3 years after the date on which the fiduciary was sent a report that adequately disclosed the existence of a potential claim for breach of trust; provided, however, that a fiduciary shall not commence a proceeding against a trust advisor or trust protector for breach of trust if, under subsection (a), none of the beneficiaries may commence a proceeding against the trust advisor or trust protector for such breach of trust. For purposes of this section, a "fiduciary" means any trustee, trust advisor, or trust protector.

(c) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the recipient knows of the potential claim or should have inquired into its existence.

(d) The periods of limitation under subsection (a) shall not be tolled for any reason, except by a written agreement of the qualified beneficiaries and each of the trust advisors and trust protectors against whom a beneficiary may commence a proceeding or a court order. The periods of limitation under subsection (b) shall not be tolled for any reason, except by a written agreement of the trustees and each of the trust advisors and trust protectors against whom a fiduciary may commence a proceeding or a court order. Without limiting the circumstances under which a court may issue an order tolling the period of limitations, a court may issue an order tolling the period of limitations under this section during the pendency of any action described in RSA 564-B:10-1014(c)(3).

(e) Nothing in this section shall limit the authority of the attorney general provided by common law or other statute.

16 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(a)-(b) to read as follows:

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

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor ~~[or testator]~~, **as defined in RSA 564-B:1-103(15)**, and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the ~~[sui juris]~~ **qualified** beneficiaries, **as defined in RSA 564-B:1-103(12) and including the director of charitable trusts if the director is a "qualified beneficiary" of the trust under RSA 564-B:1-110(c).** ~~[who:~~

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

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

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

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

~~(4) No sui juris]~~ **(3) No qualified** beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under subparagraph (a)(2).

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

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

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

~~(C) There are no sui juris beneficiaries under subparagraph (a)(2)(C);]~~ **a qualified beneficiary timely objects to the conversion of the unitrust.**

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

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

17 Uniform Principal and Income Act; Conversion to Unitrust. Amend RSA 564-C:1-106(j)-(l) to read as follows:

(j)(1) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ **(i)(6)** applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may convert the trust, unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust.

(2) If subparagraph (i)(3), (i)(4), or ~~[(i)(5)]~~ **(i)(6)** applies to all the trustees, the trustees may petition the court to direct a conversion.

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

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

(2) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in paragraph (i).

(l) ~~[The provisions of RSA 564-B:3-304 shall apply with respect to beneficiaries other than sui juris beneficiaries]~~ **For the purposes of this section, a person may represent and bind another person in accordance with Article 3 of RSA 564-B.**

18 Qualified Dispositions in Trust Act; When Transferor May Serve as Trust Advisor. Amend RSA 564-D:5 to read as follows:

564-D:5 Transferor May Serve as Trust Advisor. Any individual, including the transferor of the qualified disposition, may serve as a trust advisor as described in RSA 564-D:4. However, if ~~[such]~~ **the** transferor

serves as [the] **a** trust advisor, his or her rights and powers as a trust advisor shall be limited to: ~~[the right to disapprove distributions from the trust and the right to consent to a trustee's action or inaction relating to the investment of trust assets]~~ **(i) the right to direct, consent to, or veto a fiduciary's actual or proposed investment decisions; and (ii) the rights and powers described in RSA 564-D:2, II excluding any power that would enable the transferor, acting as trust advisor, to direct, consent to, veto, or otherwise participate in a distribution by the trustee to or for the benefit of the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate.**

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

The question is on the adoption of the Committee Amendment. Adopted.

Sen. White asserts Rule 2-15 on SB 50.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Sen. White asserts Rule 2-15 on SB 50.

SB 86, requiring the department of labor to warn employers of certain violations prior to imposing a fine. Ought to Pass with Amendment, Vote 3-0. Senator White for the committee.

Commerce
March 24, 2011
2011-1182s
06/05

Amendment to SB 86

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

1 Civil Penalties. RSA 273:11-a is repealed and reenacted to read as follows:

273:11-a Civil Penalties.

I. In addition to any criminal penalty provided under this chapter, the commissioner may, after hearing, impose a civil penalty not to exceed \$2,500, as determined by the commissioner, for any violation of any of the provisions of this chapter or of any rule adopted pursuant to this chapter. All moneys collected under this section shall be deposited in the general fund.

II. Except as provided in paragraph III, the commissioner shall issue one written warning to the employer. The employer shall have 30 days from receipt of the warning to cure the defect causing the violation.

III. No warning shall be issued if, in the opinion of the commissioner, the employer intends to cause harm, the violation poses a threat to public safety, or the violation involves any of the following:

(a) Failure to pay an employee in full and on time under RSA 275:43.

(b) Payment of wages by checks on a financial institution that is not convenient to the place of employment as required by RSA 275:43, I(e).

(c) Failure to pay final wages in full as required by RSA 275:44.

(d) Failure to pay amounts withheld for court ordered child support to the custodial parent.

(e) Continuation of wage withholding for insurance benefits that have been cancelled.

(f) Illegal withholding of wages to compensate employer for employee actions resulting in loss or damage.

(g) Failure to comply with RSA 275-A:4-a regarding illegal aliens.

(h) Requiring that employees to perform any illegal activities under threat of job loss.

IV. Any person on whom a penalty is imposed under this section may appeal as provided in RSA 273:11-c and 273:11-d.

V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the conduct of hearings under paragraph IV.

2 Civil Penalties. Amend RSA 157-A:10-a, II to read as follows:

II. The commissioner shall conduct hearings in the manner required under rules adopted pursuant to RSA 541-A and 273:11-a, [H] V.

3 Civil Penalties. Amend RSA 157-B:13-a to read as follows:

II. The commissioner shall conduct hearings in the manner required under rules adopted pursuant to RSA 541-A and 273:11-a, [H] V.

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

The question is on the adoption of the Committee Amendment. Adopted.

Sen. Sanborn asserts Rule 2-15 on SB 86.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Sen. Sanborn asserts Rule 2-15 on SB 86.

SB 110, relative to condominium development projects and application of the state fire code. Inexpedient to Legislate, Vote 3-0. Senator White for the committee.

The question is on the adoption of the Committee recommendation of Inexpedient to Legislate. Adopted.

Sen. White asserts Rule 2-15 on SB 110.

SB 111, relative to short sales of a homeowner's residence. Re-refer to committee, Vote 4-0. Senator White for the committee.

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

Sen. White moved Ought to Pass.

Sen. White offered a floor amendment.

Sen. White, Dist. 9

March 30, 2011

2011-1307s

06/04

Floor Amendment to SB 111

Amend RSA 479-B:11, II(b) and (c) as inserted by section 2 of the bill by replacing them with the following:

(b) If, as part of the sale, a deficiency was required by any creditor, the exact terms and conditions of any deficiencies were disclosed to the borrower by the purchaser at least 72 hours before the transfer. The disclosure shall be:

(1) Printed in at least 14-point type and in boldface; and

(2) Dated and personally signed by the homeowner and witnessed and acknowledged by a notary public or a justice of the peace appointed and commissioned by the state of New Hampshire; and

(c) The homeowner received from the purchaser, at least 72 hours before the transfer, a document entitled "notice of short sale." The document entitled "notice of short sale" shall:

(1) Be printed in at least 14-point type;

(2) Be dated and personally signed by the homeowner and witnessed and acknowledged by a notary public or a justice of the peace appointed and commissioned by the state of New Hampshire;

(3) Contain a prominent statement, printed in at least 16-point type and in boldface, that the homeowner is selling his or her home, will no longer have any ownership of the home after the sale, and will no longer have the right to live in the home after the sale; and

(4) Describe in detail the terms of the sale.

Amend RSA 479-B:11, III as inserted by section 2 of the bill by replacing it with the following:

III. Notwithstanding any provision of the law to the contrary, the provisions of this chapter shall not apply to a person who attempts to negotiate a short sale in which the person would purchase the homeowner's residence as set forth in paragraph II, but does not purchase the homeowner's residence or arrange for another person to purchase the homeowner's residence.

Amend the bill by replacing section 3 with the following:

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

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

SB 119, relative to qualified association trusts. Inexpedient to Legislate, Vote 3-1. Senator White for the committee.

The question is on the adoption of the Committee recommendation of Inexpedient to Legislate. Adopted.

Sen. White asserts Rule 2-15 on SB 119.

SB 121, relative to the application of the worker adjustment and retraining notification act.

Ought to Pass, Vote 3-1. Senator Sanborn for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Houde, Kelly, Larsen, D'Allesandro, Merrill.

Yeas: 19 - Nays: 5

Adopted, bill ordered to Third Reading.

SB 175, regulating the commercial use of a person's identity. Ought to Pass with Amendment, Vote 4-0. Senator Houde for the committee.

Commerce

March 24, 2011

2011-1184s

05/10

Amendment to SB 175

Amend RSA 359-K:3 as inserted by section 2 of the bill by replacing it with the following:

359-K:3 Transferability. The right to control the commercial use of one's identity is a property right that is freely transferable and descendable, in whole or in part, during and after a person's life by means of (1) a written contract, license, conveyance, or assignment or a will, trust, or other testamentary instrument, executed before or after the enactment of this chapter, and by the original holder or his or her successor-in-interest, or (2) by intestate succession occurring before or after the enactment of this chapter. In the absence of an express transfer in a testamentary instrument of the right to control commercial use of a person's identity, a provision in a testamentary instrument that provides for the disposition of the residue of the deceased person's assets shall be effective to transfer that right in accordance with the terms of that provision.

Amend RSA 359-K:4 as inserted by section 2 of the bill by inserting after paragraph III the following new paragraph:

IV. The right protected under this chapter, insofar as it extends beyond a person's death, applies only to any person who died a domiciliary of the state of New Hampshire. With regard to any person still living, this paragraph shall not be construed to alter or expand the in personam jurisdiction or choice of law principles to be applied in an action brought under this chapter.

Amend RSA 359-K:5, I as inserted by section 2 of the bill by replacing it with the following:

I. Any use of a person's identity during the term of the right protected under this chapter, on or in products, merchandise, or goods, or for the purpose of advertising, marketing, selling, or soliciting purchases of products, merchandise, goods or services, requires the written authorization, including by electronic means, of that person or his or her successor-in-interest.

Amend RSA 359-K:6 as inserted by section 2 of the bill by replacing it with the following:

359-K:6 Exceptions. This chapter shall not apply to the following:

I. Use of a person's identity in an attempt to portray, describe, impersonate, or refer to that person in any of the following informational or expressive works, regardless of length or format, appearing in any medium now known or hereafter devised, provided that the work does not in and of itself constitute a commercial advertisement for a product, merchandise, goods, or services, and provided further that the work is not a videogame or other similar digital or electronic device:

- (a) A news, public affairs, public interest, or sports broadcast or account.
- (b) A play, book, story, graphic novel, article, editorial, commentary, or other similar written or theatrical work.
- (c) A speech.
- (d) A musical composition or musical lyrics.
- (e) A radio program, sound recording, or other similar audio work.
- (f) A documentary, motion picture, television program, or other similar audiovisual work.
- (g) An original work of art.
- (h) Any work used in connection with any political campaign.
- (i) An article, editorial, commentary, magazine, newspaper, periodical, or other work of political or newsworthy value.

II. Use of a person's image in a photograph that does not single the person out as an individual, but rather depicts the person as a member of a group or the public, provided that the person is not named or otherwise identifiable in connection with the use of the photograph.

III. Truthful identification of a person as the author, composer, performer, or creative contributor to or of a work or lawfully recorded performance, under circumstances in which the work or recorded performance is otherwise lawfully reproduced, exhibited, or broadcast.

IV. Promotional materials, advertisements, or commercial announcements for a use described in paragraph I, II, or III, or the facilitation of the same, provided that the use of the person's identity in such promotional materials, advertisements, or announcements is related to the promoted, advertised, or announced use of that same person's identity.

V. Use of a person's identity in promotional material or an advertisement for a news reporting or an entertainment medium that:

- (a) Uses such identity solely as originally contained in all or part of a past or future edition of the medium's own broadcast or publication; and
- (b) Does not convey or reasonably suggest that the person endorses the news reporting or entertainment medium.

VI. Use of a person's identity in promotional material or an advertisement for an aggregator of news reporting and/or entertainment content that:

- (a) Uses such identity solely as originally contained in all or a part of the content of any news medium or entertainment medium available via the aggregator to the aggregator's customers; and
- (b) Does not convey or reasonably suggest that the person endorses the news and/or entertainment aggregator. As used in this paragraph, the term "aggregator" means a party who receives content not of its own creation from others which it transmits or otherwise provides to others.

VII. Use of a person's identity in connection with the efforts of a government agency to promote travel and tourism in this state, portray historical events, or commemorate persons or physical sites that are significant in the history of this state, except where the use is directly connected with commercial use, benefit, or sponsorship by a nongovernmental agency; provided, however, that if a government agency intends to have photographs taken at a public event for use pursuant to this paragraph, the government agency shall, if practical, announce or otherwise inform the public, or request the sponsor of the event to announce or otherwise inform the public, that photographs may be taken that can be used in materials for the promotion of travel and tourism in this state without permission from the person photographed.

VIII. Use of a person's identity that is merely descriptive and used in good faith solely for the purpose of referring to products, merchandise, goods, or services that have been marketed, advertised, or sold by means of an authorized use of that person's identity, or the facilitation of the same.

Amend RSA 359-K:7, III-V as inserted by section 2 of the bill by replacing them with the following:

III. In any suit brought to enforce the right protected under this chapter, the plaintiff may recover an amount equal to the greater of \$2,500 or actual damages incurred as a result of the prohibited use and any profits that are attributable to the prohibited use but not otherwise taken into account in computing actual damages. In establishing profits attributable to a prohibited use, the plaintiff shall be required to present proof only of the gross revenue attributable to use, and the defendant shall be required to prove his, her, or its deductible expenses.

