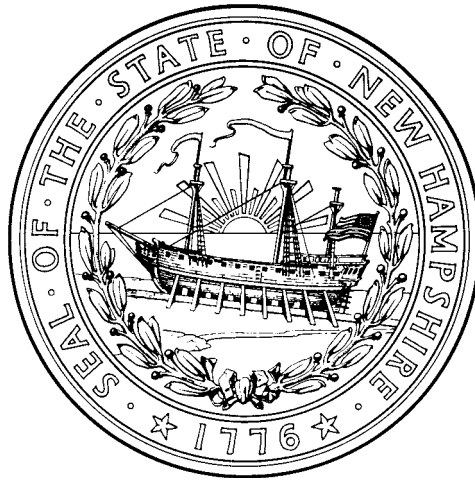


March 16, 2011
Nos. 8-9

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 9, 2011 SESSION
COMMENCEMENT – MARCH 16, 2011 SESSION

SENATE JOURNAL 8 *(continued)*

March 9, 2011

HOUSE MESSAGE

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

HB 90, relative to enforcement of the requirement of boaters to have a safe boater education certificate.

HB 106, relative to filing for town offices.

HB 259, requiring the supreme court to adopt rules of evidence for the judicial branch family division.

HB 289, relative to procedures followed by funeral directors.

HB 313, requiring parental consent for court referral of a minor to a juvenile diversion program.

HB 441-FN, relative to muffling devices on boats.

HB 488-FN, relative to criminal records checks for employment with child day care agencies.

HB 510, requiring marital masters to be New Hampshire residents.

HB 511, relative to retired judges over 70 years of age.

HB 525, naming a bridge in the town of Merrimack in honor of Corporal Timothy Gibson, U.S.M.C.

HB 535, relative to the committee to study parole boards and parole board procedures.

HB 572-FN, relative to official oppression.

HB 634-FN, relative to payment of guardian ad litem and mediator fees in marital cases where the parties are indigent.

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 36-FN-L, reducing the fee for copies of birth certificates. (Ways and Means Committee.)

HB 90, relative to enforcement of the requirement of boaters to have a safe boater education certificate. (Transportation Committee.)

HB 91, relative to the reporting by state agencies with capital budget projects to the capital budget overview committee. (Capital Budget Committee.)

HB 111, relative to redispensing unused drugs. (Health and Human Services Committee.)

HB 113, prohibiting the use of state funds for New Hampshire public television. (Finance Committee.)

HB 148, relative to federal funding for motorcycle-only roadside checkpoints. (Transportation Committee.)

HB 187-FN-A, relative to the carry forward periods for the business enterprise tax credit against the business profits tax. (Ways and Means Committee.)

HB 209, establishing a study committee to recommend a continuing revenue estimating process to produce revenue forecasts. (Ways and Means Committee.)

HB 289, relative to procedures followed by funeral directors. (Health and Human Services Committee.)

HB 364, relative to the membership of the state committee on aging. (Health and Human Services Committee.)

HB 441-FN, relative to muffling devices on boats. (Transportation Committee.)

HB 488-FN, relative to criminal records checks for employment with child day care agencies. (Health and Human Services Committee.)

HB 525, naming a bridge in the town of Merrimack in honor of Corporal Timothy Gibson, U.S.M.C. (Transportation 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 9

March 16, 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.

In the early 400s, when Saint Patrick was captured by Irish pirates and dragged off to slavery as a shepherd, he had five years to think. Years after, he returned to that place of captivity, a cold and rocky wet place, not unlike New Hampshire in the spring.

He is known for his strategy: he took Druid pillars and put crosses on them. We can take a page from Saint Patrick's playbook, no matter what religion or perspective we hold on things spiritual. Patrick led by embracing hardship as a teaching tool, using silent captivity to search his heart rather than his head, and moved his agenda forward by carving signs into stone rather than messages into flesh. As leaders, our calling is to lead with strong tenderness, not weak power plays. Let us pray.

God of all tenderness, so change our hearts and move within our souls that we, like the shepherds of every land, may learn that it is in silence and not in the debate that we will find our answers. Grant us the good use of our silence. *Amen.*

Sen. Kelly led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Sen. Forrester introduced Alannah LeBlanc and Abby Downing, students from Ashland Elementary School, serving as Senate Pages today.

FINANCE REPORT

Sen. Morse reported that the following bills will not come to Finance: SB 12-FN, SB 13-FN, SB 14-FN, SB 70-FN, SB 75-FN, SB 77-FN, SB 79-FN, SB 83-FN, SB 84-FN, SB 132-FN-A-L, SB 134-FN, SB 142-FN, SB 152-FN, SB 155-FN-A, SB 162-FN, SB 167-FN-A-L, SB 182-FN-A-L.

SUSPENSION OF SENATE RULES

Sen. Bradley moved that the Senate Rules be suspended in order to allow SB 156-FN-L to be reported out of the Commerce Committee, as the Committee acted after the Senate deadline.

The question is on the motion to suspend the rules. Adopted by necessary 2/3 vote.

COMMITTEE REPORTS

SPECIAL ORDER

Without objection President Bragdon moved SB 3-FN-A-L be Special-Ordered to immediately following lunch.

COMMERCE

SB 70-FN, relative to remedies in landlord-tenant actions. Re-refer to committee, Vote 4-0. Senator De Blois for the committee.

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

Sen. De Blois moved Ought to Pass.

Sen. Houde offered a floor amendment.

Sen. Houde, Dist. 5

Sen. Sanborn, Dist. 7

Sen. De Blois, Dist. 18

March 14, 2011

2011-0866s

05/10

Floor Amendment to SB 70-FN

Amend the bill by replacing section 2 with the following:

2 Remedies. Amend RSA 540-A:4, IX(b) to read as follows:

(b) Notwithstanding the provisions of subparagraph (a), a landlord who violates RSA 540-A:3, VII shall be subject only to an award of actual damages, plus costs and reasonable attorneys fees.

(c) The provisions of subparagraph (a) shall not apply to petitions brought in good faith by a landlord or a tenant to determine whether a request for entry under RSA 540-A:3, V is reasonable and lawful.

2011-0866s

AMENDED ANALYSIS

This bill shortens the time period during which a landlord is required to store a tenant's abandoned property. The bill also reduces the amount of damages available for violations of the requirement.

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

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

SB 77-FN, relative to the special fund for payment for second injuries under the workers' compensation law. Re-refer to committee, Vote 4-0. Senator Sanborn for the committee.

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

SB 156-FN-L, authorizing retail vehicle dealers to act as agents of the division of motor vehicles in the issuance of vehicle titles and registrations. Ought to Pass with Amendment, Vote 4-0. Senator Sanborn for the committee.

Commerce

March 11, 2011

2011-0807s

03/09

Amendment to SB 156-FN-LOCAL

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

AN ACT authorizing retail vehicle dealers to act as agents of the division of motor vehicles for vehicle registrations and title applications.

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

1 Statement of Purpose.

I. This act known as the Electronic Vehicle Registration (EVR) law will allow New Hampshire residents to choose the most convenient place for them to register their newly purchased vehicle: their town or city hall or the New Hampshire dealership where it was purchased.

II. Currently, New Hampshire residents and businesses can only register their vehicles at town or city halls. In nearly 30 other states, customers can choose to electronically register their vehicle at the dealership. These dealers through an electronic intermediary securely and quickly electronically transmit the official local and state fees and data to the appropriate entity. This act seeks to replicate the success in those states.

III. This act will:

- (a) Allow customers to securely register their vehicles at authorized dealerships but only at time of sale of the vehicle.
- (b) Improve customer service at the towns, cities, state, and dealerships.
- (c) Allow law enforcement access to temporary plate information.
- (d) Allow New Hampshire dealers to collect and electronically remit the official fees, securely and promptly, to the towns or cities and the state as they have successfully done in other states.
- (e) Allow towns and cities and the state to collect their respective revenues more quickly and safely.
- (f) Allow towns and cities and the state to quickly integrate moneys and data into their respective accounting or related software.

IV. All current town revenues are to stay with the towns. The fees collected by dealer agents will be transmitted to the same government entity where the fees are currently sent or collected. This includes the registration permits fees (RSA 261:153, I), town clerk fee (RSA 261:152), title application fee (RSA 261:4, IV), municipal agent fee (RSA 261:74-d), waste reclamation fee (RSA 261:153, V), municipal transportation improvement fee (RSA 261:153, VI), collection of permit fees in unorganized places (RSA 261:160), and the public parking facilities fee (RSA 261:154).

2 New Paragraph; Notification of Unpaid Fines. Amend RSA 231:130-a by inserting after paragraph II the following new paragraph:

III. The town or city clerk may provide the notifications permitted by subparagraphs I(b) and I(c) to electronic vehicle registration integrators operating under an agreement with the department of safety pursuant to RSA 261:74-s.

3 New Sections; Definitions. Amend RSA 259 by inserting after section 29-a the following new sections:

259:29-b EVR Integrator. "EVR integrator" shall mean an electronic vehicle registration integrator who provides 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.

259:29-c EVR Program. "EVR program" means the electronic vehicle registration program that allows dealer agents to process 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 pursuant to RSA 261:74-h through 261:74-s.

4 Bond Required. Amend RSA 261:98, I to read as follows:

I.(a) Every retail vehicle dealer as defined in RSA 259:89-a, every auto wholesale dealer as defined in RSA 259:5-a, every automotive recycling dealer as specified by RSA 261:123, and certain utility dealers as defined by RSA 259:121 if required by rule of the commissioner, shall obtain a bond or equivalent proof of financial responsibility as described in paragraph VI, and continue in effect a surety bond or other equivalent proof of financial responsibility satisfactory to the department in the amount of \$25,000 executed by a surety company authorized to transact business in the state by the insurance department.