IV. Any plaintiff or defendant that prevails in an action to enforce the right protected under this chapter shall be entitled to recover reasonable attorney's fees, costs, and expenses.

V. No owner, employee, or provider of any medium used for the distribution, transmission, or aggregation of advertising, news reporting, and/or entertainment content is liable pursuant to this chapter for any prohibited use of a person's identity in an advertisement promoting the goods or services of a third party unless it is established that the owner, employee, or provider had actual knowledge that the use was unauthorized and the owner, employee, or provider did not create the advertisement.

VI. Nothing in this chapter may be construed to impose liability for offering the transmission, routing, or providing of connections for communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material sent or received.

Amend RSA 359-K as inserted by section 2 of the bill by deleting RSA 359-K:9

The question is on the adoption of the Committee Amendment. Failed.

The question is on the adoption of the motion of Ought to Pass. Failed.

Sen. Bradley moved Re-refer to Committee.

The question is on the adoption of the motion of Re-refer to Committee. Adopted.

SB 179, relative to qualified purchasing alliances. Ought to Pass with Amendment, Vote 4-0.

Senator Prescott for the committee.

Commerce

March 23, 2011

2011-1178s

01/09

Amendment to SB 179

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

1 Powers and Duties of Purchasing Alliance; Restrictions on Purchasing Alliances. Amend RSA 420-M:7, I(f) to read as follows:

(f) Establish membership criteria that allow any employer to participate in the alliance or that limit participation ***in the alliance*** to employers that are members of or affiliated with an association, trade group, or other entity that has been in existence for at least 10 years and was established and maintained for purposes other than the provision of health coverage;

2 Qualified Purchasing Alliance. Amend RSA 420-M:13, I to read as follows:

I. Either that ~~[it]~~ ***membership in the alliance*** is open to all employers without discrimination or ~~[if participation is based on membership in or an affiliation]~~ ***that the alliance has established membership criteria that limit membership in the alliance to employers that are members of or affiliated*** with an association, trade group, or other entity ~~[;]~~ that ~~[the entity]~~ has been in existence for at least 10 years and was established and maintained for purposes other than the provision of health coverage; and

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

The question is on the adoption of the Committee Amendment. Adopted.

Sen. White asserts Rule 2-15 on SB 179.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Sen. White asserts Rule 2-15 on SB 179.

SB 187, relative to fair debt collection. Inexpedient to Legislate, Vote 4-0. Senator White for the committee.

The question is on the adoption of the Committee recommendation of Inexpedient to Legislate. Adopted.

SB 189, relative to the definition of mortgage loan originator. Ought to Pass with Amendment, Vote 4-0. Senator White for the committee.

Commerce
March 24, 2011
2011-1185s
08/05

Amendment to SB 189

Amend the bill by replacing section 1 with the following:

1 Mortgage Loan Originator; Definition. Amend the introductory paragraph of RSA 397-A:1, XVII(a) to read as follows:

(a) "Originator" or "mortgage loan originator" or "mortgage originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain, takes a mortgage application or offers, negotiates, solicits, arranges, or finds a mortgage loan or ~~who assists a consumer in obtaining or applying to obtain a mortgage loan by, among other things, advising on loan terms (including rates, fees, and other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a mortgage loan or~~ who offers or negotiates terms of a residential mortgage loan. No individual may act as an originator for more than one mortgage broker, mortgage servicer, or mortgage banker. A sole proprietor licensed as a mortgage broker, mortgage servicer, or mortgage banker shall also obtain a license as a mortgage originator prior to engaging in the activities of a mortgage originator. Mortgage loan originator does not include:

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

SB 191, relative to the registration of independent contractors for the purposes of workers' compensation. Ought to Pass with Amendment, Vote 5-0. Senator De Blois for the committee.

Commerce
March 23, 2011
2011-1173s
01/09

Amendment to SB 191

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

AN ACT authorizing registration of independent contractors for the purposes of workers' compensation.

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

1 Workers' Compensation; Definitions. Amend RSA 281-A:2, V-a to read as follows:

V-a. "Domestic," "domestic employee," or "domestic worker" means a person performing domestic services in a private residence of the employer, where the employer is an individual, family, local college club, or local chapter of a college fraternity or sorority and not an agency or other entity engaged in the business of providing domestic workers to the public and the person is not defined as an independent contractor under RSA 281-A:2, VI(b) **or registered under RSA 281-A:3-b.**

2 Workers' Compensation; Definitions; Employee With Respect to Private Employment. Amend the introductory paragraph of RSA 281-A:2, VI(b)(1) to read as follows:

(b)(1) Subject to the preceding subparagraph, any person, other than a direct seller or qualified real estate broker or agent or real estate appraiser, or person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, who performs services for pay for an employer, is presumed to be an employee. ***This presumption may be rebutted by presenting to the employer a certificate of registration obtained pursuant to RSA 281-A:3-b.*** This presumption may ***also*** be rebutted by proof that an individual meets all of the following criteria:

3 New Section; Registration for Independent Contractors. Amend RSA 281-A by inserting after section 3-a the following new section:

Registration for Independent Contractors

281-A:3-b Registration for Independent Contractors Authorized for Workers' Compensation.

I. Every person doing business in this state as an independent contractor for the purposes of workers' compensation under RSA 281-A may register as a sole proprietor in the manner provided in paragraph II.

II. Every person engaged as an independent contractor doing business in this state may file with the department a form signed by such person stating the name under which the business is to be conducted and the principal place of said business. The commissioner may charge a fee for filing of registration and issuance of a certificate of registration.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to any fee to be charged and forms required for the purposes of this section.

IV. This section shall not apply to employees, as defined in RSA 281-A:2, VI, who are not working in their capacity as registered independent contractors.

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

2011-1173s

AMENDED ANALYSIS

This bill authorizes an independent contractor to register with the department of labor as a sole proprietor for purposes of workers' compensation. Under this bill, the department shall issue a certificate acknowledging that such person is an independent contractor for purposes of workers' compensation. The independent contractor may present the certificate to the employer which shall satisfy any audit requirement for purposes of RSA 281-A.

The question is on the adoption of the Committee Amendment. Failed.

The question is on the adoption of the motion of Ought to Pass. Failed.

Sen. De Blois moved Re-refer to Committee.

The question is on the adoption of the motion of Re-refer to Committee. Adopted.

EDUCATION

SB 114, prohibiting assessing teacher performance based solely on assessment scores.

Ought to Pass with Amendment, Vote 3-2. Senator Forsythe for the committee.

Senate Education

March 24, 2011

2011-1215s

04/09

Amendment to SB 114

Amend the bill by replacing section 1 with the following:

1 Failure to be Renominated or Reelected. Amend RSA 189:14-a to read as follows:

189:14-a Failure to be Renominated or Reelected.

I.(a) Any teacher who has a professional standards certificate from the state board of education and who has taught for one or more years in the same school district shall be notified in writing on or before April 15 or within 15 days of the adoption of the district budget by the legislative body, whichever is later, if that teacher is not to be renominated or reelected, provided that no notification shall occur later than the Friday following the second Tuesday in May.

(b) Any such teacher who has taught for [3] 5 consecutive years or more in the same school district and who has been so notified may request in writing within 10 days of receipt of said notice a hearing before the school board and may in said request ask for reasons for failure to be renominated or reelected. For purposes of this section only, a leave of absence shall not interrupt the consecutive nature of a teacher's service, but neither shall such a leave be included in the computation of a teacher's service. Computation of a teacher's service for any other purposes shall not be affected by this section. The notice shall advise the teacher of all of the teacher's rights under this section. The school board, upon receipt of said request, shall provide for a hearing on the request to be held within 15 days. The school board shall issue its decision in writing within 15 days of the close of the hearing.

II. Any teacher who has a professional standards certificate from the state board of education and who has taught for [3] 5 consecutive years or more in any school district in the state shall, after having taught for [2] 3 consecutive years in any other school district in the state, be entitled to all of the rights for notification and hearing *set forth* in [paragraphs I(b), III, and IV of] this section.

III. In cases of nonrenomination because of unsatisfactory performance, [~~the superintendent of the local school district shall demonstrate, at the school board hearing, by a preponderance of the evidence, that the teacher had received written notice that the teacher's unsatisfactory performance may lead to nonrenomination, that the teacher had a reasonable opportunity to correct such unsatisfactory performance, and that the teacher had failed to correct such unsatisfactory performance. Nothing in this paragraph shall be construed to require the superintendent or the school board to provide a teacher with remedial assistance to correct any deficiencies that form the basis for such teacher's nonrenomination~~] ***a teacher's performance shall not be based solely on state or national assessment scores received by pupils in such teacher's class.***

[IV. In all proceedings before the school board under this section, the burden of proof for nonrenewal of a teacher shall be on the superintendent of the local school district by a preponderance of the evidence.]

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Applicability. Section 1 of this act shall not apply to any teacher who has taught for 3 or 4 consecutive years in any school district in the state as of the effective date of this act.

Sen. Forsythe moved to Table SB 114.

The question is on the motion to Table. Adopted.

Sen. Stiles moved to remove SB 117 from the table.

The question is on the motion to remove SB 117 from the table. Adopted.

EDUCATION

SB 117, relative to private postsecondary career schools and the student tuition guaranty fund. Ought to Pass with Amendment, Vote 3-0. Senator Stiles for the committee.

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

Sen. Stiles offered a floor amendment.

Sen. Stiles, Dist. 24

March 29, 2011

2011-1270s

04/09

Floor Amendment to SB 117

Amend RSA 188-D:19, I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) "Entity" means any individual, firm, partnership, association, corporation, organization, trust, school, or other legal entity or combination of these entities. For the purposes of this section, "entity" shall not include an individual, firm, partnership, association, corporation, organization, trust, or school that provides training or instruction only to employees whose tuition, fees, or other costs are paid entirely by their employer.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

ENERGY AND NATURAL RESOURCES

SB 22, relative to alternative regulation of small incumbent local exchange carriers.

Ought to Pass with Amendment, Vote 5-0. Senator Odell for the committee.

Energy and Natural Resources

March 24, 2011

2011-1197s

06/04

Amendment to SB 22

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

1 Alternative Regulation of Small Incumbent Local Exchange Carriers. Amend RSA 374:3-b to read as follows:

374:3-b Alternative Regulation of Small Incumbent Local Exchange Carriers.

I. In this section, "small incumbent local exchange carrier" means an incumbent local exchange carrier serving fewer than 25,000 access lines.

II. ***Solely at its option***, a small incumbent local exchange carrier subject to rate of return regulation, ***and only such small incumbent local exchange carrier***, may petition the public utilities commission for approval of an alternative form of regulation providing for regulation of such carrier's retail operations comparable to the regulation applied to competitive local exchange carriers, subject to paragraph III, due to its status as carrier of last resort.

III. The commission shall approve the alternative regulation plan if it finds that:

(a) ~~[Competitive wireline, wireless, or broadband service is available to a majority of the retail customers in each of the exchanges served by such small incumbent local exchange carrier;]~~ ***The small incumbent local exchange carrier has 25 percent fewer access lines in service than it did on December 31, 2004;***

(b) The plan provides for maximum ***stand-alone*** basic local service rates at levels that do not exceed the comparable rates charged by the largest incumbent local exchange carrier operating in the state and that do not increase by more than ~~[10]~~ **5** percent in each of the 4 years after a plan is approved with the exception that the plan may provide for additional rate adjustments, with public utilities commission review and approval, to reflect changes in federal, state, or local government taxes, mandates, rules, regulations, or statutes;

(c) ~~[The plan promotes the offering of innovative telecommunications services in the state;~~

~~(d)~~ The plan meets intercarrier service obligations under other applicable laws;

~~(e)~~ **(d)** The plan preserves universal access to affordable ***stand-alone*** basic telephone service; and

~~(f)~~ **(e)** The plan provides that, if the small incumbent local exchange carrier operating under the plan fails to meet any of the conditions set out in this section, the public utilities commission may require the small incumbent local exchange carrier to propose modifications to the alternative regulation plan or return to rate of return regulation.

IV. The alternative regulation plan may allow the small incumbent local exchange carrier to offer bundled services that include combinations of telecommunications, data, video, and other services.

V. Following approval of the alternative regulation plan, the small incumbent local exchange carrier shall no longer be subject to rate of return regulation or be required to file affiliate contracts or seek prior commission approval of financings or corporate organizational changes, including, without limitation, mergers, acquisitions, corporate restructurings, issuance or transfer of securities, or the sale, lease, or other transfer of assets or control.

VI. Notwithstanding any other provision of law, competitive entry in the service territory of a small incumbent local exchange carrier which has petitioned for approval of an alternative regulation plan, is consistent with the public good for the specific purpose of RSA 374:22-g and approval of such competitive entry shall not require a hearing as required under RSA 374:26.

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

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

HB 35-FN, authorizing the acquisition of certain dams in the Connecticut Lakes Headwaters Tract. Ought to Pass, Vote 4-0. Senator Bradley for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Committee on Finance (Rule 4-3).

HB 45, relative to the Connecticut Lakes headwater citizens committee. Ought to Pass, Vote 4-0. Senator Gallus for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

HB 93, relative to medical documentation for a crossbow permit for a person with a disability. Ought to Pass, Vote 5-0. Senator Lambert for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

HB 167, naming the Enfield wildlife management area after former fish and game biologist Henry Laramie. Ought to Pass, Vote 5-0. Senator Odell for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

HB 195, relative to special permits for transportation of deer. Ought to Pass, Vote 5-0. Senator Lambert for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

SPECIAL ORDER

Without objection President Bragdon moved SB 4 be Special-Ordered to after lunch.