(b) The bond or its equivalent shall only be for the benefit of:

(1) A natural person who purchases a vehicle from a dealer, an automotive recycling dealer, or a utility dealer, and who suffers loss on account of:

[{a}] (A) The dealer's default or nonpayment of all valid bank drafts, including checks, drawn by the dealer for the purchase of motor vehicles;

[{b}] (B) The dealer's failure to deliver in conjunction with the sale of a motor vehicle a valid motor vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle;

[{c}] (C) The motor vehicle purchased from the dealer was stolen; or

[{d}] (D) The dealer's intentional or knowing failure to disclose the vehicle's actual mileage at the time of sale.

(2) A New Hampshire town or city or the state of New Hampshire which suffers loss on account of:

(A) The dealer's failure to collect all official fees related to motor vehicle registration, permits for registration, registration transfer, and title applications required and permitted under this chapter; or

(B) The dealer's nonpayment of all official fees collected to register a motor vehicle, issue a permit for registration, transfer a registration, or title a vehicle.

(c) Subparagraph (b)(2) shall apply to only those dealers who are dealer agents appointed pursuant to RSA 261:74-h. Subparagraph (b)(2), if applicable, shall not require the dealer to obtain a separate bond.

5 New Subdivision; Registration by Dealer Agents. Amend RSA 261 by inserting after section 74-g the following new subdivision:

Registration by Dealer Agents

261:74-h Appointment of Dealer Agents. 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.

261:74-i Duration of Appointment. The director shall appoint those dealers that meet the reasonable security requirements and other requirements as set forth in this chapter and in rule. The appointment of any dealer for the purposes of this subdivision shall continue only as long as the ownership of the dealer remains the same, except as provided in RSA 261:74-j and RSA 261:74-q. In case of a transfer of ownership, the new owner may apply to become a dealer agent.

261:74-j Qualifications and Training of Dealer Agents. No dealer shall be appointed as an agent unless the dealer principal or its staff meet the qualifications and successfully complete the training programs established under RSA 261:74-r. No dealer agent may perform the duties required under this subdivision unless the dealer principal or its staff continues to meet the reasonable qualification and training requirements.

261:74-k Duties of Dealer Agents. Each dealer agent or its staff shall perform all the duties necessary to register motor vehicles, issue a permit for registration, transfer motor vehicle registrations, and process title applications unless the director determines otherwise. Dealers shall be responsible to the division, or towns and cities where applicable, for any inventory of title applications, registration forms, and any other materials issued to them and for all moneys collected. The dealer agent through the EVR integrator shall electronically transmit to the appropriate town or city a copy of the newly issued registration permit and a signed affidavit of residency, and, where applicable, a copy of the registration transferred and a copy of either the resident tax affidavit or the tax receipt as set forth in 261:74-n, III. Dealer agents shall be in compliance with the Red Flags Rule, 16 C.F.R. part 681, and the Safeguards Rule, 16 C.F.R. part 314, as promulgated by the Federal Trade Commission.

261:74-l Security and Record-Keeping Requirements. Before receiving title applications, registration forms, and any materials related to electronic vehicle registration, dealer agents shall adopt and implement security and record-keeping requirements satisfactory to the director.

261:74-m Examination of Dealer Agent Records. Any dealer appointed as an agent pursuant to this subdivision shall be deemed to have given its consent for authorized agents of the department and any auditor employed or commissioned by the state of New Hampshire or the municipality to examine, during usual business hours and with reasonable notice, the records required to be preserved under this chapter; provided no such agent shall be subjected to unnecessary or unreasonable examinations or investigations.

261:74-n Collection of Fees.

I. Dealer agents shall collect the fees required to process motor vehicle registrations, permits for registration, transfers of registrations, and title applications as set forth in this chapter.

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 title application fee 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 by the town or city to offset the expenses of examination and auditing of dealer agents. 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.

III. When a registration permit applicant resides in a town that assesses, levies, or collects a resident tax pursuant to RSA 72:1, the applicant shall comply with the provisions of RSA 261:71 either by showing or causing to be shown to the dealer agent a tax receipt or by executing the affidavit permitted under RSA 261:71 at the time of sale. If a resident tax town electronically shares resident tax data with the EVR integrator, neither the affidavit nor tax receipt is needed if such data reveals the resident tax has been paid. An applicant shall not be permitted to register a vehicle if such data reveals that the applicant is delinquent in paying the resident tax.

IV. If the applicant resides in a town or city which has adopted the provisions of RSA 231:130-a and the town or city has provided notification of unpaid fines to the electronic vehicle registration integrator pursuant to 231:130-a, III, a dealer agent shall not issue a registration permit to the applicant unless the town or city clerk's records reveal no outstanding parking violations in this state.

V. No dealer agent shall assume or absorb any fee listed in paragraph II owed by a customer or advertise or assert that the dealer will assume or absorb such fee. Any violation of this paragraph shall subject the dealer agent to a fine of \$100 per violation.

261:74-o Optional Electronic Vehicle Registration Charge. Each dealer agent may collect a charge from the consumer to transmit electronically the registration and title data and the fees collected required to register a motor vehicle, issue a permit for registration, transfer a motor vehicle registration, or title a motor vehicle. This optional charge is in addition to other dealership fees or charges and the fees otherwise required to register a motor vehicle, issue a permit for registration, transfer a motor vehicle registration, or title a motor vehicle. The charge shall be separately stated and identified as "optional EVR charge" on the purchase agreement between the customer and the dealer agent. If a customer declines to pay the optional electronic vehicle registration charge, the dealer agent is not required to register the vehicle, issue a permit for registration, title the vehicle, or collect the required fees. 261:74-p Proof of Residency. A dealer agent shall not process any vehicle registration, permit for registration, or transfer of motor vehicle registrations of a natural person unless the applicant has provided to the dealer agent a current New Hampshire driver's license or New Hampshire nondriver's picture identification card with an address matching the application to be transmitted and the natural person has signed an affidavit of residency which specifies the town or city in which he or she currently resides. Dealer agents shall not process registrations for homeless residents without a permanent address eligible to register under RSA 261:52-c. A dealer agent may register the vehicles of a corporation or other legal entity with a place of business in this state if the applicant is a registered business in New Hampshire and is in good standing and an authorized representative of the corporation or entity has signed an affidavit specifying the New Hampshire town or city in which the corporation or entity resides, is headquartered, or operates.

261:74-q Revocation or Suspension of Agency Status.

I. The director may revoke or suspend a dealer's agent status for any violation of law or rule governing electronic vehicle registration, any violation of the dealer agent's security and record-keeping plan, revocation or suspension of the dealer license, or any other action that in the director's opinion adversely affects the registration system. If the director determines that a dealer agent has not continued to fulfill the requirements of this subdivision or has violated any of the rules adopted pursuant to this subdivision, the director shall commence a process to suspend or revoke the agent status of the dealer. The director shall take into account concerns of towns, cities, and the EVR advisory group established under RSA 261:74-s, IV about dealer agents.

II. Any dealer agent whose appointment is sought to be suspended or revoked shall be afforded the opportunity for a hearing before the bureau of hearings prior to such suspension or revocation. Following the hearing, the director may suspend or revoke the appointment as dealer agent upon satisfactory evidence of malfeasance, misfeasance, theft, financial instability, or violation of the rules adopted under this subdivision and that the revocation or suspension is in the best interest of the state.

III. Upon the revocation of such agent status, the dealer agent shall surrender to the department or its authorized agent all materials issued by the state under the provision of this subdivision and all records pertaining to all matters authorized by this subdivision.

IV. Whenever an authorized auditor of the state of New Hampshire or the department determines that the public interest requires immediate action, the director may issue a temporary order suspending the authority of a dealer agent to register or transfer registrations, pending a hearing.

261:74-r Rulemaking. The director, with input from the EVR advisory group established under RSA 261:74-s, IV, shall adopt rules pursuant to RSA 541-A relative to:

I. Minimum standards for the qualification of dealer agents and their staffs.

II. Minimum security standards for the dealer agent, staff, and dealer agent facility.

III. Training requirements and programs for dealer agents and their staffs.

IV. The collection, remittance, and auditing of state and local funds pursuant to this subdivision.

V. The completion of required reports and records and their submission to the department and towns or cities.

VI. Minimum standards of accuracy, legibility, and timeliness of submission for documents and reports.

VII. The indemnification and reimbursement of the state or town or city in case of loss.

VIII. The efficient and economical administration of this subdivision.

IX. Revocation and suspension of dealer agent status.

X. The ability to enter into agreements with dealer-agents and EVR integrators.

XI. The creation of an error resolution process to resolve registration errors resulting from the EVR Program.

261:74-s Agreements with Electronic Vehicle Registration Integrators.

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 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.

II. An agreement under this section shall provide for minimum standards established by the department and the department of information technology for transfers of data and funds, financial solvency of the electronic vehicle registration integrator, training of dealer-agents, and town clerks, if necessary, by the electronic vehicle registration integrator, implementation of an electronic vehicle registration integrator "help line" to assist dealer agents, automatic and accurate calculation of all fees required by this chapter, electronic transmittal of applicable documents to the towns, cities, and state, bonding to indemnify the state, municipalities, and dealer agents in the event of loss, security, and privacy of motor vehicle records, access by state-appointed auditors to the records and reports of the electronic vehicle registration integrator, minimum standards for the accuracy and timeliness of submission of data and funds, reporting to the state, towns, or cities, transmittal of fees required to register a motor vehicle, issue a permit for registration, transfer a motor vehicle registration, or title a vehicle provided said fees are transmitted to the appropriate entity in the manner set forth in this chapter, conditions for cancellation of the agreement, and the other requirements related to the efficient and economical administration of this subdivision. The reporting to the towns, cities, and state shall provide notice of registrations processed, allow proper and accurate collection and remittance of town or city moneys, allow integration of data and moneys into software used by towns and cities to transmit registration data to the state, allow towns and cities to clearly identify the particular fees collected and remitted, and provide vehicle specific data including the maker's list price, and vehicle make and model. The department shall solicit input from affected municipalities before entering into an agreement under this section.

III. To ensure the EVR integrator and dealer agents are accurately calculating the applicable fees and properly transmitting the fees and data, and that towns and cities may integrate the data and fees into the software used by towns and cities to transmit registration data to the state, the EVR program shall be implemented as follows:

(a) The first year of the EVR program shall involve a limited number of dealers and towns and cities as determined by the director and a single electronic vehicle registration (EVR) integrator to ensure that the EVR program is successfully implemented. The director shall select which towns, cities, and dealers shall participate during the first year from a list submitted to the director by the senate president and the speaker of the house of representatives within 60 days of the effective date of this section. The director shall select the participants after obtaining the input of the New Hampshire City and Town Clerks' Association and the New Hampshire Automobile Dealers Association. The director shall select both large and small municipalities to participate and towns and cities that use software to transmit registration data to the state, with at least 2 towns or cities for each type of software.

(b) After the EVR program has operated for 270 days, the director shall seek formal input from the EVR advisory group established in paragraph IV and towns, cities, and dealer agents involved in the program as to whether or not the EVR integrator and dealer agents are properly calculating and assessing applicable fees, properly transmitting the fees and data, and properly integrating data and moneys into the software used by towns and cities to transmit registration data to the state.

(c) After the EVR program has operated for one year, the director shall incorporate the remaining towns and cities into the program and additional dealers may apply to become dealer agents unless the director, in consultation with the EVR advisory group established in paragraph IV determines that the EVR integrator has failed to materially comply with the program requirements. If such a determination is made, the director shall delay the addition of towns and cities and dealers for up to 180 days to permit the EVR integration to materially comply with the program requirements.

(d) One year after the incorporation of the remaining towns and cities into the EVR program, the department may enter into agreements with additional EVR integrators.

(e) After the incorporation of all towns and cities into the EVR program, the director shall evaluate on a periodic basis, no less than annually, whether the EVR integrators and dealer agents are properly calculating and assessing applicable fees, properly transmitting the fees and data, and properly integrating data and moneys into the software used by towns and cities to transmit registration data to the state.

IV. The director shall form an EVR advisory group consisting of representatives from the department of information technology, the division of motor vehicles, the department of safety, the New Hampshire City and Town Clerks' Association, the New Hampshire Government Finance Officers Association, organizations representing the interests of town managers and administrators, the New Hampshire Municipal Association, the New Hampshire Local Government Information Network, the New Hampshire Automobile Dealers Association, the EVR integrators, and other persons the director deems necessary. The primary purpose of the EVR advisory group is to ensure that the EVR program meets the requirements in rules and law. The EVR advisory group shall meet at least quarterly.

V. The director shall periodically evaluate whether the EVR program affects registration-related assistance provided to towns and cities by the department.

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

2011-0807s

AMENDED ANALYSIS

This bill authorizes retail vehicle dealers to act as agents of the division of motor vehicles for vehicle registrations and title applications.

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 Committee on Finance (Rule 4-3).

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

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.

SB 160-FN, relative to the definition and regulation of installment loans. Ought to Pass with Amendment, Vote 3-1. Senator Sanborn for the committee.

Commerce
March 8, 2011
2011-0705s
08/09

Amendment to SB 160-FN

Amend RSA 384-H:2, III as inserted by section 1 of the bill by replacing it with the following:

III. "Installment loan" or "loan" means a loan, advance of money, or extension of credit with a repayment term agreed to by the parties and not exceeding 180 days, including any loan transaction conducted via any medium whatsoever, including paper, facsimile, Internet, or telephone.

Amend RSA 384-H:4, II as inserted by section 1 of the bill by replacing it with the following:

II. No lender shall make an installment loan to a consumer if:

(a) The total of all loan payments for that loan coming due within the first calendar month of the loan exceeds the lesser of:

(1) \$1,000; or

(2) Thirty-five percent of the consumer's gross monthly income.

(b) The consumer has another outstanding installment loan with the lender.

Amend RSA 384-H:10, II as inserted by section 1 of the bill by replacing it with the following:

II. The commissioner may conduct examinations of the books, records, and loan documents of a licensee after giving reasonable notice to the licensee.

Amend RSA 384-H:12, II (b)-(d) as inserted by section 1 of the bill by replacing it with the following:

(b) The requirements under RSA 384-H:13 are satisfied;

(c) The payment of the annual license fee required under paragraph IV; and

(d) The applicant has submitted such other information as the commissioner may reasonably deem necessary.

Amend the introductory paragraph of RSA 384-H:12, IV as inserted by section 1 of the bill by replacing it with the following:

IV. A licensee shall pay an annual fee of \$450. In addition to the license fee, the reasonable expense of any examination or hearing by the commissioner under any provisions of this chapter shall be borne by the licensee. If a licensee fails to renew its license prior to its expiration, the license shall automatically expire; however, the commissioner, in his or her discretion, may reinstate an expired license upon:

Amend RSA 384-H:13 as inserted by section 1 of the bill by replacing it with the following:

384-H:13 Net Worth. Each applicant and licensee shall maintain a positive net worth at all times. Each applicant shall demonstrate that it has available for use in such business at each location specified in the application, at least \$25,000, or in the case of a licensee, has such amount available or actually invested in loans made under this chapter at each location or has posted a continuous surety bond in the amount of \$25,000 in the form and under the terms determined by the commissioner.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect 30 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.

Sen. Bradley moved to Table SB 160-FN.

The question is on the motion to Table. Adopted.

SB 162-FN, relative to federal health care reform 2010. Ought to Pass with Amendment, Vote 4-0. Senator White for the committee.

Commerce
March 8, 2011
2011-0704s
01/09

Amendment to SB 162-FN

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

1 New Subdivision; Federal Health Care Reform. Amend RSA 400-A by inserting after section 66 the following new subdivision:

Federal Health Care Reform

400-A:67 Implementation of Public Law 111-152. The general court shall determine any policy regarding implementation of Public Law 111-152 if it is determined that the state of New Hampshire is required to implement such law. The insurance commissioner, or designee, shall develop recommendations in conjunction with the insurance reform oversight committee, established in RSA 400-A:68, prior to the enforcement of Public Law 111-152. In addition, any state official or agency that seeks to enforce the insurance provisions of Public Law 111-152 shall develop recommendations in conjunction with the oversight committee.

400-A:68 Joint Health Insurance Reform Oversight Committee Established.

I. There is established an oversight committee on health insurance reform consisting of 5 members as follows:

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

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

II. The terms of the members shall be for the biennium and shall be coterminous with their membership in the general court. The committee shall elect a chairman from its membership.

III. The committee shall provide legislative oversight, policy direction, and recommendations for legislation to implement Public Law 111-152 as it determines appropriate.

2 Effective Date. This act shall take effect July 1, 2011.

2011-0704s

AMENDED ANALYSIS

This bill establishes an oversight committee to implement Public Law 111-152, should it be determined that the state of New Hampshire is required to implement such law.

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

Sen. White asserts Rule 2-15 on SB 162-FN.

Sen. White offered a floor amendment.

Sen. White, Dist. 9
March 14, 2011
2011-0853s
01/09

Floor Amendment to SB 162-FN

Amend RSA 400-A:68, II as inserted by section 1 of the bill by replacing it with the following:

II. The terms of the members shall be for the biennium and shall be coterminous with their membership in the general court. The committee shall elect a chairman from its membership. The committee shall meet at the call of the chairman who may call a meeting as often as necessary.

Amend RSA 400-A:68 as inserted by section 1 of the bill by inserting after paragraph III the following new paragraph:

IV. The committee shall make a report, together with any recommendations for legislation, to the president of the senate, the speaker of the house of representatives, the chairpersons of the house and senate committees having jurisdiction over commerce issues and the house and senate committees having jurisdiction over health and human services issues by October 1, 2011 and annually thereafter.

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

Sen. White asserts Rule 2-15 on SB 162-FN.

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 162-FN.

EDUCATION

SB 113, relative to nonpublic schools receiving public funds. Inexpedient to Legislate, Vote 3-0. Senator Carson for the committee.

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

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.

Senate Education

March 8, 2011

2011-0714s

04/10

Amendment to SB 117

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

1 Postsecondary Education Commission; Rulemaking Authority. Amend the introductory paragraph of RSA 188-D:8-a to read as follows:

188-D:8-a Rulemaking Authority. The executive director~~[-in consultation with the postsecondary education commission;]~~ shall adopt rules pursuant to RSA 541-A relative to:

2 Regulation of Private Postsecondary Career Schools; Definitions; Exclusions. RSA 188-D:19 is repealed and reenacted to read as follows:

188-D:19 Definitions; Exclusions.

I. The following definitions shall apply in this subdivision except as otherwise provided:

(a) "Alternative delivery" means a mode of instruction, which does not involve face-to-face instruction between instructor and student in the same geographic location. This mode of instruction shall include Internet, televised, video, telephonic, and correspondence media.

(b) "Entity" means any individual, firm, partnership, association, corporation, organization, trust, school, or other legal entity or combination of these entities.

(c) "Executive committee" means the executive committee of the postsecondary education commission as defined in the postsecondary education commission bylaws.

(d) "Executive director" means the executive director of the postsecondary education commission, or designee.

(e) "Instructor" means any person who teaches, trains, or educates students.

(f) "Occupational" means related to an occupation or vocation.

(g) "Physical presence" means any physical location, place of contact, telephone exchange, or mail drop in this state, and if an individual is conducting one or more of the following activities within this state:

(1) Advertising.

(2) Solicitation of potential students.

(3) Enrollment of students.

- (4) Providing student services.
- (5) Student mentoring.
- (6) Instruction of students.

(h) "Private postsecondary career school" means any for-profit or nonprofit, non-degree granting, postsecondary career entity maintaining a physical presence in this state and providing vocational or occupational education or training for tuition or a fee to the public. Private and postsecondary career schools that offer resident or non-resident programs, including programs using modes of alternative delivery, beyond the secondary school level to the public shall be included in this definition regardless of the fact that the school's tuition and fees from education and training programs constitute only a part of the school's revenue.

(i) "Student" means any person enrolled in a course or program at a private postsecondary career school.