Sen. Bradley moved to remove SB 75 from the table.

The question is on the motion to remove SB 75 from the table. Adopted.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 75-FN, relative to notification by the retirement system to the department of administrative services of law and rule changes; the availability of public documents of the retirement system; and clarification of part-time service. Inexpedient to Legislate, Vote 3-1.

Senator White for the committee.

The pending question is on the adoption of the Committee recommendation of Inexpedient to Legislate. Failed.

Sen. Bradley moved Ought to Pass.

Sen. Bradley offered a floor amendment.

Sen. Bradley, Dist. 3

March 28, 2011

2011-1240s

10/05

Floor Amendment to SB 75-FN

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

AN ACT relative to clarification of part-time service in the state retirement system.

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

1 New Section; Participation Standards; Classified State Employees. Amend RSA 100-A by inserting after section 28-b the following new section:

100-A:28-c Participation Standards; Classified State Employees.

I. In order to be eligible for participation in the retirement system, an employee as defined in RSA 100-A:1, V who is a classified employee of the state or of any department, commission, institution, or agency of the state government, must be employed in a full-time position with the state or a department, commission, institution, or agency of the state government, as defined by the department of administrative services, division of personnel. Employment by a classified employee in one or more part-time positions, as defined by the department of administrative services, division of personnel, shall not result in such employee's participation in the system, regardless of the number of hours worked in one or more part-time positions, regardless of whether the part-time position or positions may in some instances qualify for vacation pay, sick pay, or other benefits, and regardless of whether positions are held within one or more departments, commissions, institutions, or agencies.

II. Employment by a full-time classified employee of any department, commission, institution, or agency of the state government in a part-time position with a different department, commission, institution, or agency of the state government shall not result in retirement contributions being made in regard to the part-time position, nor shall that position be considered for the purposes of the member's participation in the retirement system. III. Solely part-time state employment by a classified employee shall not entitle the person to benefits under this chapter or under RSA 21-I:30, RSA 21-I:30-a, or RSA 21-I:32.

IV. To the extent that any administrative rule of the New Hampshire retirement system is inconsistent with the provisions contained this section, the operation of that rule is hereby suspended.

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

2011-1240s

AMENDED ANALYSIS

The bill provides that part-time classified state employees shall not participate in the retirement system on the basis of such part-time employment.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the motion of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 92, establishing an economic strategic commission to review the relationship between business and government. Ought to Pass with Amendment, Vote 5-0. Senator Groen for the committee.

Senate Executive Departments and Administration

March 24, 2011

2011-1209s

08/03

Amendment to SB 92

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

AN ACT establishing an economic strategic commission to review the relationship between business and government and changing the name of the department of resources and economic development to the department of business assistance.

Amend RSA 359-K:3, I(c)-(d) as inserted by section 1 of the bill by replacing it with the following:

(c) Twelve members of the business community, 4 of whom shall be appointed by the senate president, 4 of whom shall be appointed by the speaker of the house of representatives, and 4 of whom shall be appointed by the governor.

(d) Nine members specializing in business law, 3 of whom shall be appointed by the senate president, 3 of whom shall be appointed by the speaker of the house of representatives, and 3 of whom shall be appointed by the governor.

Amend RSA 359-K:4, I as inserted by section 1 of the bill by replacing it with the following:

I. The commission and any subcommittees therein shall study and review all aspects of public policy, front- and back-end data interchange, coordination, technology requirements, legislative initiatives, stream-

lining, and such causal requirements to create a plan to project New Hampshire into a “one-door” front-end operational facility to assist in the ease of economic opportunities in the establishment, support, maintenance, education, and monitoring of the business community.

Amend RSA 359-K:4, III(c) as inserted by section 1 of the bill by replacing it with the following:

(c) Study the feasibility of establishing a new adjudicatory conflict resolution center to manage business to government conflicts. This center shall manage, hear, and adjudicate conflicts when administrative hearings are unresolved, or where the business community remains aggrieved.

Amend RSA 359-K:4, IV as inserted by section 1 of the bill by replacing it with the following:

IV. The commission may enlist any faculty and students from postsecondary institutions in New Hampshire to provide research services to the commission.

Amend RSA 359-K:6 as inserted by section 1 of the bill by replacing it with the following:

359-K:6 Report. The commission shall make an interim report of its findings and recommendations on or before November 1, 2011 and a final report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 31, 2011.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 4:

2 Name Change. Amend the following RSA provisions by replacing “department of resources and economic development” with “department of business assistance”: 1:16; 2:1; 2:5; 4:8-a, I-II; 4:40, III-a; 4:43, III; 6:12, I(b)(9), (13), (21), and (46); 6:12-c, II(a); 6:12-c, II(j); the chapter heading of 12-A:1; 12-A:1; 12-A:1-a; 12-A:1-b, II; 12-A:1-c; 12-A:1-d; 12-A:1-e, (intro. para.), I, and V; 12-A:2-c, I; 12-A:2-e, I; 12-A:2-f, V; 12-A:2-i; 12-A:2-j; 12-A:7; 12-A:8; 12-A:8-a; 12-A:9-a, I; 12-A:9-b, I(j), V(b), V(d), and VI; 12-A:9-c, I(j), and (l), V(b), and (d), and VI; 12-A:10; 12-A:10-a; 12-A:10-b; 12 A:10 d; 12-A:10-f, I, and IV; 12-A:13; 12-A:15, I(b), and II; 12-A:15-a, I and III; 12-A:18; 12-A:28; 12-A:29-a, (intro. para.); 12-A:29-c, I; 12-A:30, II(d); 12-A:31; 12-A:32, I and V; 12-A:33, I; 12-A:34; 12-A:43-a, I; 12-A:44, III; 12-A:45-a; 12-A:54, I-III; 12-A:55, VI(c) and VII; 12-A:58, I; 12-A:61, I and IV; 12-B:2; 12-E:1, III and XIII; 12-E:4, VI(d); 12-E:6, I; 12-G:43-a, I; 12-G:44, I; 12-I:1, IV; 12 I:18, I(e); 21-I:80, I(b); 21-K:23, III(c); 21-O:12, II; 21-O:19, I(b); 21-P:27, I(b) and II(a); 21-P:48, I(j); 21-T:1, II(b); 31:112, I; 36-A:2; 36-A:6; 78-A:3, III(b); 79:8; 79:10, I(g); 79:11, I; 79:14, II; 79:28-a; 79-A:3, II(e); 100-A:1, VII-a(b); 125-N:5, I; 125-O:5-a, II(e); 149-O:3, I(e); 154:30-g; 162-B:4, II; 162-C:1, II; 162-H:3; 162-H:4, V; 162-L:2, II; 162-L:15, II(d); 162-Q:2; 162-Q:3, (intro. para.); 187-A:31; 187-A:32, I(a); 207:31; 212:10; 212:14; 212:19; 214:14-c; 215-A:1, II; 215-A:2; 215-A:3, I, II, II-b, III, V, VII, and IX; 215-A:3-a, (intro. para.); 215-A:3-b, I-II; 215-A:6, III(b)(4); 215-A:16, II; 215-A:17; 215-A:18, II; 215-A:21, X(a)(1)-(2); 215-A:21, X(b)(1)-(2); 215-A:23; 215-A:30, I(a)-(b); 215-A:31; 215 A:40; 215-A:42, I(a)-(b); 215-A:43, (intro. para.), VI and VII(b)(3); 215-A:44, III; 215-C:1, III; 215-C:2; 215-C:3, (intro. para.); 215-C:3-a; 215-C:8, III(b)(4); 215-C:32, II-III; 215-C:33, II; 215-C:39; 215 C:50, I(a)-(b); 215-C:51; 215-C:56; 215-C:57, III; 216:3, I and IV(a); 216:5; 216:7, I; 216:8, IV; 216:9, II and V; 216:10, I; 216:11, IV; 216-A:2, VII; 216-A:3, (intro. para.); 216-A:3-g, (intro. para.), 216-A:3-i; 216-A:3-k, I(b) and VI(d); 216-A:3-l, (intro. para.); 216-A:3-m, II; 216-A:5; 216-A:12; 216-A:16; 216-D:2; 216-D:4; 216-F:1, I; 216-F:4; 216-F:6; 216-H:2; 216-J:2, I(a); 217-A:3, II, III, and XII; 219:21; 227:1; 227:3; 227:8; 227:12; 227:14; 227-B:6, V-VI; 227-C:19; 227 D:2; 227-D:3; 227-D-5, I and VI; 227-D:6; 227-E:6, II; 227-G:2; 227-G:3, I(c); 227-J:6, II; 227-L:5-a, I and IV; 227-L:28; 227-L:32; 227-M:4, II(f); 228:106; 230:76; 231:139; 231:153; 233:8, I; 233-A:2, I(b); 236:86, II; 238:20, I(c); 238:23, I; 261:97-b, I; 261:97-c, IV; 261:97-f, I; 265:76; 265:102, I-a; 270:107, III; 276-A:24, I; 380:7; 380:17; 380:18; 430:30, I(c); 432:10; 432:19, II(b); 436-A:1; 481:3, X and X-a; 482:3, I; 482:48; 482:51, IV-V; 482-A:3, V, XI(c), XII, and XV(a); 482-A:14-a; 482-A:32, II(d); 483:10-a; 483-B:5, I; 483-B:15; 485-A:17, IV-V; 485-A:22-a, (intro. para.); and 485-B:1-a.

3 Name Change. Amend the following RSA provisions by replacing “commissioner of resources and economic development” with “commissioner of business assistance”: 12-A:1; 12-A:1-b; 12-A:1-e, II(a), IV, VII, and IX; 12-A:2; 12-A:2-d; 12-A:2-g, 12-A:2-h; 12-A:4; 12-A:5, I; 12-A:6; 12-A:7; 12-A:8; 12-A:21 (intro para.); 12-A:22 (intro para.); 12-A:23 (intro para.); 12-A:25; 12-A:29-b, V; 12-A:29-c; 12 A:30, I; 12-A:31; 12-A:32, II(a)(1), IV, VII, and IX; 12-A:36; 12-A:43 (intro para.); 12-A:43-a, II; 12 A:45, I(a); 12-A:45-a; 12-A:46, II(b) and II(h); 12-A:61, V; 12-B:2; 12-B:4; 21-O:5-a, I(c); 36-A:6; 77-E:3-c, I(a); 162-N:1; 162-N:2; 162-N:3; 162-N:4; 162-N:5; 162-N:8; 162-N:9; 162-O:1, I; 162-P:1, I; 215-A:3-b, II; 215-A:31; 215-A:42, III; 215-C:3-a, II; 215-C:51; 216:3, IV(b); 216-A:2 (intro para.); 216-A:2, VIII; 216-A:3-d, I; 216-A:3-e, I and III; 218:6; 219:21, I; 227-C:29, I(c); 227-K:15; 261:75-c; 261:97-d, I(d); 282-A:138-a, I II; 430:54, I(c); 483:8, II; and 483-A:6, III.

2011-1209s**AMENDED ANALYSIS**

This bill establishes an economic strategic commission to review the relationship between business and government and changes the name of the department of resources and economic development to the department of business assistance.

The question is on the adoption of the Committee Amendment. Adopted.

Sen. Sanborn offered a floor amendment.

Sen. Sanborn, Dist. 7

March 28, 2011

2011-1234s

09/04

Floor Amendment to SB 92

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

AN ACT establishing an economic strategic commission to review the relationship between business and government.

Amend RSA 359-K:4, III as inserted by section 1 of the bill by inserting after subparagraph (c) the following new subparagraph:

(d) Consider changing the name of the department of resources and economic development to the department of business advancement-NH or any other name that conveys New Hampshire's desire to promote economic growth and prosperity.

Amend RSA 359-K:6 as inserted by section 1 of the bill by replacing it with the following:

359-K:6 Report. The commission shall make status reports on its findings and recommendations on or before December 1, 2011 and August 1, 2012, a preliminary report of its findings and recommendations on or before October 1, 2012, and a final report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, 2012.

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

2 Repeal. RSA 359-K, relative to the economic strategic commission to review the relationship between business and government, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect December 1, 2012.

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

2011-1234s**AMENDED ANALYSIS**

This bill establishes an economic strategic commission to review the relationship between business and government.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

SB 166, relative to medical benefits for beneficiaries of a police officer or firefighter killed in the line of duty. Ought to Pass, Vote 5-0. Senator Luther for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 170, relative to the New Hampshire Medical Malpractice Joint Underwriting Association.

Ought to Pass with Amendment, Vote 5-0. Senator Carson for the committee.

Senate Executive Departments and Administration
March 24, 2011
2011-1193s
10/04

Amendment to SB 170

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

1 Statement of Purpose. The general court finds that the New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA) is a mutual form of insurance plan funded in the first instance by premiums paid by policyholders. Since 1986, the NHMMJUA has amassed more funds through premium payments than is necessary to sustain operations. Return premiums should be issued to all policyholders who have contributed to the current surplus of funds.

2 New Section; New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA). Amend RSA 404-C by inserting after section 13 the following new section:

404-C:14 New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA).

I. Notwithstanding any provision of law to the contrary, no officer or agent of the state shall take or transfer, through taxation or otherwise, any funds now held by the NHMMJUA in a manner inconsistent with this section.