(j) "Vocational" means related to an occupation or vocation.

II. "Private postsecondary career school" shall not include barbering or cosmetology schools, schools offering training that has been approved by a state agency with appropriate jurisdiction over such training, including but not limited to the plumber's board, the electrician's board, the office of the state fire marshal, the division of fire standards and training and emergency medical services, and schools providing federally-required flight or ground instruction to students.

3 Private Postsecondary Career Schools; Licenses and Fees. Amend RSA 188-D:20 to read as follows:

188-D:20 Licenses and Fees.

I. Prior to registering or renewing a business or trade name, or soliciting students for enrollment, an entity maintaining a physical presence in this state shall be reviewed by the executive director to determine if the entity requires a license. The executive director~~[-in consultation with the postsecondary education commission]~~ shall establish procedures to accomplish this review.

II. [A] **Any** private postsecondary career school maintaining a physical presence in this state **and which assesses tuition or fees for providing vocational or occupational training** shall register to obtain a license or license renewal from the postsecondary education commission. The license shall be issued or renewed pursuant to rules, adopted under RSA 541-A, by the executive director~~[-in consultation with the postsecondary education commission]~~. The rules shall establish minimum criteria, including but not limited to, financial stability, educational program, administrative and staff qualifications, business procedures, facilities, equipment, and ethical practices to be met by licensees, and criteria for rejecting a licensing applicant and for suspending or revoking a license.

III. A school that is not required to obtain a license may apply for a license and, upon issuance of the license, shall be subject to the provisions of RSA 188-D:19 through RSA 188-D:28. Such school may voluntarily surrender its license and revert to its original status.

IV. The executive director~~[-in consultation with the postsecondary education commission]~~ shall adopt rules pursuant to RSA 541-A to establish reasonable fines, reimbursement rates for consultants, and procedures for complaint investigations and enforcement actions, which are necessary for the administration of this subdivision.

V. A private postsecondary career school which the executive director has determined requires a license shall, prior to the issuance of a license, comply with RSA 188-D:20, RSA 188-D:20-a, and RSA 188-D:20-b.

4 Private Postsecondary Career Schools; Surety Indemnification. Amend RSA 188-D:20-a, IV(b) to read as follows:

(b) A term deposit account held in the state treasury, payable to the postsecondary education commission, shall be held in trust for the benefit of students entitled thereto under this section. Said account shall be maintained for the licensing period as a minimum, in an amount determined by the postsecondary education commission. ~~[Any interest shall be paid annually to the appropriate school, unless the term deposit account is activated due to a school closing.]~~ **The licensee, subject to the approval of the executive director, may replace the term deposit with either a bond or an irrevocable letter of credit. After receipt of the appropriate indemnification, the term deposit plus any accrued interest shall be returned to the licensee.** Should the licensee for any reason, while not in default, discontinue operation, all moneys on deposit, including any interest, shall be released to the appropriate school subject to the approval of the executive director.

5 Private Postsecondary Career Schools; Student Tuition Guaranty Fund. Amend RSA 188-D:20-b to read as follows:

188-D:20-b Student Tuition Guaranty Fund.

I.(a) A student tuition guaranty fund is hereby established within the postsecondary education commission and shall be administered by the executive director.

(b) The fund shall be funded from an annual fee to be established by the executive director and assessed against each school duly licensed by the postsecondary education commission and all applicants for a license under RSA 188-D:20.

(c) The funds shall be placed in an interest-bearing account in the office of the state treasurer and the state treasurer shall deposit all interest earned on the funds into the account. ***These funds shall be nonlapsing and continually appropriated to the postsecondary education commission.***

(d) The fund shall be used to reimburse students when a school has failed to faithfully perform its contractual obligations for tuition and instructional fees in the event of a school closing, and the expense of investigating and processing the claims. ~~[The owner of]~~ A school which fails to perform its contractual obligations shall be ~~[personally]~~ liable to reimburse the fund for the difference between the per student amount paid into the fund by the school and the amount paid out of the fund to a student to settle a claim made against the school.

(e) A school's surety bond, irrevocable letter of credit, or other approved form of indemnification shall be exhausted prior to the use of any funds from the student tuition guaranty fund.

II. The executive director~~[-in consultation with the postsecondary education commission,]~~ shall adopt rules, pursuant to RSA 541-A, relative to the administration and maintenance of the fund.

III. The executive director may establish guidelines for exempting schools from providing surety indemnification and from paying into the student tuition guaranty fund, provided the executive director determines that there are sufficient funds in the student tuition guaranty fund for disbursement in the event of a school closure. The executive director shall not grant such an exemption to any school until the school has paid into the student tuition guaranty fund for at least 5 years and is in good standing with the postsecondary education commission. An exemption granted to a school may be revoked if the executive director determines that the student tuition guaranty fund balance is insufficient for disbursement in the event of a school closing.

6 Regulation of Private Postsecondary Career Schools; Revocation. Amend RSA 188-D:22 to read as follows:

188-D:22 Revocation; Hearing. The executive committee~~[-in consultation with the postsecondary education commission]~~ may, after due notice and hearing, revoke the license of any school licensed pursuant to RSA 188-D:20 for violating the provisions of this subdivision or rules adopted hereunder. The provisions of RSA 541 shall apply to actions taken pursuant to this section.

7 Private Postsecondary Career Schools; Use of Fees. Amend RSA 188-D:25 to read as follows:

188-D:25 Use of Fees. Notwithstanding any provision of law to the contrary, all license fees collected under the provisions of this subdivision shall be ~~[retained by]~~ ***deposited in a nonlapsing account within the postsecondary education commission which shall be continually appropriated to the commission*** for use in meeting the expenses of administering this subdivision.

8 Regulation of Private Postsecondary Career Schools; Rulemaking. Amend RSA 188-D:26 to read as follows:

188-D:26 Rulemaking Authority. The executive director ~~[in consultation with the postsecondary education commission]~~ shall adopt such rules, pursuant to RSA 541-A, as may be necessary in order to carry out the provisions of this subdivision.

9 Repeal. The following are repealed:

I. 2004; 190:6, relative to the contingent repeal of the surety indemnification to be provided by private postsecondary career schools.

II. 2004; 190:7, relative to the written certification required for the contingent repeal in 2004; 190:6 to take effect.

10 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.

Sen. Stiles moved to Table SB 117.

The question is on the motion to Table. Adopted.

SB 192, establishing a commission to identify strategies needed for delivering a 21st century education. Ought to Pass with Amendment, Vote 3-0. Senator Stiles for the committee.

Senate Education

March 8, 2011

2011-0713s

04/10

Amendment to SB 192

Amend RSA 189:66, I(e) as inserted by section 1 of the bill by replacing it with the following:

(e) One teacher who is a member of the National Education Association-New Hampshire, appointed by the executive director of the association.

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 194, transferring all real and personal property from the former department of regional community-technical colleges to the board of trustees of the community college system of New Hampshire. Ought to Pass, Vote 3-0. Senator Forsythe for the committee.

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

Sen. Carson asserts Rule 2-15 on SB 194.

MOTION OF RECONSIDERATION

Sen. Bradley, having voted on the prevailing side, moved to reconsider SB 194, the bill having been previously adopted. **Adopted.**

Sen. Carson asserts Rule 2-15 on SB 194.

Sen. Stiles offered a floor amendment.

Sen. Stiles, Dist. 24

March 11, 2011

2011-0809s

04/09

Floor Amendment to SB 194

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2011.

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

Sen. Carson asserts Rule 2-15 on SB 194.

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

Sen. D'Allesandro moved to Table SB 194.

The question is on the motion to Table. Adopted.

Sen. Carson asserts Rule 2-15 on SB 194.

ENERGY AND NATURAL RESOURCES

SB 84-FN, relative to state regulation of the septic system installation process. Re-refer to committee, Vote 5-0. Senator Lambert for the committee.

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

SB 105, excepting department of transportation property from evaluation requirements for certain all terrain and trail bike trails. Ought to Pass with Amendment, Vote 5-0. Senator Bradley for the committee.

Energy and Natural Resources

March 10, 2011

2011-0787s

10/05

Amendment to SB 105

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

AN ACT exempting highway trail crossing from evaluation requirements for certain all terrain and trail bike trails.

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

1 Bureau of Trails; Responsibilities; Highway Trail Crossings. Amend RSA 215-A:3, VI to read as follows:

VI. The supervisor of the bureau shall receive all written requests from persons applying for permission to establish a highway trail crossing or trail connector on any class I, class II or class III highway for any OHRV trail or cross country ski trail on which an OHRV trail maintenance vehicle may operate. The requests shall be submitted by the supervisor to the commissioner of the department of transportation or the commissioner's representative for the department's approval or disapproval. If approval is granted, the commissioner of the department of transportation may post the area with appropriate signs designating the location of the trail crossing or trail connector and providing signs for both sides of the highway at an appropriate distance from the crossing or trail connector to warn the motoring public of said crossing or trail connector. *Highway trail crossing requests and approvals under this paragraph shall be exempt from the provisions of RSA 215-A:42 and RSA 215-A:43.*

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

2011-0787s

AMENDED ANALYSIS

This bill clarifies that highway trail crossings received by the bureau of trails and approved by the department of transportation are exempt from the evaluation process required in establishing certain state trails for ATVs and trail bikes.

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 106, naming the visitor center at Jericho Mountain state park for Robert Danderson. Ought to Pass, Vote 3-0. 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.

SB 142-FN, relative to reorganizing the permitting process within the department of environmental services. Re-refer to committee, Vote 5-0. Senator Merrill for the committee.

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

SB 154-FN, reforming the comprehensive shoreland protection act. Ought to Pass with Amendment, Vote 5-0. Senator Bradley for the committee.

Energy and Natural Resources

March 10, 2011

2011-0788s

06/09

Amendment to SB 154-FN

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

AN ACT reforming and renaming the comprehensive shoreland protection act.

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

1 Shoreland Water Quality Protection Act. Amend the chapter heading of RSA 483-B to read as follows:

CHAPTER 483-B

[COMPREHENSIVE] SHORELAND **WATER QUALITY** PROTECTION ACT

2 Shoreland Water Quality Protection; Minimum Standards Required. Amend RSA 483-B:2, IX to read as follows:

IX. Control building sites, placement of structures, and land uses ***that may potentially damage the public waters.***

3 Minimum Standards Required. Amend RSA 483-B:2, XV to read as follows:

XV. Anticipate and respond to the impacts of development in shoreland areas ***to the extent they may potentially damage the public waters.***

4 Definitions. Amend RSA 483-B:4, VII-b to read as follows:

VII-b. "Impervious surface" means any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, ***and unless designed to effectively absorb or infiltrate water,*** decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways [~~unless designed to effectively absorb or infiltrate water~~]

VII-c. "Horticultural professional" means any arborist, landscape architect, or gardening consultant whose function is that of providing services relative to horticulture.

5 Definitions. Amend RSA 483-B:4, X-b to read as follows:

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

6 Definitions. Amend RSA 483-B:4, XIII to read as follows:

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

7 Definitions. Amend RSA 483-B:4, XV to read as follows:

XV. "Protected shoreland" means, for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, ***except private garden water features and ponds of less than 10 acres,*** and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.

8 Definitions. Amend RSA 483-B:4, XVIII to read as follows:

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

9 Definitions. Amend RSA 483-B:4, XVIII-c to read as follows:

XVIII-c. "Replace in kind" means the substitution of a new structure for an existing legal structure, whether in total or in part[, ~~with no change in size, dimensions, footprint, interior square footage, and location, with the exception of changes resulting in an increase in the setback to public waters~~].

10 Definitions. Amend RSA 483-B:4, XX-a to read as follows:

XX-a. "Shoreland frontage" means the [~~average of the distances of the actual natural shoreline footage and a straight line drawn between property lines~~] ***actual shoreland frontage along the water front measured at the reference line.***

11 Definitions. Amend RSA 483-B:4, XXII to read as follows:

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

12 Definitions. Amend RSA 483-B:4, XXIV-b to read as follows:

XXIV-b. "Unaltered state" means [native] vegetation allowed to grow without cutting, limbing, trimming, pruning, mowing, or other similar activities except as needed [to maintain the health of the plant being trimmed, as allowed by rules of the department] **for plant health, normal maintenance, and renewal.**

13 Enforcement by Commissioner; Duties; Woodland Buffer. Amend RSA 483-B:5, II to read as follows:

II. The commissioner or his **or her** designee may, for cause, enter upon any **subject** land or parcel at any reasonable time **after written notification and with prior permission of the owner** to perform oversight and enforcement duties provided for in this chapter.

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

I.(a) No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter. **For projects which have no impact on water quality and which follow department rules, the applicant shall qualify for a permit by notification. The owner may proceed with the proposed project immediately upon receipt of written notice from the department that a complete and appropriate notification has been received by the department. A notification shall be complete and appropriate provided it meets or exceeds all of the minimum standards under RSA 483-B:9, includes a notification form signed by the owner of property, the name and address of the property owner, the address of the site on which the work will occur, the name of the jurisdictional waterbody, the tax map and lot number on which the proposed work will occur, plans clearly and accurately depicting the work to be completed relative to the reference line of the jurisdictional waterbody, photographs of the area to be impacted, and identification of those project criteria listed below that would qualify the project for a permit by notification. Such project criteria shall include:**

(1) Construction, excavation, and filling, or other activity that impacts less than 1,500 square feet and adds no more than 900 square feet of impervious area within a protected shoreland area.

(2) Construction, excavation, and filling, directly related to stormwater management improvements and erosion control projects or environmental restoration or enhancement projects.

(3) Maintenance, repairs, and improvements of public utilities, public roads, and public access facilities.

(4) Any similar activities defined as qualified for a permit by notification by rules of the department.

(b) The permit application fee shall be \$100 plus \$.10 per square foot of area affected by the proposed activities and shall be deposited in the wetlands and shorelands review fund established under RSA 482-A:3, III. Such fees shall be capped as follows:

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

(2) For projects of 0-9,999 square feet, **that do not qualify for a permit by notification**, \$750.

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

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

(c) If the application is denied after relying on the recommendations of the department, the application fee shall be refunded to the applicant within 30 days of such denial.

15 New Paragraph; Permit Required; Exemption. Amend RSA 483-B:5-b by inserting after paragraph IV-a the following new paragraph:

IV-b. No permits issued by the department pursuant to this chapter that involve private, non-federal undertakings shall require coordination with or clearance by the New Hampshire division of historical resources.

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

V.(a) Within 30 days of receipt of an application for a permit or ~~[75]~~ **30** days of receipt of an application for a permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or a]~~ waiver of the minimum standards of RSA 483-B:9, the department shall request any additional information **reasonably** required to complete its evaluation of the application, and provide the applicant with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and notify the applicant that if all of the requested information is not received within ~~[60]~~ **120** days of the request, the department shall deny the application.

(b) When the department requests additional information pursuant to subparagraph (a), the department shall, within ~~[30]~~ **20** days of the department's receipt of the information:

(1) Approve the application~~[- in whole or in part,]~~ and issue a permit; or

(2) Deny the application, and issue written findings in support of the denial; or

(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(c) Where no request for additional information is made, the department shall, within 30 days of receipt of the application for a permit or ~~[75]~~ **30** days of receipt of an application for a permit that will require a ~~[variance of the minimum standard of RSA 483-B:9, V or a]~~ waiver of the minimum standards of RSA 483-B:9~~[-]~~,

~~[(1)]~~ approve or deny the application~~[- in whole or in part, and issue a permit; or-~~

~~(2) Deny the application, and issue]~~ **with** written findings in support of the ~~[denial; or-~~

~~(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant]~~ **decision.**

(d) Within 5 business days of receipt of a permit by notification filing the department shall issue a written notice to the property owner or agent stating that the notification has either been accepted or rejected.

~~[(d)]~~ **(e)**(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (b) and (c), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.

(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:

(A) Approve the application, in whole or in part, and issue a permit; or

(B) Deny the application and issue written findings in support of the denial.

(3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this chapter and RSA 485-A relating to water quality.

(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (d)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this chapter and RSA 485-A relating to water quality.

~~[(e)]~~ **(f)** All applications filed in accordance with the rules adopted by the department under RSA 483-B:17 and which meet the minimum standards of this chapter shall be approved and a permit shall be issued.

~~[(f)]~~ **(g)** The department may extend the time for rendering a decision under subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this chapter or any rule adopted or permit or approval issued under this chapter, or to have misrepresented any material

fact made in connection with any activity regulated or prohibited by this chapter, pursuant to an action initiated under RSA 483-B:18. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

[(g)] **(h)** The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this chapter, RSA 482-A, RSA 485-A:17, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this chapter, RSA 482-A, RSA 485-A:17, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

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

(d) No fertilizer, except limestone, shall be applied to vegetation or soils located within 25 feet of the reference line of any public water. ***Beyond 25 feet, limestone or any fertilizer containing*** low phosphate[;] ***and*** slow release nitrogen [fertilizer or limestone;] may be used [on areas beyond 25 feet from the reference line].

18 Minimum Shoreland Protection Standards. RSA 483-B:9, V(a) through V(b)(2)(A)(ii) is repealed and reenacted to read as follows:

(a) Maintenance of a Waterfront Buffer.

(1) The waterfront buffer shall be those protected shorelands within 50 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters while allowing homeowner discretion with regard to water access, safety, viewscape maintenance, and lot design.

(2) Within the waterfront buffer all of the following prohibitions and limitations shall apply:

(A) No chemicals, including pesticides or herbicides of any kind shall be applied to ground, turf, or established vegetation except if applied by horticultural professionals who have a pesticide application license issued by the department of agriculture or as allowed under special permit issued by the division of pesticide control under rules adopted by the pesticide control board under RSA 541-A, or fertilizers of any kind except those specified in RSA 483-B:9, II(d).

(B) Rocks and stumps and their root systems shall be left intact in the ground unless removal is specifically approved by the department, pursuant to RSA 482-A or RSA 483-B:11, II or unless rocks are removed to improve runoff control or the planting in the waterfront buffer, and stumps that are removed are replaced with pervious surfaces, new trees, or other woody vegetation.

(C) No natural ground cover shall be removed except as necessary for a foot path to water and access ways as provided under RSA 483-B:9, V(a)(2)(D)(ix), for normal maintenance, to protect the waterfront buffer, cutting those portions that have grown over 3 feet in height for the purpose of providing a view, to provide access to natural areas or shoreline, or as specifically approved by the department, pursuant to RSA 482-A or RSA 483-B.

(D) Starting from the northerly or easterly boundary of the property, and working along the shoreline, the waterfront buffer shall be divided into 50 by 50 foot segments. Owners of land within the waterfront buffer shall measure, calculate, and maintain the tree, sapling, shrub, and groundcover point score in each of these segments in accordance with the methods and standards described in subparagraphs (i) through (ix).

(i) Tree and sapling diameters shall be measured at 4 1/2 feet above the ground for existing trees and saplings, or by caliper at a height consistent with established nursery industry standards when nursery stock is to be used, and are scored as follows:

Diameter or Caliper Score

1 to 3 inches – 1

3 to 6 inches – 5

6 to 12 inches –10

12 to 24 inches –15

Greater than 24 inches- 25

(ii) Shrubs and groundcover plants shall be scored as follows:

Four square feet of shrub area – 1 point.

Ground cover planted in the form of sod or mat – one point for every 50 square feet.

Shrub and groundcover shall not count for more than 25 points in each full segment.

(iii) Dead, diseased, or unsafe trees or saplings shall not be included in scoring.