II. All funds held as of the effective date of this section by the NHMMJUA in excess of the amount required for the fund to remain actuarially sound, as determined by a qualified actuary, shall constitute excess surplus funds and shall not be less than \$110,000,000 in accordance with 2009, 144:1. Such determination shall be completed under the direction of the NHMMJUA board of directors not more than 45 days from the effective date of this section. All such excess surplus funds have resulted from premiums paid under assessable and participating medical malpractice insurance policies, belong to the policyholders who paid these premiums, and shall be returned as directed under this section. Within 60 days from the effective date of this section, all excess surplus funds, except for a reserve of \$25,000,000 for the payment of any federal tax liability, shall be interpleaded into the Merrimack County Superior Court, docket no. 217-2010-CV-00414 for the purpose of adjudicating all policyholders' claims to excess surplus funds. All distributions made to policyholders shall be subject to a claim from the NHMMJUA to reclaim a pro rata portion of the distribution to satisfy any federal tax liabilities in excess of the \$25,000,000 reserved for such claims.

III. Within 30 days of the effective date of this section, the NHMMJUA, the insurance commissioner, or designee, and a representative of NHMMJUA policyholders, designated by the president of the New Hampshire Medical Society, shall jointly approach the United States Internal Revenue Service to obtain a closing agreement, or its equivalent, determining whether the NHMMJUA has any federal tax liability arising from the excess premiums paid and that shall be returned to policyholders.

IV. No later than 30 days after receipt of the closing agreement, or its equivalent, the NHMMJUA shall interplead into the Merrimack County Superior Court docket no. 217-2010-CV-00414 for the purpose of adjudicating all policyholders' claims to these remaining excess surplus funds the remaining amount of the tax reserve after satisfaction of any taxes owed.

V. Funds that cannot be distributed to a policyholder in the court proceedings referenced in this section due to the inability to locate the policyholder after reasonable efforts, shall revert to the NHMMJUA. Undistributed funds that revert to the NHMMJUA as provided in this section shall be used to provide grants in aid to health care providers servicing medically underserved populations to assist in the NHMMJUA coverage.

VI. The approval of the commissioner of insurance shall not be required for any action contemplated under this section.

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

The question is on the adoption of the Committee Amendment. Adopted.

Sen. White asserts Rule 2-15 on SB 170.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Sanborn, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes, De Blois, Rausch, Merrill, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: D'Allesandro.

Yeas: 23 - Nays: 1

Adopted, bill ordered to Third Reading.

Sen. White asserts Rule 2-15 on SB 170.

FINANCE

SB 3-FN-A-L, making comprehensive changes to the state retirement system. Ought to Pass with Amendment, Vote 6-1. Senator Morse for the committee.

Senate Finance

March 24, 2011

2011-1221s

10/05

Amendment to SB 3-FN-A-LOCAL

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

1 Retirement System; Definition of Earnable Compensation. Amend RSA 100-A:1, XVII to read as follows:

XVII. "Earnable compensation" shall mean:

(a) For [aH] members *who have attained vested status prior to January 1, 2012* the full base rate of compensation paid, *as determined by the employer*, plus any overtime pay, holiday and vacation pay, sick pay, longevity or severance pay, cost of living bonus, additional pay for extracurricular and instructional activities [~~or for other extra or special duty~~], and any military differential pay, plus the fair market value of non-cash compensation paid to, or on behalf of, the member for meals or living quarters if subject to federal income tax, but excluding other compensation except cash incentives paid by an employer to encourage members to retire, supplemental pay paid by the employer while the member is receiving workers' compensation, and teacher development pay that is not part of the contracted annual salary. *Compensation for extra and special duty, as determined by the employer, shall be included but limited during the highest 3 years of creditable service as provided in paragraph XVIII.* However, earnable compensation in the final 12 months of creditable service prior to termination of employment shall be limited to 1-1/2 times the higher of the earnable compensation in the 12-month period preceding the final 12 months or the highest compensation year as determined for the purpose of calculating average final compensation, but excluding the final 12 months. Any compensation received in the final 12 months of employment in excess of such limit shall not be subject to member or employer contributions to the retirement system and shall not be considered in the computation of average final compensation. Provided that, the annual compensation limit for members of governmental defined benefit pension plans under section 401(a)(17) of the United States Internal Revenue Code of 1986, as amended, shall apply to earnable compensation for all employees, teachers, permanent firemen, and permanent policemen who first become eligible for membership in the system on or after July 1, 1996. Earnable compensation shall not include compensation in any form paid later than 120 days after the member's termination of employment from a retirement eligible position, with the limited exceptions of disability related severance pay paid to a member or retiree no later than 120 days after a decision by the board of trustees granting the member or retiree disability retirement benefits pursuant to RSA 100-A:6 and of severance pay which a member was entitled to be paid within 120 days after termination but which, without the consent of the member and not through any fault of the member, was paid more than 120 days after the member's termination. The member shall have the burden of proving to the board of trustees that any severance payment paid later than 120 days after the member's termination of employment is earnable compensation and meets the requirements of an asserted exception to the 120-day post-termination payment requirement.

(b) *For members who begin service after December 31, 2011 or who are not in vested status on January 1, 2012 the full base rate of compensation paid, as determined by the employer, plus any overtime pay, holiday and vacation pay, sick pay, longevity pay, cost of living bonus, additional pay for extracurricular and instructional activities, and any military differential pay, plus the fair market value of non-cash compensation paid to, or on behalf of, the member for meals or living quarters*

if subject to federal income tax, but excluding other compensation except supplemental pay paid by the employer while the member is receiving workers' compensation and teacher development pay that is not part of the contracted annual salary. Compensation for extra and special duty, as determined by the employer, shall be included but limited during the highest 5 years of creditable service as provided in paragraph XVIII. Earnable compensation shall not include incentives to encourage members to retire, severance pay, and pay for unused sick or vacation time. However, earnable compensation in the final 12 months of creditable service prior to termination of employment shall be limited to 1-1/2 times the higher of the earnable compensation in the 12-month period preceding the final 12 months or the highest compensation year as determined for the purpose of calculating average final compensation, but excluding the final 12 months. Any compensation received in the final 12 months of employment in excess of such limit shall not be subject to member or employer contributions to the retirement system and shall not be considered in the computation of average final compensation. Provided that, the annual compensation limit for members of governmental defined benefit pension plans under section 401(a)(17) of the United States Internal Revenue Code of 1986, as amended, shall apply to earnable compensation for all employees, teachers, permanent firemen, and permanent policemen who first become eligible for membership in the system on or after July 1, 1996. Earnable compensation shall not include compensation in any form paid later than 120 days after the member's termination of employment from a retirement eligible position.

2 Retirement System; Definitions; Average Final Compensation. Amend RSA 100-A:1, XVIII to read as follows:

XVIII. "Average final compensation" shall mean:

(a) For members who have attained vested status prior to January 1, 2012, the average annual earnable compensation of a member during his or her highest 3 years of creditable service, or during all of the years in his or her creditable service if less than 3 years. For purposes of this calculation, the inclusion of the average annual compensation for extra and special duty in the 3 years shall not exceed the average annual amount of compensation for extra and special duty paid to the members over the member's last 7 years or over all of the years in his or her creditable service if less than 7 years.

(b) For members who began service after December 31, 2011 or have not attained vested status on January 1, 2012, the average annual earnable compensation of a member during his or her highest 5 years of creditable service, or during all of the years in his or her creditable service if less than 5 years. For purposes of this calculation, the inclusion of the average annual compensation for extra and special duty in the 5 years shall not exceed the average annual amount of compensation for extra and special duty paid to the members over the member's last 7 years or over all of the years in his or her creditable service if less than 7 years.

Amend the bill by replacing sections 4-11 with the following:

4 State Employees; Group Insurance Benefits; Group II. Amend RSA 21-I:30, III to read as follows:

III. Any vested deferred state retiree may receive medical and surgical benefits under this section if the vested deferred state retiree is eligible. To be eligible, a group I vested deferred state retiree shall have at least 10 years of creditable service with the state if the employee's service began prior to July 1, 2003 or 20 years of creditable service with the state if the employee's service began on or after July 1, 2003 and a group II vested deferred state retiree shall have at least 20 years of creditable service with the state if the employee's service with the state began on or after July 1, 2010. In addition, if the vested deferred state retiree is a member of group I, such retiree shall be at least 60 years of age to be eligible. If the vested deferred state retiree is a member of group II *who is in vested status before January 1, 2012*, such retiree shall not be eligible until 20 years from the date of becoming a member of group II and shall be at least 45 years of age, *and any group II member who commenced service after December 31, 2011 shall not be eligible until 25 years from the date of becoming a member of group II and shall be at least 50 years of age, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d).*

5 Service Retirement; Group II. Amend RSA 100-A:5, II to read as follows:

II. Group II Members.

(a) Any group II member in service, *who is in vested status before January 1, 2012*, who has attained age 45 and completed 20 years of creditable service, *and any group II member who commenced*

service after December 31, 2011 who has attained age 50 and completed 25 years of creditable service, and group II members not in vested status on January 1, 2012 as provided in the transition provisions in RSA 100-A:5, II(d), or any group II member in service who has attained age 60 regardless of the number of years of creditable service, may retire on a service retirement allowance upon written application to the board of trustees setting forth at what time not less than 30 days nor more than 90 days subsequent to the filing thereof the member desires to be retired, notwithstanding that during such period of notification the member may have separated from service.

(b) Upon service retirement, a group II member shall receive a service retirement allowance which shall consist of:

(1) A member annuity which shall be the actuarial equivalent of his *or her* accumulated contributions at the time of retirement; and

(2) *For members who are in vested status before January 1, 2012*, a state annuity which, together with his *or her* member annuity, shall be equal to 2-1/2 percent of his *or her* average final compensation multiplied by the number of years of his *or her* creditable service not in excess of 40 years, *or for members who commenced service after December 31, 2011, a state annuity which, together with his or her member annuity, shall be equal to 2 percent of his or her average final compensation multiplied by the number of years of his or her creditable service not in excess of 50 years, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d) with the maximum number of years adjusted proportionally between 40 and 50.*

(c)(1) Notwithstanding any provision of RSA 100-A to the contrary, any group II member who *is in vested status before January 1, 2012 and* has retired on or after the effective date of this subparagraph after attaining the age of 45 with at least 20 years of creditable service, *and any group II member who commenced service after December 31, 2011 and has retired on or after the effective date of this subparagraph after attaining the age of 50 with at least 25 years of creditable service, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d)*, shall receive a minimum annual service retirement allowance of \$10,000. If such group II member has elected to convert the retirement allowance into an optional allowance for the surviving spouse under RSA 100-A:13, the surviving spouse shall be entitled to a proportional share of the \$10,000.

(2) [Repealed.]

(3) [Repealed.]

(d) *Active group II members who are not in vested status on January 1, 2012 shall be subject to the following transition provisions for years of service required for regular service retirement, the minimum age for regular service retirement, and the multiplier used to calculate the retirement annuity, which shall be applicable on January 1, 2012 according to the following table:*

<u>Creditable service</u> <u>on January 1, 2012</u>	<u>Minimum years of service</u>	<u>Minimum age attained</u>	<u>Annuity multiplier</u>
(1) <i>Less than 4 years</i>	24	<i>age 49</i>	<i>2.1%</i>
(2) <i>At least 4 years but less than 6 years</i>	23	<i>age 48</i>	<i>2.2%</i>
(3) <i>At least 6 years but less than 8 years</i>	22	<i>age 47</i>	<i>2.3%</i>
(4) <i>At least 8 years but less than 10 years</i>	21	<i>age 46</i>	<i>2.4%</i>

6 Ordinary Disability Retirement; Group II. Amend RSA 100-A:6, II(b) to read as follows:

(b) Upon ordinary disability retirement, the group II member shall receive an ordinary disability retirement allowance which shall consist of: a member annuity which shall be the actuarial equivalent of his *or her* accumulated contributions at the time of his *or her* ordinary disability retirement; and a state annuity which, together with his *or her* member annuity, *for members who are in vested status before January 1, 2012*, shall be equal to 2-1/2 percent of his *or her* average final compensation at the time of [his]

ordinary disability retirement multiplied by the number of years of his *or her* creditable service not in excess of 40 at the time of [his] ordinary disability retirement, *or for members who commenced service after December 31, 2011, shall be equal to 2 percent of his or her average final compensation at the time of ordinary disability retirement multiplied by the number of years of his or her creditable service not in excess of 50 at the time of ordinary disability retirement, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d) with the maximum number of years adjusted proportionally between 40 and 50* provided, however, that such allowance shall not be less than 25 percent of the member's final compensation at the time of his *or her* disability retirement.

7 Accidental Disability Retirement; Group II. Amend RSA 100-A:6, II(d) to read as follows:

(d) Upon accidental disability retirement, the group II member shall receive an accidental disability retirement allowance equal to 2/3 of his *or her* average final compensation at the time of [his] disability retirement.

(1) *For members who are in vested status before January 1, 2012*, any group II member who has more than 26-2/3 years of service, a supplemental disability retirement allowance shall be paid. Such supplement shall be equal to 2-1/2 percent of his *or her* average final compensation multiplied by the number of years of his *or her* creditable service in excess of 26-2/3 but not in excess of 40 years.