(iv) If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees, saplings, shrubs, and groundcover (vegetation) may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. If for any reason there is insufficient area for a full segment, or the segment contains areas incapable of supporting trees and saplings, such as areas of rock, ledge, or beaches, the point score requirement for the remaining vegetation in that partial segment shall be reduced proportionally to that required of a full segment. Vegetation shall not be removed from any segment which fails to meet the minimum point score for that segment. Owners are encouraged to take efforts to plan the maintenance of their waterfront buffer areas including the planting of additional non-invasive vegetation to increase point scores within segments, thus providing sufficient points to allow the future removal of vegetation as may become necessary while still meeting the requirements of this paragraph.

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

(vi) Owners of lots and holders of easements on lots that were legally developed prior to July 1, 2008 may maintain but not enlarge cleared areas, including but not limited to existing lawns, gardens, landscaped areas, beaches, and rights-of-way for public utilities, public transportation, and public access, and may repair existing utility structures within the waterfront buffer. Conversion to or planting of cleared areas with non-invasive species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements of subparagraph (g)(2) or (g)(3), or RSA 483-B:11, II.

(vii) Normal trimming, pruning, and thinning of branches to the extent necessary to maintain the health of the planted area as well to protect structures, maintain clearances, and provide views is permitted provided such activity does not endanger the health of the plant.

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

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

(b) Maintenance of a Natural Woodland Buffer.

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of a given lot the vegetation, except lawn, within at least 25 percent of the area outside the waterfront buffer shall be maintained unaltered or improved with additional vegetation. Owners of lots legally developed or landscaped prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area to be maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased.

19 Impervious Surfaces. Amend RSA 483-B:9, V(g) to read as follows:

(g) Impervious surfaces.

(1) ~~[Subject to subparagraph (2),]~~ No more than 30 percent of the area of a lot located within the protected shoreland shall be composed of impervious surfaces, ***unless a stormwater management system designed and certified by a professional engineer that will not concentrate stormwater runoff or contribute to erosion is implemented.***

(2) If the impervious surface area will exceed 20 percent, a stormwater management system shall be implemented and maintained which is designed to infiltrate increased stormwater from development occurring after the effective date of this paragraph in accordance with rules established by the department under RSA 485-A:17.

(3) If the impervious surface area will exceed ~~[20]~~ **30** percent and the ~~[natural]~~ tree, ~~[and]~~ sapling ~~[cover], shrub, and groundcover~~ in the waterfront buffer does not meet the ~~[50-point minimum]~~ **point** score ***requirement*** of RSA 483-B:9, V(a)(2)(D) in any segment, then such segment shall be planted, as determined by rule of the department, with ~~[native]~~ trees, saplings, ***shrubs***, or ~~[natural ground cover]~~ ***groundcover*** in sufficient quantity, type, and location either to meet the minimum score or to provide at least an equivalent level of protection as provided by the minimum score and shall be maintained in accordance with RSA 483-B:9, V(a).

20 Waivers. Amend RSA 483-B:9, V(i) to read as follows:

(i) The commissioner shall have the authority to grant ~~[variances]~~ ***waivers*** from the minimum standards of this section. Such authority shall be exercised ~~[subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b)]~~ ***if the commissioner deems that strict compliance with the minimum standards of this section will provide no material benefit to the public and have no material adverse effect on the environment or the natural resources of the state. Waivers shall also be granted to accommodate the reasonable needs of persons with disabilities.***

21 Nonconforming Lots of Record. Amend RSA 483-B:10, I to read as follows:

I. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single family residential dwelling ***and appurtenant accessory structures*** on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.

22 New Paragraph; Nonconforming Lots of Record; Merger. Amend RSA 483-B:10 by inserting after paragraph II the following new paragraph:

III. Consistent with RSA 674:39-a, a municipality shall not merge adjacent nonconforming lots in common ownership without the consent of the owner.

23 Nonconforming Structures. RSA 483-B:11 is repealed and reenacted to read as follows:

483-B:11 Nonconforming Structures.

I. Except as otherwise prohibited by law or applicable municipal ordinance, nonconforming structures located within the protected shoreland may be repaired, replaced in kind, reconstructed in place, altered, or expanded. Repair, replacement-in kind, or reconstruction in place may alter or remodel the interior design or existing foundation of the nonconforming structure, but shall result in no expansion or relocation of the existing footprint within the waterfront buffer. However, alteration or expansion of a nonconforming structure may expand the existing footprint within the waterfront buffer, provided the structure is not extended closer to the reference line and the proposal or property is made more nearly conforming than the existing structure or the existing conditions of the property.

II. For the purposes of this section, a proposal that is "more nearly conforming" means alteration of the location or size of the existing footprints, or redevelopment of the existing conditions of the property, such that the structures or the property are brought into greater conformity with the design standards of this chapter. Methods for achieving greater conformity include, without limitation, reducing the overall square footage of structural footprints, enhancing stormwater management, adding infiltration areas and landscaping, upgrading wastewater treatment, improving traffic management, or other enhancements that improve wildlife habitat or resource protection.

III. An expansion that increases the sewerage load to an onsite septic system, or changes or expands the use of a septic system, shall require a subsurface approval issued by the department.

IV. Under paragraph I, and except as otherwise prohibited by law or applicable municipal ordinance, primary nonconforming structures may be entirely demolished and reconstructed, with continued encroachment into the waterfront buffer, provided the replacement structure is located farther back from the reference line than the preexisting nonconforming structure.

24 Rulemaking. Amend RSA 483-B:17, IV to read as follows:

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

25 Penalties. RSA 483-B:18, III is repealed and reenacted to read as follows:

III. Persons violating the provisions of this chapter and damaging the public waterway who, after notification by the department, fail to make a good faith effort at remediation and restoration shall be subject to the following:

(a) Upon petition of the attorney general or of the municipality in which the violation occurred, the superior court may levy upon any person violating this chapter a civil penalty in an amount not to exceed \$5,000 for each continuing violation. The superior court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.

(b) The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine of up to \$5,000 for each offense upon any person who violates this chapter. Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an administrative fine under this section shall not preclude the imposition of further civil penalties under this chapter.

(c) Notwithstanding the \$5,000 fine limit in subparagraph (b), the administrative fine for each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation committed by the person or entity.

26 New Paragraph; Shoreland Advisory Committee. Amend RSA 483-B:21 by inserting after paragraph VII the following new paragraph:

VIII. Any permit applications denied under any section of this chapter shall be reported to the shoreland advisory committee by the department.

27 Permit Application Fees; Effective Date. Amend 2008, 5:28, II to read as follows:

II. **Paragraph I of** section 27 of this act shall take effect July 1, ~~[2011]~~ **2016**.

28 Definitions. Amend RSA 483-B:4, XVII(a) to read as follows:

(a) For all lakes, ponds, and artificial impoundments greater than 10 acres in size, the surface elevation as listed in the Consolidated List of Water Bodies subject to the ~~[Comprehensive]~~ shoreland **water quality** protection act as maintained by the department.

29 Shoreland Advisory Committee. Amend the introductory paragraph of RSA 483-B:21 to read as follows:

There is established a shoreland advisory committee. All members shall be New Hampshire residents representing diverse geographic areas of the state. The primary focus of this committee is to address residential shorefront owner input and perspective relating to shoreland development regulated under the ~~[comprehensive]~~ shoreland **water quality** protection act under this chapter and the regulation of shoreline structures under RSA 482-A.

30 Approval to Increase a Load on a Sewage System. Amend RSA 485-A:38, II-a(c) to read as follows:

(c) When applicable, the proposed expansion, relocation, or replacement complies with the requirements of the ~~[comprehensive]~~ shoreland **water quality** protection act, RSA 483-B. 31 Repeal. RSA 483-B:9, V(c)(1), relative to subdivision of land within the protected shoreland, is repealed.

32 Effective Date.

I. Section 27 of this act shall take effect June 30, 2011.

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

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 Committee on Finance (Rule 4-3).

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

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.

Sen. White moved to Table SB 75-FN.

The question is on the motion to Table. Adopted.

SB 152-FN, relative to participation in state employees' group insurance by members of the general court. Ought to Pass with Amendment, Vote 5-0. Senator Carson for the committee.

Senate Executive Departments and Administration

March 9, 2011

2011-0759s

09/01

Amendment to SB 152-FN

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

1 New Paragraphs; Members of the General Court; Insurance Participation. Amend RSA 14-A:6 by inserting after paragraph II the following new paragraphs:

III. The commissioner of the department of administrative services shall invoice and collect amounts due from members. Collected amounts shall be deposited in the employee and retiree benefit risk management fund.

IV. Failure to remit payment for participation pursuant to paragraph I of this section in full within 30 days of billing shall be grounds for terminating benefits, effective with the beginning of the billing period. Reenrollment shall be dependent upon payment of outstanding participation or other amounts.

V. Failure to remit payment in full for participation pursuant to paragraph II of this section within 30 days of billing shall be grounds for permanently terminating benefits effective upon the beginning of the billing period.

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

2011-0759s

AMENDED ANALYSIS

This bill allows the department of administrative services to invoice and collect payment for participation in the group insurance plan by members of the general court.

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. Adopted, bill ordered to Third Reading.

SB 153-FN, relative to the regulation of real estate appraisers by the New Hampshire real estate appraiser board. Ought to Pass with Amendment, Vote 5-0. Senator Carson for the committee.

Senate Executive Departments and Administration

March 8, 2011

2011-0719s

10/01

Amendment to SB 153-FN

Amend the bill by replacing section 2 with the following:

2 New Paragraphs; Definitions. Amend RSA 310-B:2 by inserting after paragraph XV the following new paragraphs:

XVI. "Agency" means the New Hampshire real estate appraiser board, which is responsible for registering appraisal management companies under this act.

XVII. "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards for Professional Appraisal Practice as developed by the Appraisal Foundation.

XVIII. "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of, or other principal in, the secondary mortgage markets:

- (a) To recruit, select, and retain appraisers;
- (b) To contract with licensed and certified appraisers to perform appraisal assignments;
- (c) To manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or
- (d) To review and verify the work of appraisers.

XIX. "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, except that a Quality Control Examination of an appraisal report shall not be an appraisal review.

XX. "Appraiser" means an individual who holds a license or certification as an appraiser and is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.

XXI. "Appraiser panel" means a group of licensed or certified independent appraisers that have been selected to perform appraisal services for a third party.

XXII. "Controlling person" means:

- (a) An officer director, or owner of greater than a 10 percent interest, of a corporation, partnership or other business entity, seeking to act as an appraisal management company in this state; or
- (b) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of services requiring registration as an appraisal management company and has the authority to enter into agreements with appraisers for the performance of appraisals; or
- (c) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

XXIII. "Person" means an individual, firm, partnership, limited partnership, limited liability company, association, corporation, or other group engaged in joint business activities, however organized.

XXIV. "Quality Control Examination" is an examination of an appraisal report for compliance and completeness including grammatical, typographical, or other similar errors.

XXV. "Uniform Standards of Professional Appraisal Practice" (USPAP) means the current standards of the appraisal profession, developed for appraisers and users of appraisal services by the Appraisal Standards Board of the Appraisal Foundation.

Amend the bill by inserting after section 7 the following and renumbering the original sections 8-19 to read as 9-20:

8 New Sections; Registration of Appraisal Management Companies. Amend RSA 310-B by inserting after section 12-a the following new sections:

310-B:12-b Registration of Appraisal Management Companies.

I. It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the agency under the provisions of this chapter.

(a) An applicant for registration as an appraisal management company in this state shall submit to the agency an application on a form or forms prescribed by the agency.

(b) In the event a registration process is unavailable upon the effective date of this chapter, an appraisal management company already conducting business in this state may continue to conduct business in accordance with this chapter until the 120th day after a registration process becomes available.

II. An application for the registration required by paragraph I of this section shall include the following information:

(a) Name of the person seeking registration and the fictitious name or names (if any) under which it does business in any state;

(b) Business address of the person seeking registration;

(c) Phone contact information of the person seeking registration;

(d) If the person is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(e) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns 10 percent or more of the appraisal management company;

(f) The name, address, and contact information for one controlling person designated as the main contact for all communication between the appraisal management company and the agency;

(g) A certification that the person has a system and process in place to verify that an individual being added to the appraiser panel of the appraisal management company holds a license in good standing in this state under this chapter if a license or certification is required to perform appraisals;

(h) A certification that the person requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) including the requirements for geographic and product competence;

(i) A certification that the person has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(j) A certification that the person has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act, including the requirement that fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer.

(k) A certification that the person maintains a detailed record of each service request that it receives and the appraiser that performs the residential real estate appraisal services for the appraisal management company;

(l) An irrevocable uniform consent to service of process, pursuant to RSA 310-B:12-c.

(m) Any other information required by the agency which is reasonably necessary to implement this chapter.

III. An application for the renewal of a registration shall include substantially similar information required for the initial registration as noted in paragraph II, as determined by the agency.

IV. A registration granted by the agency pursuant to this chapter shall be valid for one year from the date on which it is issued.

310-B:12-b Appraisal Management Company Exemptions.

I. The provisions of this chapter shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institutions regulatory agency.

II. The provisions of this chapter shall not apply to a business entity that exclusively engages real estate appraisers on an employer and employee basis for the performance of all real property appraisal services in the normal course of its business, except to the extent federal law or regulation requires such entities to register with and be subject to supervision by a state appraiser certifying and licensing agency.

310-B:12-c Appraisal Management Company Consent to Service of Process. Each person applying for a registration as an appraisal management company that is not domiciled in this state shall complete an irrevocable uniform consent to service of process, as prescribed by the agency.

310-B:12-d Appraisal Management Company Fee.

I. The agency shall establish by rule or regulation a processing fee to be paid by each appraisal management company seeking registration under this chapter that is sufficient for the administration of the registration process.

II. A similar processing fee, may be charged by the agency in connection with the renewal of any registrations.

310-B:12-e Appraisal Management Company Owner Requirements.

I. An appraisal management company applying for registration in this state shall not:

(a) Be owned by any person who has had an appraiser license or certificate in this state or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked, unless such license or certificate was subsequently granted or reinstated;

(b) Be more than 10 percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the practice of appraisal, banking, mortgage lending or the provision of financial services, or any crime involving fraud, misrepresentation or moral turpitude.

II. For purposes of subparagraph I(b), each owner of more than 10 percent of an appraisal management company shall submit to a background investigation to be carried out by a law enforcement agency or other entity authorized by the agency.

310-B:12-f Appraisal Management Company Designated Contact. Each appraisal management company applying to the agency for registration in this state shall designate one controlling person who is an employee of the appraisal management company that will be the designated contact for all communication between the agency and the appraisal management company.

310-B:12-g Appraisal Management Company Appraiser Credentials.

I. An appraisal management company that applies to the agency for a registration to do business in this state as an appraisal management company shall not:

(a) Knowingly employ any individual to perform appraisal services, who has had a license or certificate to act as an appraiser in this state or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked, unless such license or certificate was subsequently granted or reinstated;

(b) Knowingly enter into any independent contractor arrangement for the performance of appraisal services, in verbal, written, or other form, with any individual who has had a license or certificate to act as an appraiser in this state or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked, unless such license or certificate was subsequently granted or reinstated.

II. Prior to assigning appraisal orders, an appraisal management company shall have a system in place to verify that a person being added to the appraiser panel holds the appropriate appraiser credential in good standing.

III. Each appraisal management company seeking to be registered in this state shall certify to the agency on an annual basis on a form prescribed by the agency that the appraisal management company has systems in place to verify that:

(a) An individual on the appraiser panel has not had a license or certification as an appraiser refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation in the previous 12 months, unless such license or certificate was subsequently granted or reinstated; and

(b) Only licensed or certified appraisers are used to complete appraisal assignments in connection with federally related transactions.

310-B:12-h Appraisal Management Company; Appraisal Review. Any employee of, or independent contractor to, an appraisal management company that performs a USPAP Standard 3 review of an appraisal report on property located in this state shall be an appraiser with the proper level of licensure issued by the agency. Quality control examinations are exempt from this requirement as they are not considered a Standard 3 review.

310-B:12-i Appraisal Management Company; Adherence to Standards.

I. Each appraisal management company seeking to be registered in this state shall certify to the agency on an annual basis that it requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice including the requirements for geographic and product competence.

II. Each appraisal management company seeking to be registered in this state shall certify to the agency on an annual basis that it has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act, including the requirement that fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer.

III. An appraisal management company shall not prohibit an appraiser from reporting the fee paid to the appraiser in the body of the appraisal report, however an appraisal management company may require an appraiser to present any such disclosure in a specified format and location.

310-B:12-j Appraisal Management Company; Recordkeeping. Each appraisal management company seeking to be registered in this state shall certify to the agency on an annual basis that it maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal for the appraisal management company. Such records must be retained for a period of at least 5 years after an appraisal is completed or 2 years after final disposition of a judicial proceeding related to the assignment, whichever period expires later.

310-B:12-k Appraisal Management Company; Appraisal Reports.

I. An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser without the appraiser's written consent, except as necessary to comply with regulatory mandates or legal requirements.

II. An appraisal management company may not use an appraisal report submitted by an independent appraiser, or any of the data or information contained therein, for any purpose other than its intended use without the appraiser's or the intended end user's written consent.

310-B:12-l Appraisal Management Company; Registration Number.

I. The agency shall issue a unique registration number to each appraisal management company registered in this state pursuant to this chapter.

II. The agency shall maintain a list of the appraisal management companies registered in this state and the registration numbers assigned to such persons.

III. An appraisal management company registered in this state shall disclose the registration number provided to it by the agency on the engagement documents presented to an appraiser.

310-B:12-m Appraisal Management Company; Unlawful Acts.

I. It shall be a violation of this chapter for any employee, partner, director, officer, or agent of an appraisal management company to:

(a) Influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or in any other manner, including but not limited to:

(i) Withholding or threatening to withhold timely payment or partial payment for an appraisal with the exception of a substandard or noncompliant appraisal;

(ii) Withholding or threatening to withhold future business from an appraiser, or demoting, terminating or threatening to demote or terminate an appraiser;

(iii) Promising or implying that an appraiser may be given opportunities for future business, promotions, or increased compensation;

(iv) Conditioning an assignment of an appraisal or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(v) Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal, or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;

(vi) Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided; and

(vii) Requiring an appraiser to prepare an appraisal report if the appraiser has indicated to the appraisal management company that he or she does not have the necessary expertise for the specific geographic area.

(b) Require an appraiser to indemnify the appraisal management company against liability, damages, losses, or claims other than those liabilities, damages, losses or claims arising out of the services performed by the appraiser, including performance or non-performance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct.

(c) Submit or attempt to submit false, misleading, or inaccurate information in any application for registration or renewal;

(d) Fail to timely respond to any subpoena or any other legally-binding request for information;

(e) Fail to timely obey a lawful administrative order of the agency; or

(f) Fail to fully cooperate in any agency investigation.

II. Notwithstanding any other provision in this chapter, an appraisal management company shall not be prohibited from requesting that an appraiser:

(a) Consider additional appropriate property information;

(b) Provide additional information concerning the basis for an evaluation; or

(c) Correct objective factual errors in an appraisal report.

310-B:12-n Appraisal Management Company; Mandatory Reporting. An appraisal management company that has a reasonable basis to believe an appraiser has failed to comply with applicable laws, the Uniform Standards of Professional Appraisal Practice or other ethical or professional requirements in connection with a consumer credit transaction secured by a consumer's principal dwelling, shall refer the matter to the agency if the failure to comply is material. For purposes of this section, a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

310-B:12-o Appraisal Management Company; Rulemaking Authority. The agency may adopt rules consistent with the provisions of this chapter that are reasonably necessary to implement, administer, and enforce the provisions of this chapter.