(2) *For members who commenced service after December 31, 2011, any group II member who has more than 33-1/3 years of service, a supplemental disability retirement allowance shall be paid. Such supplement shall be equal to 2 percent of his or her average final compensation multiplied by the number of years of his or her creditable service in excess of 33-1/3 but not in excess of 50 years.*

(3) *For group II members not in vested status on January 1, 2012 calculation of the supplemental allowance shall be as provided in the transition provisions in RSA 100-A:5, II(d) with the number of years for the supplement adjusted proportionally.*

8 Vested Deferred Retirement; Group II. Amend RSA 100-A:10, II(b) to read as follows:

(b) *For members who are in vested status before January 1, 2012*, upon the member's attainment of age 45, provided the member would then have completed 20 years of creditable service, otherwise the subsequent date on which such 20 years would have been completed, *or for members who commenced service after December 31, 2011, upon the member's attainment of age 50, provided the member would then have completed 25 years of creditable service, otherwise the subsequent date on which such 25 years would have been completed, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d)*, or at any time after age 60, a group II member who meets the requirement of subparagraph (a) may make application on a form prescribed by the board of trustees and receive a vested deferred retirement allowance which shall consist of: (1) A member annuity which shall be the actuarial equivalent of accumulated contributions on the date the member's retirement allowance commences; and (2) A state annuity which, together with the member annuity, shall be equal to a service retirement allowance based on the member's average final compensation and creditable service at the time the member's service is terminated.

9 Split Benefits; Minimum Age. Amend RSA 100-A:19-b, II to read as follows:

II.(a) For a member *who is in vested status before January 1, 2012 and*, who has completed 20 or more years of combined creditable service, one year shall be deducted from age 60 for each year of creditable group II service, provided that the age shall not be less than 45 years.

(b) *For a member who commenced service after December 31, 2011 and who has completed 25 or more years of combined creditable service, one year shall be deducted from age 60 for each year of creditable group II service, provided that the age shall not be less than 50 years.*

(c) *For group II members not in vested status on January 1, 2012, minimum age shall be as provided in the transition provisions in RSA 100-A:5, II(d) with one year deducted from age 60 to not less than the adjusted minimum age.*

10 Split Benefits; Reduced Early Retirement. Amend RSA 100-A:19-d to read as follows:

100-A:19-d Reduced Early Retirement. Notwithstanding any other provision of law, any retirement system member who has creditable service in both group I and group II with at least 10 years combined creditable

service, and who has attained an age which is at least 45 *for members who are in vested status with group II service before September 1, 2011 or at least 50 for members who commenced group II service after December 31, 2011, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d)*, and is within 10 years of the minimum age set forth in RSA 100-A:19-b, may elect to retire and have benefits commence immediately as a reduced split-benefit service retirement allowance. Application shall be as provided in RSA 100-A:5, I(c). The allowance shall be determined as a split-benefit service retirement allowance in accordance with RSA 100-A:19-c, and the total combined split-benefit service allowance shall be reduced by the percentages shown in RSA 100-A:5, I(c), based on the total combined length of creditable service, for each month by which the date on which benefits commence precedes the month after which the member attains the minimum age set forth in RSA 100-A:19-b.

11 Financing; Member Contribution Rates; Group II Member Payroll Deduction. Amend RSA 100-A:16, I(a) to read as follows:

(a) The member annuity savings fund shall be a fund in which shall be accumulated the contributions deducted from the compensation of members to provide for their member annuities together with any amounts transferred thereto from a similar fund under one or more of the predecessor systems. Such contribution shall be, for each member, dependent upon the member's employment classification at the rate determined in accordance with the following table:

~~(1) [Employees of employers other than the state 5.00~~

~~Employees of the state hired on or before June 30, 2009 5.00~~

~~Employees of the state hired after June 30, 2009 7.00~~

~~Teachers 5.00 }~~

Group I members, 7.00

~~(2) [Permanent Policemen 9.30~~

~~Permanent Firemen 9.30]~~

Group II members, 11.30

(aa) The board of trustees shall certify to the proper authority or officer responsible for making up the payroll of each employer, and such authority or officer shall cause to be deducted from the compensation of each member, except group II members *who are in vested status before January 1, 2012 with creditable service in excess of 40 years and group II members who commenced service after December 31, 2011 with creditable service in excess of 50 years, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d) with the maximum number of years adjusted proportionally between 40 and 50*, as provided in RSA 100-A:5, II(b) and RSA 100-A:6, II(b), on each and every payroll of such employer for each and every payroll period, the percentage of earnable compensation applicable to such member. No deduction from earnable compensation under this paragraph shall apply to any group II member *who is in vested status before January 1, 2012 with creditable service in excess of 40 years, and any group II member who commenced service after December 31, 2011 with creditable service in excess of 50 years, and group II members not in vested status on January 1, 2012 shall be as provided in the transition provisions in RSA 100-A:5, II(d) with the maximum number of years adjusted proportionally between 40 and 50*, as provided in RSA 100-A:5, II(b) and RSA 100-A:6, II(b), and this provision for such members shall not affect the method of determining average final compensation as provided in RSA 100-A:1, XVIII. In determining the amount earnable by a member in a payroll period, the board may consider the rate of compensation payable to such member on the first day of a payroll period as continuing throughout the payroll period and it may omit deduction from compensation for any period less than a full payroll period if such person was not a member on the first day of the payroll period, and to facilitate the making of deductions it may modify the deduction required of any member by such an amount as shall not exceed 1/10 of one percent of the annual earnable compensation upon the basis of which such deduction is made. The amounts deducted shall be reported to the board of trustees. Each of such amounts, when deducted, shall be paid to the retirement system at such times as may be designated by the board of trustees and credited to the individual account, in the member annuity savings fund, of the member from whose compensation the deduction was made.

Amend RSA 100-A:27-a as inserted by section 19 of the bill by replacing it with the following:

100-A:27-a Return to Work; Suspension of Benefits. No person who retires after January 1, 2012 and is receiving retirement benefits under this chapter shall within 6 months of his or her retirement be employed by the state or another participating employer. Beginning January 1, 2012, no person shall be hired into a full-time position for which membership is required under RSA 100-A:3, or hired into a full-time state position for which membership is optional under RSA 100-A:3, I, while concurrently receiving a retirement benefit under this chapter. Benefits shall be suspended during any such period of employment.

Amend subparagraph I(b) of section 22 of the bill by replacing it with the following:

(b) Three members of the house of representatives, each of whom shall be from the special committee on public employee pensions reform, appointed by the speaker of the house of representatives.

Amend paragraph I of section 23 of the bill by replacing it with the following:

I. RSA 100-A:16, III-a, relative to employer assessments for excess benefits paid by employers in the retirement system.

Amend the bill by replacing all after section 24 with the following:

25 Retirement System; Recalculation of Employer Rates; Recertification. Notwithstanding the notice requirements of RSA 100-A:16, III, the board of trustees of the retirement system shall recalculate employer contribution rates for the state fiscal years 2012 and 2013 to reflect the requirements of this act. Notwithstanding the notice requirements of RSA 100-A:16, III, such employer contribution rates shall be effective during the biennium beginning July 1, 2011, and the recertification of employer contribution percentages, applicable beginning January 1, 2012, shall be provided to each employer within a reasonable period of time not to exceed 30 days from January 1, 2012 and shall be calculated using most recent information available. The exception to the notice requirements of RSA 100-A:16, III in this section shall be limited to the applicable employer contribution rates for the biennium beginning July 1, 2011.

26 Effective Date.

I. Sections 1, 2, 4-10, 11, 19, and 20 of this act shall take effect January 1, 2012.

II. Section 3 of this act shall take effect July 1, 2016.

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

2011-1221s

AMENDED ANALYSIS

This bill makes various changes to the state retirement system including:

I. Increasing retirement ages of group II members for service retirement, disability retirement, vested deferred retirement, and split benefits.

II. Changing the definitions of earnable compensation and average final compensation used in calculating retirement benefits.

III. Changing the composition of the board of trustees.

IV. Eliminating the special account.

V. Eliminating the retirement system funding of medical benefits premium payments.

VI. Increasing contribution rates.

VII. Establishing committee to study the establishment of a federal tax qualified voluntary defined contribution plan administered by the board of trustees.

VIII. Limiting when a member in service may concurrently receive benefits.

Recess. Out of recess.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Houde, Kelly, Larsen, D'Allesandro, Merrill.

Yeas: 19 - Nays: 5

Adopted, bill ordered to Third Reading.

SB 52-FN, excluding persons convicted of violent crimes and sexually violent persons from mandatory early release on probation or parole. Ought to Pass with Amendment, Vote 7-0. Senator Forrester for the committee.

Senate Finance

March 23, 2011

2011-1177s

04/01

Amendment to SB 52-FN

Amend the bill by replacing section 1 with the following:

1 Parole of Prisoners; Terms of Release. Amend RSA 651-A:6, I(b) to read as follows:

(b) A prisoner convicted of a nonviolent offense *who has not been previously convicted of a sexually violent offense as defined in RSA 135-E:2, XI, aggravated felonious sexual assault pursuant to RSA 632-A:2, felonious sexual assault pursuant to RSA 632-A:3, sexual assault pursuant to RSA 632-A:4, I(a)-(b), kidnapping pursuant to RSA 633:1, I, first degree assault pursuant to RSA 631:1, I, possession of child sexual abuse images pursuant to RSA 649-A:3, I, or distribution of child sexual abuse images pursuant to RSA 649-A:3-a, I* shall be released on parole upon serving 120 percent of the minimum term of his or her sentence, minus any credits received pursuant to RSA 651-A:23, plus the disciplinary period added to such minimum under RSA 651:2, II-e, any part of which is not reduced for good conduct as provided in RSA 651-A:22, *unless the parole board votes to deny such release.*

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Sanborn, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes, De Blois, Rausch, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: (None.)

Yeas: 24 - Nays: 0

Adopted, bill ordered to Third Reading.

SB 58-FN-A, adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. Ought to Pass with Amendment, Vote 7-0. Senator Odell for the committee.

Senate Finance

March 23, 2011

2011-1181s

06/01

Amendment to SB 58-FN-A

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

4 Taxation of Income; What Taxable. Amend RSA 77:4, V to read as follows:

V. For each holder of an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI which is not a qualified investment capital company as defined in RSA 77-A:1, XXIV, which holder is subject to tax under RSA 77, the holder's proportional share of the *interest or dividend* income *taxable under this chapter*, less any income attributable to United States government notes or bonds, [of] *received by* such qualified investment company shall be treated as a dividend *taxable under this chapter to the holder*; however, notwithstanding any other provision of RSA 77, no actual distribution made to such holder by such qualified investment company shall be taxable under RSA 77.

5 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after December 31, 2010. Section 4 of this act shall apply with respect to all taxable periods subject to assessment of the tax and appealed pursuant to RSA 21-J:28-b.

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

2011-1181s

AMENDED ANALYSIS

This bill adds qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. The bill also clarifies the a New Hampshire resident investor in a qualified investment company is only taxable on his or her proportionate share of interest and dividend income earned by the qualified investment company.

The question is on the adoption of the Committee Amendment. Adopted.

Sen. Odell offered a floor amendment.

Sen. Odell, Dist. 8

March 29, 2011

2011-1276s

09/10

Floor Amendment to SB 58-FN-A

Amend the bill by replacing section 4 with the following:

4 Taxation of Income; What Taxable. Amend RSA 77:4, V to read as follows:

V. For each holder of an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI [~~which is not a qualified investment capital company as defined in RSA 77-A:1, XXIV~~], which holder is subject to tax under RSA 77, the holder's proportional share of the *interest or dividend* income *taxable under this chapter*, less any income attributable to United States government notes or bonds, [of] *received by* such qualified investment company shall be treated as a dividend *taxable under this chapter to the holder*; however, notwithstanding any other provision of RSA 77, no actual distribution made to such holder by such qualified investment company shall be taxable under RSA 77.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

SB 76-FN, relative to the authority of the department of revenue administration to adopt rules and to administer state tax laws. Ought to Pass, Vote 7-0. Senator Forrester for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 154-FN, (New Title) reforming and renaming the comprehensive shoreland protection act. Ought to Pass with Amendment, Vote 5-0. Senator Odell for the committee.

Senate Finance

March 24, 2011

2011-1210s

06/01

Amendment to SB 154-FN

Amend RSA 483-B:9, V(g)(2) as inserted by section 19 of the bill by replacing it with the following:

(2) If the impervious surface area will exceed 20 percent, *but is less than 30 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.

The question is on the adoption of the Committee Amendment. Adopted.

Sen. Bradley asserts Rule 2-15 on SB 154-FN.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Sen. Bradley asserts Rule 2-15 on SB 154-FN.

SB 156-FN-L, (New Title) authorizing retail vehicle dealers to act as agents of the division of motor vehicles for vehicle registrations and title applications. Ought to Pass with Amendment, Vote 6-1. Senator Morse for the committee.

Senate Finance

March 24, 2011

2011-1220s

03/05

Amendment to SB 156-FN-LOCAL

Amend RSA 259:29-b as inserted by section 3 of the bill by replacing it with the following:

259:29-b EVR Integrator. "EVR integrator" shall mean an electronic vehicle registration integrator who provides necessary hardware, software, software updates, or network connections between dealer agents, the department, and towns for the electronic transmittal and receipt of registration and title data and money.

Amend RSA 261:74-h as inserted by section 5 of the bill by replacing it with the following:

261:74-h Appointment of Dealer Agents. Notwithstanding the provisions of RSA 261:148, subject to the direction and approval of the commissioner, the director may appoint retail vehicle dealers meeting the requirements of RSA 261:103-a as agents to process electronically through EVR integrators motor vehicle registrations, permits for registration, or registration transfers and title applications in conjunction with the sale of a new or used vehicle by said dealer. The director shall consult with the New Hampshire City and Town Clerks' Association and the New Hampshire Automobile Dealers Association prior to approving the appointment of any dealer agent. Any permits issued by a dealer agent shall indicate that it was processed by a dealer agent. No dealer shall be permitted to act as a dealer agent unless the department of safety has implemented an agreement with an EVR integrator.

Amend RSA 261:74-n, II as inserted by section 5 of the bill by replacing it with the following:

II. When a dealer agent processes motor vehicle registrations, permits for registration, transfers of registration, and title applications the applicable town or city or clerk shall receive the following fees through the dealer agent and the EVR integrator: the registration permit fee under RSA 261:153, I, the town clerk fee under RSA 261:152, the town clerk and dealer title application fees under RSA 261:4, IV, the municipal agent fee under RSA 261:74-d, and, when applicable, the waste reclamation fee under RSA 261:153, V, the municipal transportation improvement fee under RSA 261:153, VI, the collection of permit fees in unorganized places under RSA 261:160, and the public parking facilities fee under RSA 261:154. The town or city may use the fees received under this paragraph to offset the expenses of examination and auditing of the EVR program, if required. Towns, cities, and the state shall inform the EVR integrator annually as to the details of the fees listed in this paragraph and provide timely notice to the EVR integrator of any changes to fees.

Amend RSA 261:74-s, I as inserted by section 5 of the bill by replacing it with the following:

I. Upon approval of the attorney general and governor and council, the department may enter into an agreement with an electronic vehicle registration integrator to provide, at no cost to the state, any necessary hardware, software, or network connections between dealer agents, the department, and towns for the electronic transmittal and receipt of registration and title data and money. The electronic vehicle registration integrator shall be authorized in the agreement to collect and transfer funds electronically from the dealers to the department, towns, cities, or town clerks, where appropriate. RSA 261:141-b and RSA 80:52-c shall not apply to electronic transfers to or from an electronic vehicle registration integrator or a dealer agent. Electronic vehicle registration integrators shall transmit funds within one business day of the completion of the registration to the appropriate entity if the entity accepts electronic transfers of funds and within 20 days to any other entity. The transmittal of funds by an EVR integrator to a town or city or the state pursuant to this section shall not be considered a delegation of a town's, city's, or state's deposit function as set forth in RSA 41:29.

Amend RSA 261:74-s as inserted by section 5 of the bill by inserting after paragraph V the following new paragraph:

VI. The EVR integrator shall be responsible for all reasonable costs, as determined by the commissioner in consultation with the EVR integrator, of the state and towns for:

(a) The development, implementation, and integration of, and ongoing maintenance required to effectively operate, the EVR program; and

(b) Software modifications necessary to integrate EVR program moneys and data into software used by towns to transmit registration data to the state.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Sen. Forrester is in opposition to the motion of Ought to Pass as Amended on SB 156-FN-L.

SB 160-FN, relative to the definition and regulation of installment loans. Ought to Pass, Vote 4-3. Senator Morse for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass.

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

The following Senators voted Yes: Forrester, Bradley, Forsythe, Sanborn, White, Lambert, Carson, Boutin, De Blois, Rausch, Morse, Stiles, Bragdon.

The following Senators voted No: Gallus, Houde, Groen, Odell, Kelly, Luther, Larsen, Barnes, D'Allesandro, Merrill, Prescott.

Yeas: 13 - Nays: 11

Adopted, bill ordered to Third Reading.

SB 165-FN, relative to the Medicaid uncompensated care fund and the Medicaid enhancement tax. Ought to Pass with Amendment, Vote 6-0. Senator Morse for the committee.

**Senate Finance
March 23, 2011
2011-1179s
01/09**

Amendment to SB 165-FN

Amend the bill by replacing sections 2-5 with the following:

2 Uncompensated Care Fund; Definitions. Amend RSA 167:63, IV to read as follows:

IV. "Hospital" means general hospitals and special hospitals for rehabilitation required to be licensed under RSA 151 ~~[and receiving medicaid diagnosis related group (DRG) payments]~~, but not including government facilities ***and hospitals excluded from taxation under RSA 84-A pursuant to federal approval of a waiver of the broad-based requirement as described in 42 C.F.R. section 433.68.***

3 Uncompensated Care Fund; Rehabilitation Hospitals Deleted. Amend RSA 167:64, I(d) to read as follows:

(d) The commissioner may provide reimbursement for uncompensated care costs in accordance with the approved schedule of payments through either Medicaid fee for service rate adjustments or disproportionate share hospital payment adjustments, or a combination thereof. Funds available under this section shall be ~~[first]~~ allocated to ensure that critical access hospitals ~~[and rehabilitation hospitals]~~ receive reimbursement for reported uncompensated care costs at the rate of 100 percent of the individual hospital limit for disproportionate share payments as determined by the commissioner consistent with the provisions of 42 U.S.C. section 1396r-4(g). Non-critical access hospitals shall receive reimbursement at the highest uniform percentage of each hospital limit as the funds made available under this section permit. The commissioner may create additional categories of need and make further reasonable distinctions among hospitals when determining the methodology for payments under this section, as necessary, to ensure that no hospital is unduly burdened by the fiscal effect of uncompensated care costs.

4 Uncompensated Care Fund; Duties of Commissioner. Amend RSA 167:65, II to read as follows:

II. Seek input from ~~[the chairman of]~~ the senate health and human services committee, ~~[the chairman of]~~ the house health, human services and elderly affairs committee, ~~[the chairmen of]~~ the house and senate finance

committees, ~~[the insurance department,] and [representatives of]~~ **the** hospitals currently participating in the uncompensated care program ~~[in developing]~~ **during the development of** the uncompensated care payment system required under paragraph I, and present a report ~~[detailing all the options and making recommendations]~~ **describing the planned payment methodology** to the oversight committee on health and human services, established under RSA 126-A:13~~[, not later than January 1, 2010]~~ **prior to payments being made.**

II-a. Submit a waiver calculation pursuant to the process outlined in 42 C.F.R. section 433.68 for the purpose of waiving RSA 84-A, Medicaid enhancement tax liability for Hampstead hospital, Healthsouth Rehabilitation hospital, Northeast Rehabilitation hospital, and New Hampshire hospital, no later than September 30, 2011.

5 Medicaid Enhancement Tax. Amend RSA 84-A:1, III to read as follows:

III. "Hospital" means general hospitals and special hospitals for rehabilitation **that provide inpatient and outpatient hospital classes of health care services consistent with the requirements of 42 C.F.R. section 433.56 and the Medicaid state plan definitions of inpatient hospital and outpatient hospital services**, required to be licensed under RSA 151 ~~[and receiving medicaid diagnosis related group (DRG) payments]~~, but not including government facilities **and hospitals excluded from taxation under this chapter pursuant to federal approval of a waiver of the broad-based requirement as described in 42 C.F.R. section 433.68.**

2011-1179s

AMENDED ANALYSIS

This bill allows exclusion of rehabilitation hospitals by federal waiver from the uncompensated care fund and clarifies the application of the Medicaid enhancement tax.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted.

Sen. Morse moved to Table SB 165-FN.

The question is on the motion to Table. Adopted.

INTERNAL AFFAIRS

CACR 14, relating to funding public education. Providing that the general court shall define reasonable standards for elementary and secondary public education, establish reasonable standards of accountability, and mitigate local disparities in educational opportunity and fiscal capacity. Ought to Pass with Amendment, Vote 3-1. Senator Bradley for the committee.

Internal Affairs

March 22, 2011

2011-1142s

04/05

Amendment to CACR 14

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

RELATING TO: public education.

PROVIDING THAT: the general court shall have the authority to define standards for public education, establish standards of accountability, mitigate local disparities in educational opportunity and fiscal capacity, and shall have full discretion to determine the amount of state funding for education.

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

I. That the second part of the constitution be amended by inserting after article 5-b the following new article:

[Art.] 5-c [Public Education.] In fulfillment of the provisions with respect to education set forth in Part II, Article 83, the general court shall have the authority, responsibility, and discretion to define reasonable standards for elementary and secondary public education, to establish reasonable standards of accountability therefor, and to mitigate local disparities in educational opportunity and fiscal capacity. Further, in the exercise thereof, the general court shall have full discretion to determine the amount of, and methods of raising and distributing, State funding for education.

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2012.

III. That the selectmen of all towns, cities, wards, and places in the state are directed to insert in their warrants for the said 2012 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2011 session of the general court shall be approved.

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

“Are you in favor of amending the second part of the constitution by inserting after article 5-b a new article to read as follows:

[Art.] 5-c [Public Education.] In fulfillment of the provisions with respect to education set forth in Part II, Article 83, the general court shall have the authority, responsibility, and discretion to define reasonable standards for elementary and secondary public education, to establish reasonable standards of accountability therefor, and to mitigate local disparities in educational opportunity and fiscal capacity. Further, in the exercise thereof, the general court shall have full discretion to determine the amount of, and methods of raising and distributing, State funding for education.”

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote “Yes” or “No.” If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words “Questions Relating to Constitutional Amendments proposed by the 2011 General Court” shall be printed in bold type at the top of the ballot.

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

2011-1142s

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that the general court shall have the authority to define standards for public education, establish standards of accountability, mitigate local disparities in educational opportunity and fiscal capacity, and shall have full discretion to determine the amount of state funding for education.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Groen, Sanborn, Odell, White, Luther, Lambert, Boutin, Barnes, De Blois, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Forsythe, Houde, Kelly, Carson, Larsen, Rausch, D’Allesandro, Merrill.

Yeas: 16 - Nays: 8

Adopted by necessary 3/5 vote, bill ordered to Third Reading.

SB 196, relative to the enrollment of laws. Re-refer to committee, Vote 3-0. Senator Lambert for the committee.

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

Sen. Forsythe moved Ought to Pass.

Sen. Forsythe moved that the Rules of the Senate be suspended to allow for the introduction of a non-germane amendment to SB 196.

The question is on the adoption of the motion to suspend the Rules to allow for the introduction of a non-germane amendment to SB 196. Adopted by necessary 2/3 vote.

Sen. Forsythe offered a floor amendment.

Sen. Forsythe, Dist. 4
 March 24, 2011
 2011-1223s
 04/10

Floor Amendment to SB 196

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

AN ACT relative to the renomination or reelection of teachers and prohibiting assessing teacher performance based solely on assessment scores.

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

1 Failure to be Renominated or Reelected. Amend RSA 189:14-a to read as follows:

189:14-a Failure to be Renominated or Reelected.

I.(a) Any teacher who has a professional standards certificate from the state board of education and who has taught for one or more years in the same school district shall be notified in writing on or before April 15 or within 15 days of the adoption of the district budget by the legislative body, whichever is later, if that teacher is not to be renominated or reelected, provided that no notification shall occur later than the Friday following the second Tuesday in May.

(b) Any such teacher who has taught for [3] **5** consecutive years or more in the same school district and who has been so notified may request in writing within 10 days of receipt of said notice a hearing before the school board and may in said request ask for reasons for failure to be renominated or reelected. For purposes of this section only, a leave of absence shall not interrupt the consecutive nature of a teacher's service, but neither shall such a leave be included in the computation of a teacher's service. Computation of a teacher's service for any other purposes shall not be affected by this section. The notice shall advise the teacher of all of the teacher's rights under this section. The school board, upon receipt of said request, shall provide for a hearing on the request to be held within 15 days. The school board shall issue its decision in writing within 15 days of the close of the hearing.

II. Any teacher who has a professional standards certificate from the state board of education and who has taught for [3] **5** consecutive years or more in any school district in the state shall, after having taught for [2] **3** consecutive years in any other school district in the state, be entitled to all of the rights for notification and hearing *set forth* in [paragraphs I(b), III, and IV of] this section.

III. In cases of nonrenomination because of unsatisfactory performance, [~~the superintendent of the local school district shall demonstrate, at the school board hearing, by a preponderance of the evidence, that the teacher had received written notice that the teacher's unsatisfactory performance may lead to nonrenomination, that the teacher had a reasonable opportunity to correct such unsatisfactory performance, and that the teacher had failed to correct such unsatisfactory performance. Nothing in this paragraph shall be construed to require the superintendent or the school board to provide a teacher with remedial assistance to correct any deficiencies that form the basis for such teacher's nonrenomination~~] **a teacher's performance shall not be based solely on state or national assessment scores received by pupils in such teacher's class.**

[~~IV. In all proceedings before the school board under this section, the burden of proof for nonrenewal of a teacher shall be on the superintendent of the local school district by a preponderance of the evidence.~~]

2 Applicability. Section 1 of this act shall not apply to any teacher who has taught for 3 or 4 consecutive years in any school district in the state as of the effective date of this act.

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

2011-1223s

AMENDED ANALYSIS

This bill amends the length of time required for a teacher to be entitled to the rights of notification and hearing for failure to be renominated or reelected. The bill also prohibits a teacher's performance from being considered unsatisfactory based solely on state or national assessment scores received by pupils in such teacher's classes.

The question is on the adoption of the Floor Amendment. Adopted.

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

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Houde, Kelly, Larsen, Boutin, D'Allesandro, Merrill.

Yeas: 18 - Nays: 6

Adopted, bill ordered to Third Reading.

SCR 1, urging Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States. Re-refer to committee, Vote 3-0. Senator Lambert for the committee.

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

JUDICIARY

SB 44, relative to payment of rent pending a landlord-tenant action. Re-refer to committee, Vote 4-0. Senator Houde for the committee.

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

PUBLIC AND MUNICIPAL AFFAIRS

SB 2, relative to adoption of spending caps by municipalities. Ought to Pass with Amendment, Vote 4-1. Senator Boutin for the committee.

Public and Municipal Affairs

March 22, 2011

2011-1149s

10/09

Amendment to SB 2

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

1 New Paragraph; City Charters; Vote. Amend RSA 49-C:12 by inserting after paragraph II the following new paragraph:

III. Notwithstanding any contrary provision in paragraph I, the adoption of an override threshold provision to a spending cap included in a charter pursuant to RSA 49-C:33, I(d) shall provide for a supermajority vote of the elected body to adopt the annual budget.

2 New Subparagraph; City Charters; Optional Provisions; Spending Cap Added. Amend RSA 49-C:33, I by inserting after subparagraph (c) the following new subparagraph:

(d) A limit on the annual increases to spending under the city budget adopted pursuant to RSA 49-C:23. Such spending cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. A spending cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.

3 Town Charters; Optional Matters; Spending Cap. Amend RSA 49-D: 3, I(e) to read as follows:

(e) Other matters of local concern may be included in a charter including, but not limited to, conflict of interest provisions which shall be at least as strict as those established in the general laws, citizen powers of initiative, referendum and recall as described in RSA 49-C, [and] *the adoption and periodic review of an administrative code, a merit personnel system, a purchasing system, and a town investment policy, and the adoption of a spending cap limiting the annual increases in spending under the town budget. Such spending cap shall include an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. Such spending cap may specifically exclude certain dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.*

4 Municipal Budget Law; Application. Amend RSA 32:2 to read as follows:

32:2 Application. RSA 32:1-13, shall apply to all towns, school districts, cooperative school districts, village districts, and any other municipal entities, including those created pursuant to RSA 53-A or 53-B, which adopt their budgets at an annual meeting of their voters, *except RSA 32:5-b, which shall apply only in those towns or districts adopting that section pursuant to RSA 32:5-c*. RSA 32:14-23, concerning budget committees, shall apply only in those towns or districts adopting that section pursuant to RSA 32:14, I, and shall apply automatically in school districts or village districts located wholly within towns adopting that section.

5 New Sections; Local Spending Cap; Adoption of Local Spending Cap. Amend RSA 32 by inserting after section 5-a the following new sections:

32:5-b Local Spending Cap.

I. This section shall be known as the local spending cap act.

II. In this section, the following terms shall have the following meanings:

(a) "Inflation rate" means the Consumer Price Index for all Urban Consumers (CPI-U), Northeast urban, as determined by the Bureau of Labor Statistics, for the 12-month period ending the fifth month prior to the annual meeting of the local subdivision or, for local subdivisions that have adopted RSA 40:13, the fifth month prior to the second session of the annual meeting.

(b) "Net fiscal year appropriation" means all appropriations approved by the legislative body for the fiscal year, including the operating budget and all amounts appropriated pursuant to special warrant articles and other individual warrant articles, less estimated revenues and credits.

(c) "Estimated revenues and credits" means the estimated revenues and credits for the ensuing year as shown on the budget certified by the governing body or budget committee and posted with the warrant for the annual meeting pursuant to RSA 32:5.

(d) "Taxes raised for the prior fiscal year" means the property taxes raised for the prior fiscal year as shown on the budget certified by the governing body or budget committee and posted with the warrant for the annual meeting pursuant to RSA 32:5.

III.(a) In any local subdivision that has adopted this section, the net fiscal year appropriation as defined in paragraph II shall not exceed the taxes raised for the prior fiscal year by more than the spending cap authorized when this section was adopted except as provided in this paragraph.

(b) Once the legislative body has approved a net fiscal year appropriation that reaches the limit of the spending cap, each subsequent appropriation that increases the net fiscal year appropriation shall be deemed approved only if it receives an affirmative vote of those present and voting equal to or greater than the override threshold authorized when this section was adopted. If an appropriation that causes the net fiscal year appropriation to exceed the spending cap is approved by a simple majority but less than the override threshold, the appropriation shall be deemed approved only to the amount that is within the spending cap. If an appropriation is initially approved by the legislative body but subsequently disapproved upon reconsideration, that appropriation shall not be counted against the spending cap. Any subsequent appropriation that exceeded the spending cap when voted upon by the legislative body, but that would be within the spending cap when the reconsidered item is removed, shall be deemed approved if it has received a affirmative vote of a simple majority of the legislative body present and voting, even if it was initially deemed disapproved for failure to achieve the override threshold.

(c) For a legislative body that has adopted an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D, appropriations shall be deemed approved in the order that they appear on the official ballot.

(d) Any increase over the prior year's costs under a collective bargaining agreement entered into pursuant to RSA 273-A shall not be counted toward the spending cap.

IV. The governing body shall inform the legislative body of the maximum amount of appropriations that will result in a net fiscal year appropriation that complies with the spending cap. This information shall be contained in a notice placed conspicuously on the warrant or, in the case of a legislative body that uses an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D, on the official ballot. The governing body may, in its discretion, include an explanation of how the proposed appropriations compare to the amount permitted by the spending cap. Any reasonable explanation shall be sufficient, and any errors contained in such notice, if made in good faith and without an intent to mislead the legislative body, shall not be a basis for invalidating any actions of the legislative body.

V. A spending cap established pursuant to this section shall not apply to appropriations made at any special meeting held due to an emergency pursuant to RSA 31:5, I(a) or (b) or a disaster pursuant to RSA 31:5-a.

32:5-c Adoption of Local Spending Cap Act.

I. The provisions of RSA 32:5-b may be adopted by any local political subdivision of the state whose legislative body raises and appropriates funds through an annual meeting. A 3/5 majority of those voting on the question shall be required to adopt the provisions of RSA 32:5-b. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

II. The question shall be placed on the warrant of the annual meeting by the governing body or by petition under the procedures set out in RSA 39:3 or RSA 197:6.

III. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

IV. The wording of the question shall be: "Shall we adopt the provisions of RSA 32:5-b, known as the local spending cap act, and limit annual spending increases to (spending cap), with (override threshold) vote required to exceed that limit?" The "spending cap" shall be a fixed dollar amount, a fixed percent or a percent derived from the inflation rate. The "override threshold" shall be either three-fifths or two-thirds.

V. Voting on the question shall be by ballot, but the question shall not be placed on the official ballot used to elect officers, except in the case of a legislative body that uses an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question. If a 3/5 majority of those voting on the question vote "yes," RSA 32:5-b shall apply within the local subdivision for the fiscal year and for all subsequent years until it is rescinded as provided in paragraph VI.

VI. Any local subdivision which has adopted RSA 32:5-b may consider rescinding its action in the manner described in paragraphs I through V. The wording of the question shall be: "Shall we rescind the provisions of RSA 32:5-b, known as the local spending cap act, as adopted by the (local subdivision) on (date of adoption), so that there will no longer be a limit on annual spending increases?" A 3/5 majority of those voting on the question shall be required to rescind the provisions of this section, except in the case of repeal by charter enactment under RSA 49-D. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

6 Municipal Budget Law; Limitation on 10 Percent Increase. Amend introductory paragraph of RSA 32:18 to read as follows:

32:18 Limitation of Appropriations. In any municipality electing this subdivision, or any district wholly within a town electing this subdivision, the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting. Provided, however, that in any town or district which has adopted the provisions of RSA 32:5-b, any increase which would exceed the spending cap may only be adopted according to the procedures for exceeding the spending cap in RSA 32:5-b. In official ballot referendum municipalities, the recommendation of the budget committee made for the first session of the meeting shall be used for determining the 10 percent limitation. These totals shall include appropriations contained in special warrant articles. Money may be raised and appropriated for purposes included in the budget or in the warrant and not recommended by the budget committee, but not to an amount which would increase the total appropriations by more than the 10 percent allowed under this paragraph. The 10 percent increase allowable under this paragraph shall be computed on the total amount recommended by the budget committee less that part of any appropriation item which constitutes fixed charges. Fixed charges shall include appropriations for:

7 Home Rule Municipal Charters; Preservation. Amend RSA 49-B:13 to read as follows:

49-B:13 Separability; Preservation.

I. The provisions of this chapter and of charters created under this chapter are separable. If any portion of this chapter, or of any charter adopted under the provisions of this chapter, or if the application of the chapter or such charter to any person or circumstance shall be invalid, the remainder of the chapter or such charter or the application of such invalid portions to other persons or circumstances shall not be affected by such invalidation.

II. All town and city charters which have been adopted, revised or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby ***endorsed, ratified, validated, and*** legalized, ~~[provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state]~~ ***and are fully enforceable.***

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D unless that municipality adopts a budgetary town meeting, official ballot town meeting, an official ballot town council, or representative town meeting pursuant to RSA 49-D:3, I-a, II, II-a and III. ***Except that a municipality may adopt a spending cap as provided in RSA 49-C:33, I(d) or RSA 49-D:3, I(e), notwithstanding the provisions of RSA 32:5-b and RSA 32:5-c.***

8 Use of Official Ballot; Vote. Amend RSA 40:13, XIII to read as follows:

XIII. Approval of all warrant articles shall be by simple majority except for questions which require a ***3/5 or 2/3*** vote by law, contract, or written agreement.

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

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Houde, Kelly, Larsen, D'Allesandro, Merrill.

Yeas: 19 - Nays: 5

Adopted, bill ordered to Third Reading.

SB 193, relative to nomination of political organizations. Ought to Pass, Vote 4-0. Senator Stiles for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

HB 32, relative to statutory references to the choice and duties of town auditors. Ought to Pass, Vote 3-0. Senator Merrill for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

HB 42, relative to the appropriate officials with whom to file for a primary. Ought to Pass, Vote 5-0. Senator Barnes for the committee.

Sen. Barnes moved to Table HB 42.

The question is on the motion to Table. Adopted.

HB 288-FN-L, relative to payment for election services to unincorporated places. Ought to Pass, Vote 5-0. Senator Merrill for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

HB 410, extending the reporting date of the committee to study dispatch times within the enhanced 911 system and requiring quarterly meetings of the committee. Ought to Pass, Vote 5-0. Senator Boutin for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

TRANSPORTATION

HB 441-FN, relative to muffling devices on boats. Ought to Pass, Vote 4-1. Senator Boutin for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

Sen. Odell moved to remove SB 40 from the table.

The question is on the motion to remove SB 40 from the table. Adopted.

WAYS AND MEANS

SB 40, making technical corrections to meals and rooms tax laws. Ought to Pass with Amendment, Vote 6-0. Senator Boutin for the committee.

Ways and Means

February 15, 2011

2011-0362s

10/04

Amendment to SB 40

Amend the bill by replacing section 1 with the following:

1 Suspension and Revocation of Licenses; Appeal. Amend RSA 78-A:5, II to read as follows:

II. Any operator aggrieved by a suspension, revocation or refusal of the commissioner may appeal from the ruling either by application to the board of tax and land appeals or by petition to the superior court in the county in which he or she resides or conducts his or her operation within 10 days after receiving written notice of the commissioner's ruling in the manner prescribed in RSA 78-A:15. The board of tax and land appeals or the court, as the case may be, shall hear the appeal forthwith. If the appealing operator files a bond running to the state in an amount fixed by the board of tax and land appeals or the court, with a surety company authorized to do business in the state as surety, conditioned on the payment of taxes due and to become due during the pendency of the appeal, the ruling appealed from is inoperative if it is a ruling of suspension or revocation. If the ruling appealed from is a refusal to ~~issue a~~ **renew an existing** license, the ~~commissioner shall issue the license~~ **existing license shall remain valid** during the pendency of the appeal if the appeal bond is given.

Amend the bill by replacing section 3 with the following:

3 Collection of Tax; Gender Neutral. Amend RSA 78-A:7, II to read as follows:

II. Each operator shall keep books and records in a form acceptable to the department showing the amount of all taxes collected. The operator shall pay the taxes over to the state as provided in this section. If the department believes that special action is necessary because payment of taxes collected may be in jeopardy, it may direct an operator to keep all taxes collected separate from any other funds. The department may require that the taxes be periodically deposited in a bank designated by the department, in an account in the name of the department. The department may withdraw these tax collections from the bank account and apply them to the payment of the taxes due from the operator. When an operator commingles tax money with money belonging to him **or her**, the claim of the state for the tax is traceable, is enforceable against all other claims and takes precedence over all other claims against the commingled funds. No taxes collected by an operator under this chapter may be sent outside the state without the written consent of the department.

The pending question is on the adoption of the Committee Amendment. Adopted.

Sen. Odell offered a floor amendment.

Sen. Odell, Dist. 8

March 30, 2011

2011-1308s

09/04

Floor Amendment to SB 40

Amend the bill by replacing section 5 with the following:

5 New Paragraph; Collection of Tax; Separate Bank Account. Amend RSA 78-A:7 by inserting after paragraph IV the following new paragraph:

V. If an operator has failed to timely remit tax due under RSA 78-A:8 for at least 2 consecutive months, the commissioner may require an operator to maintain a separate bank account in a federally insured bank chartered under the laws of New Hampshire or the federal government, with a branch within the state for the

deposit of meals and rooms tax. All meals and rooms tax collected by the operator shall be deposited at least weekly in the separate bank account for monthly remittance to the state under RSA 78-A:8. When an operator required by the commissioner to maintain a separate bank account has made timely payments under RSA 78-A:8 for a period of 24 consecutive months, the requirement to maintain a separate bank account shall cease.

The question is on the adoption of the Floor Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Recess. Out of recess.

SPECIAL ORDER

COMMERCE

SB 54, repealing certain condominium registration and filing requirements. Re-refer to committee, Vote 3-0. Senator White for the committee.

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

Sen. De Blois asserts Rule 2-15 on SB 54.

Sen. De Blois moved Ought to Pass.

Sen. De Blois offered a floor amendment.

Sen. DeBlois, Dist. 18

March 30, 2011

2011-1311s

05/03

Floor Amendment to SB 54

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

AN ACT relative to the definition of declarant under the condominium act and the duties of the committee to study laws relating to condominium and homeowners' associations.

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

1 Condominium Act; Definition of Declarant; Mortgage Holder Exempt. Amend RSA 356-B:3, XIII to read as follows:

XIII. "Declarant" means all persons who execute or propose to execute the declaration or on whose behalf the declaration is executed or proposed to be executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this paragraph who come to stand in the same relation to the condominium as their predecessors did shall also come within this definition; provided, however, this definition shall not include any homeowners association which is not controlled by a declarant ***or any mortgage holder that forecloses on a declarant's interest in the condominium, provided that the foreclosing mortgagee refrains from exercising any of the rights reserved to the declarant by this chapter. A foreclosing mortgagee may transfer all such rights to a successor builder or developer without registration or exemption, provided that, prior to such intended transfer, the mortgagee files an affidavit with the attorney general identifying the intended transferee by name, address, and telephone number, and listing the number of units or interests remaining in the condominium, and the number of units or interests so transferred.***

2 Duties of the Committee to Study the Laws Relating to Condominium and Homeowners' Associations. Amend RSA 356-B:70, IV(a) to read as follows:

(a) Study laws relevant to condominium and other homeowners' associations, ***and the rules and regulations adopted thereunder, to assess their scope and application and whether revision or amendment is necessary.***

3 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

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

2011-1311s

AMENDED ANALYSIS

This bill excludes a foreclosing mortgagee from the definition of declarant under the condominium act. The bill also clarifies the duties of the committee to study the laws relating to condominium and homeowners' associations.

Recess. Out of recess.

The question is on the adoption of the Floor Amendment. Adopted.

Sen. De Blois asserts Rule 2-15 on SB 54.

The question is on the adoption of the motion of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

Sen. De Blois asserts Rule 2-15 on SB 54.

SB 120, relative to alcoholic beverage advertising restrictions. Inexpedient to Legislate, Vote 2-2. Senator Prescott for the committee.

The question is on the adoption of the Committee recommendation of Inexpedient to Legislate. Failed.

Sen. Stiles moved Ought to Pass.

Sen. Houde offered a floor amendment.

Sen. Houde, Dist. 5

March 30, 2011

2011-1318s

01/09

Floor Amendment to SB 120

Amend the bill by replacing section 3 with the following:

3 Alcoholic Beverages; Advertising Restrictions. Amend RSA 179:31, XI to read as follows:

~~XI. [No advertising or promotion shall be done by the use of a billboard. Advertising shall not contain any reference to a "happy hour" except that a "happy hour schedule" may be posted within the licensed premises, not in view of any public way and an on-premises licensee may advertise or promote the holding of a "champagne brunch" or similar package.]~~ *Licensees may advertise liquor and beverage prices separately from any other advertisement or promotion.*

XI-a. Notwithstanding paragraph XI, if the legislative body of a city or town adopts a provision prohibiting exterior signs promoting the sale of liquor or beverages at reduced prices, such signs shall not be permitted in that city or town.

The question is on the adoption of the Floor Amendment.

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

The following Senators voted Yes: Bradley, Forsythe, Houde, Groen, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Barnes, De Blois, Rausch, D'Allesandro, Merrill, Morse, Prescott, Bragdon.

The following Senators voted No: Gallus, Forrester, Sanborn, Boutin, Stiles.

Yeas: 19 - Nays: 5

Adopted.

The question is on the adoption of the motion of Ought to Pass as Amended. Adopted, bill ordered to Third Reading.

SB 197, regulating guaranteed price plans and prepaid contracts for heating oil, kerosene, or liquefied petroleum gas. Ought to Pass, Vote 3-1. Senator Houde for the committee.

The question is on the adoption of the Committee recommendation of Ought to Pass. Adopted, bill ordered to Third Reading.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 4, requiring legislative approval of cost items for state employee contract negotiations. Ought to Pass with Amendment, Vote 3-2. Senator Luther for the committee.

Senate Executive Departments and Administration**March 24, 2011****2011-1195s****08/10****Amendment to SB 4**

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 the Committee Amendment. Failed.

The question is on the adoption of the motion of Ought to Pass. Failed.

Sen. Bradley moved Re-refer to committee.

The question is on the adoption of the motion of Re-refer to committee. Adopted.

FINANCE

SB 129-FN, requiring valid photo identification to vote in person. Ought to Pass with Amendment, Vote 4-3. Senator Barnes for the committee.

Senate Finance**March 24, 2011****2011-1219s****03/05****Amendment to SB 129-FN**

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

AN ACT relative to presenting photo identification to vote in person and relative to the election fund.

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

1 Election Fund. Amend RSA 5:6-d, III to read as follows:

III. The secretary of state is authorized to accept, budget, and, subject to the limitations of this paragraph, expend monies in the election fund received from any party for the purposes of conducting elections, voter and election official education, the purchase or lease of voting equipment which complies with Help America Vote Act of 2002, Public Law 107-252, election law enforcement, and improvements to related information technology, including acquisition and operation of an automated election management system. The secretary of state shall not expend any monies in the election fund unless the balance in the fund following such expenditures shall be at least ~~[15]~~ **12** times the estimated annual cost of maintaining the programs established to comply with the Help America Vote Act of 2002, Public Law 107-252.

2 Obtaining a Ballot. Amend RSA 659:13 to read as follows:

659:13 Obtaining a Ballot.

I. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, ~~[announce his or her name to one of the ballot clerks who shall thereupon repeat the name]~~ **approach the ballot clerk to check in. The ballot clerk shall request that the voter present a valid photo identification meeting the requirements of paragraph II. The ballot clerk shall announce the name of the voter;** and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction. The voter, if still qualified to vote in the town or ward **and having presented a valid photo identification verifying the voter's identity**, and unless challenged as provided for in RSA ~~[659:27-33]~~ **659:27 through 659:33**, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

II. A valid photo identification shall satisfy all the following:

(a) The identification shows the name of the individual to whom the identification was issued, and the name substantially conforms to the name in the individual's voter registration record.

(b) The identification shows a photograph of the individual to whom the identification was issued.

(c) The identification includes an expiration date, and the identification is not expired.

(d) The identification was issued by the United States, the state of New Hampshire, a political subdivision of the state of New Hampshire, an educational institution licensed or approved by the postsecondary education commission, or a business or institution recognized by local election officials.

III. If a voter does not have a photo identification that satisfies the requirements of paragraph II, the photo identification requirement may be satisfied by having a digital photograph of the voter taken by an election official to be kept on file.

3 New Sections; Authority of Secretary of State. Amend RSA 659 by inserting after section 13-a the following new sections:

659:13-b Emergency Authority for the Secretary of State. The secretary of state may suspend the photo identification provisions of RSA 659:13 to the extent necessary to accommodate equipment or software failure, power outages, or other unforeseen situations that prevent the provisions of RSA 659:13, III from being carried out.

659:13-c Authority to Expend Moneys From the Election Fund. The secretary of state may expend moneys from the election fund established under RSA 5:6-d for the purpose of purchasing equipment and implementing improvements to information technology that may be required by RSA 659:13, III.

4 Requesting Photo Identification. At any election prior to October 1, 2012, when issuing a ballot pursuant to RSA 659:13, the ballot clerk shall request that the voter present a valid photo identification issued by the United States, the state of New Hampshire, a political subdivision of the state of New Hampshire, an educational institution licensed or approved by the postsecondary education commission, or a business or institution recognized by local election officials. If the voter does not have a photo identification requested under this section, the ballot clerk shall inform the voter that such a photo identification will be required in future elections in order to vote.

5 Effective Date.

I. Section 2 of this act and RSA 659:13-b as inserted by section 3 of this act shall take effect October 1, 2012.

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

2011-1219s

AMENDED ANALYSIS

This bill requires that a voter present a valid photo identification to vote in person or have his or her photograph taken by an election official to be kept on file. This bill also reduces the balance that the secretary of state is required to maintain in the election fund.

Recess. Out of recess.

The question is on the adoption of the Committee Amendment. Adopted.

The question is on the adoption of the Committee recommendation of Ought to Pass as Amended.

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Houde, Odell, Kelly, Larsen, D'Allesandro, Merrill.

Yeas: 18 - Nays: 6

Adopted, bill ordered to Third Reading.

JUDICIARY

SB 88, relative to physical force in defense of a person. Ought to Pass with Amendment, Vote 3-1. Senator Luther for the committee.

Senate Judiciary**March 24, 2011****2011-1222s****04/05****Amendment to SB 88**

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Paragraph; Physical Force in Defense of a Person. Amend RSA 627:4 by inserting after paragraph III the following new paragraph:

IV. A person is not justified in using deadly force on another to defend himself or herself or a third person from deadly force that he or she provoked.

2011-1222s**AMENDED ANALYSIS**

This bill removes a person's duty to retreat from an encounter involving deadly force. The bill also provides that a person is not justified in using deadly force on another to defend himself, herself, or a third person from the use of deadly force that he or she provoked.

The question is on the adoption of the Committee Amendment. Failed.

Sen. De Blois offered a floor amendment.

Sen. DeBlois, Dist. 18**March 30, 2011****2011-1310s****04/09****Floor Amendment to SB 88**

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

AN ACT relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Criminal Threatening. Amend RSA 631:4, IV to read as follows:

IV. *Except as otherwise prohibited by statute*, a person *who is anywhere he or she has a right to be and* who responds to a threat which would be considered by a reasonable person as likely to cause serious bodily injury or death to the person or to another by displaying *or brandishing* a firearm or other means of self-defense with the intent to warn away the person making the threat shall not have committed a criminal act under this section.

2011-1310s**AMENDED ANALYSIS**

This bill:

I. Removes a person's duty to retreat from an encounter involving deadly force.

II. Provides that a person is not justified in using deadly force on another to defend himself, herself, or a third person from the use of deadly force that he or she provoked.

III. Provides that, except as otherwise prohibited by statute, a person who is anywhere he or she has a right to be and who displays or brandishes a firearm or other means of self-defense to warn off a threat shall not be guilty of criminal threatening.

The question is on the adoption of the Floor Amendment. Adopted.

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

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, White, Luther, Lambert, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

The following Senators voted No: Houde, Odell, Kelly, Carson, Larsen, D'Allesandro, Merrill.

Yeas: 17 - Nays: 7

Adopted, bill ordered to Third Reading.

MOTION TO ADJOURN FROM EARLY SESSION

Sen. Bradley moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted. Adjournment from the Early Session.

LATE SESSION

Third Reading and Final Passage

CACR 14, relating to public education. Providing that the general court shall have the authority to define standards for public education, establish standards of accountability, mitigate local disparities in educational opportunity and fiscal capacity, and shall have full discretion to determine the amount of state funding for education.

SB 2, relative to adoption of spending caps by municipalities.

SB 3-FN-A-L, making comprehensive changes to the state retirement system.

SB 22, relative to alternative regulation of small incumbent local exchange carriers.

SB 40, making technical corrections to meals and rooms tax laws.

SB 50, making various changes to laws regulating trusts and trust companies.

SB 52-FN, excluding persons convicted of violent crimes and sexually violent persons from mandatory early release on probation or parole.

SB 54, relative to the definition of declarant under the condominium act and the duties of the committee to study laws relating to condominium and homeowners' associations.

SB 58-FN-A, adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

SB 75-FN, relative to clarification of part-time service in the state retirement system.

SB 76-FN, relative to the authority of the department of revenue administration to adopt rules and to administer state tax laws.

SB 86, requiring the department of labor to warn employers of certain violations prior to imposing a fine.

SB 88, relative to physical force in defense of a person and relative to the brandishing of a firearm or other means of self-defense.

SB 92, establishing an economic strategic commission to review the relationship between business and government.

SB 111, relative to short sales of a homeowner's residence.

SB 117, relative to private postsecondary career schools and the student tuition guaranty fund.

SB 120, relative to alcoholic beverage advertising restrictions.

SB 121, relative to the application of the worker adjustment and retraining notification act.

SB 129-FN, relative to presenting photo identification to vote in person and relative to the election fund.

SB 154-FN, (New Title) reforming and renaming the comprehensive shoreland protection act.

SB 156-FN-L, (New Title) authorizing retail vehicle dealers to act as agents of the division of motor vehicles for vehicle registrations and title applications.

SB 160-FN, relative to the definition and regulation of installment loans.

SB 166, relative to medical benefits for beneficiaries of a police officer or firefighter killed in the line of duty.

SB 170, relative to the New Hampshire Medical Malpractice Joint Underwriting Association.

SB 179, relative to qualified purchasing alliances.

SB 189, relative to the definition of mortgage loan originator.

SB 193, relative to nomination of political organizations.

SB 196, relative to the renomination or reelection of teachers and prohibiting assessing teacher performance based solely on assessment scores.

SB 197, regulating guaranteed price plans and prepaid contracts for heating oil, kerosene, or liquefied petroleum gas.

HB 32, relative to statutory references to the choice and duties of town auditors.

HB 45, relative to the Connecticut Lakes headwater citizens committee.

HB 91, relative to the reporting by state agencies with capital budget projects to the capital budget overview committee.

HB 93, relative to medical documentation for a crossbow permit for a person with a disability.

HB 167, naming the Enfield wildlife management area after former fish and game biologist Henry Laramie.

HB 195, relative to special permits for transportation of deer.

HB 288-FN-L, relative to payment for election services to unincorporated places.

HB 410, extending the reporting date of the committee to study dispatch times within the enhanced 911 system and requiring quarterly meetings of the committee.

HB 441-FN, relative to muffling devices on boats.

HB 525, naming a bridge in the town of Merrimack in honor of Corporal Timothy Gibson, U.S.M.C.

LIST OF RULE 2-15'S FOR THE DAY

Sen. Bradley: SB 154-FN.

Sen. De Blois: SB 54.

Sen. Sanborn: SB 86.

Sen. White: SB 50, SB 110, SB 119, SB 170, SB 179.

ANNOUNCEMENTS

MOTION TO RECESS TO CALL OF THE CHAIR

Sen. Bradley 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 and when we recess, we recess to the Call of the Chair.

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