Amend RSA 310-B:16-a, IV as inserted by section 12 of the bill by replacing it with the following:

IV. The requirements of this section shall take effect to appraisal management companies beginning the later of:

(a) January 1, 2012; or

(b) 120 days after the first date on which all rules, forms and policies necessary to implement this chapter have been finalized and made available by the agency. No unregistered appraisal management company may perform services related to a federally related transaction in the New Hampshire after January 1, 2012.

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 Committee on Finance (Rule 4-3).

SB 161-FN, relative to procedures for adoption of agency rules under the administrative procedures act. Ought to Pass with Amendment, Vote 4-0. Senator Groen for the committee.

Senate Executive Departments and Administration

March 8, 2011

2011-0706s

10/01

Amendment to SB 161-FN

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

1 Procedure for Adopting Rule; Public Hearing. Amend RSA 541-A:3, IV to read as follows:

IV. [Holding] **Scheduling** a public hearing and receiving comments under RSA 541-A:11;

2 Notice of Rulemaking Proceedings; Scheduled Public Hearing; Concise Summary. Amend RSA 541-A:6, I(e) and (f) to read as follows:

(e) The date of the first **scheduled** agency public hearing and the cut-off date for the submission of written materials to the agency.

(f) ***If existing rules are being amended, readopted, or readopted with amendment***, a concise summary ~~[explaining the effect]~~ of the ~~[rule]~~ ***existing rules and any proposed amendments, and if the proposed rules are being adopted, a concise summary of the proposed rules.***

3 Notice of Rulemaking Proceedings; Substantial Noncompliance Scheduled Public Hearing. Amend RSA 541-A:6, II and III to read as follows:

II. The director of legislative services may refuse to publish a notice if the director determines that there is significant noncompliance with the requirements of paragraph I. ***In this paragraph, "significant noncompliance" means one or more errors of such magnitude that a reasonable person would not be able to discern what rules are the subject of the rulemaking proceeding and/or what the agency is proposing to do. The term includes the absence of elements required by paragraph I.***

III. The agency shall send notice to the director of legislative services, to all persons regulated by the proposed rules who hold occupational licenses issued by the agency, and to all persons who have made timely request for advance notice of rulemaking proceedings. Upon request the agency shall send notice to the president of the senate, to the speaker of the house of representatives, to the chairperson of the fiscal committee, and to the chairpersons of the legislative committees having jurisdiction over the subject matter. Notice shall be made not less than 20 days before the first **scheduled** agency public hearing required by RSA 541-A:11, I. Notice to occupational licensees shall be by U.S. Mail, electronically, agency bulletin or newsletter, public notice advertisement in a publication of daily statewide circulation, or in such other manner ***that is reasonably calculated to inform such licensees of the proposed rulemaking. The committee may identify additional methods of notifying occupational licensees that are*** deemed sufficient ~~[by the committee]~~.

4 New Paragraphs; Rulemaking Register; Authority of Director; Date of Publication. Amend RSA 541-A:9 by inserting after paragraph I the following new paragraphs:

I-a. Prior to publication and with prior notice to the agency, the director of legislative services may correct typographical, spelling, and punctuation errors, as well as unintentional errors in references and citations in a submission, provided the corrections do not affect the substance of the notice.

I-b. The date of publication of the rulemaking register shall be the date on which the register is available to the public on the general court information services web site.

5 Rulemaking Register; Electronic Copies. Amend RSA 541-A:9, II and III to read as follows:

II. The rulemaking register shall be made available upon request to agencies and officials of this state free of charge. The director of legislative services shall send a ***paper or electronic*** copy of the rulemaking register upon request to the clerk of each municipality in the state and upon request to any member of the general court free of charge. ***Municipalities and members of the general court shall be deemed to have requested an electronic copy unless a paper copy is specifically requested. Paper*** copies of the register which are sent to municipalities and to members of the general court shall be sent by first-class mail.

III. ***Paper copies*** of the register shall also be made available upon request to other persons at prices fixed by the director of legislative services to cover mailing and publication costs.

6 Filing Proposed Rule Text; Establishing and Revising Text of Rules. Amend RSA 541-A:10 to read as follows:

541-A:10 Filing of Proposed Rule Text; ***Establishing and Revising Text.***

I. At the same time the notice required by RSA 541-A:6, I is filed, the agency shall file the text of the proposed rule with the director of legislative services. The ***text of the proposed rules*** as filed ***pursuant to RSA 541-A:3, III*** shall not be changed ~~[or established as]~~ ***prior to the hearing scheduled pursuant to RSA 541-A:11, I(a).***

II. ***The agency shall not establish*** the text of the final proposal until after the conclusion of the public comment period established pursuant to RSA ~~[541-A:11]~~ ***541-A:11, I(b). If the agency elects to solicit***

comment pursuant to RSA 541-A:11, I(c), the agency shall prepare a draft final proposal that is annotated to show how the rules as initially proposed are proposed to be changed. In response to comment received, the agency may revise the draft prior to filing the final proposal in accordance with RSA 541-A:12.

7 Public Hearing; Public Comment Period. Amend RSA 541-A:11, I to read as follows:

I.(a) Each agency shall ~~hold~~ **schedule** at least one public hearing on all proposed rules ***filed pursuant to RSA 541-A:3*** and shall afford all interested persons reasonable opportunity to testify and to submit data, views, or arguments in writing or, if practicable for the agency, in electronic format, in accordance with the terms of the notice ***filed pursuant to RSA 541-A:3, I*** and the provisions of this section. The office of legislative services shall provide oral or written comments on potential bases for committee objection under RSA 541-A:13, IV in a form and manner determined by the director of the office of legislative services. Each agency shall require all materials submitted in writing to be signed by the person who submits them, and the agency shall transfer to hard copy, if practicable for the agency, all materials submitted as diskette, electronic mail, or other electronic format. Copies of the proposed rule shall be available to the public under RSA 91-A and at least 5 days prior to the ***date of the scheduled*** hearing.

(b) For rules proposed by a board or commission, a period of at least ~~[10]~~ **5 business** days after the hearing shall be provided for the submission of materials in writing or in electronic format, unless a shorter period is specified in the notice. If a shorter period is specified in the notice, the deadline for the submission of such materials shall not be earlier than the scheduled conclusion of the public hearing. For rules proposed by an agency official, a period of at least ~~[10]~~ **5 business** days after the hearing shall be provided in all instances. If a hearing is continued or postponed as provided in paragraph III or IV of this section, the period for the submission of materials in writing or in electronic format shall be extended ***unless the previously-established deadline meets the applicable requirement specified above.***

(c) ***An agency may hold a public hearing or otherwise solicit public comment on a draft final proposed rule prior to filing the final proposed rule pursuant to RSA 541-A:3, V. Notice of such hearing or comment period shall be provided by such means as are deemed appropriate to reach interested persons, which may include publishing a notice in the rulemaking register.***

8 New Paragraph; Public Hearing; Preregistration. Amend RSA 541-A:11 by inserting after paragraph I the following new paragraph:

I-a. For an agency that has adopted preregistration requirements under RSA 541-A:16, I(b)(3), the agency may cancel a scheduled hearing if the agency:

- (a) Has a reasonable belief that no member of the public is likely to attend the hearing;
- (b) Has clearly stated the requirement to preregister for the hearing prominently in the notice filed under RSA 541-A:6, I, and in any other information about the rulemaking proceeding the agency has distributed to interested persons;
- (c) Has received no preregistration for attendance at a scheduled hearing as of 2 business days in advance of the hearing; and
- (d) Informs the director of legislative services of the cancellation.

Cancellation of the public hearing shall not affect the deadline for submission of comments.

9 Filing Final Proposal; Incorporation by Reference; Internet Content. Amend RSA 541-A:12, II-IV to read as follows:

II. The final proposal shall include:

- (a) A cover sheet listing:
 - (1) The number of the notice and the date the notice appeared in the rulemaking register;
 - (2) The name and address of the agency;
 - (3) The title and number of the rule; and
 - (4) A citation to the statutory authority for the rule.
- (b) ~~[Two copies]~~ **One copy** of the established text of the final proposed rule.

(c) ~~[A copy of the full text of the statutory authority for the rule.]~~

(d) If required pursuant to RSA 541-A:5, VI, an amended fiscal impact statement from the legislative budget assistant stating that as a result of notice and hearing the rule did change and explaining how this change affects the original fiscal impact statement.

(e) (d) A copy of the fixed text of the final proposed rule annotated clearly to show how the final proposed rule differs from the rule as initially proposed, if the text has changed.

III. ~~[With the final proposal, the agency shall also file the incorporation by reference statement described by paragraph IV of this section, if the]~~ **An agency [incorporates into] *may establish requirements in* its rules [any] *by citing to a document or to Internet content* prepared by [any entity outside the agency] *an unrelated third party. If state-enforceable requirements are so established, the agency shall file an incorporation by reference statement as specified in paragraph IV with the final proposal.*** ~~[However, the]~~ **No** agency shall ~~[not]~~ incorporate by reference any document **or Internet content** prepared by or on behalf of the agency.

IV. Any ~~[required]~~ incorporation by reference statement **required by paragraph III** shall include a ~~[separately signed]~~ statement **signed** by the adopting authority:

(a) Certifying that the text of the ~~[matter]~~ incorporated **document or Internet content** has been reviewed by the agency, with the name of the reviewing official;

(b) Explaining how the text of the ~~[matter]~~ incorporated **document or Internet content** can be obtained by the public, and at what cost;

(c) Explaining any modifications to the ~~[matter]~~ incorporated **document or Internet content**;

(d) Discussing the comparative desirability of reproducing the incorporated ~~[matter]~~ **document or Internet content** in full in the text of the rule; and

(e) Certifying that the agency has the capability and the intent to enforce the ~~[rule]~~ **requirements being incorporated.**

V. If an agency establishes requirements by incorporating undated Internet content by reference, the agency shall make a read-only copy of the incorporated Internet content no later than the date of filing the incorporation by reference statement, and make the dated copy available to the public.

10 New Section; Extension of Currently Effective Rules Pending Readoption. Amend RSA 541-A by inserting after section 14 the following new section:

541-A:14-a Extension of Currently Effective Rules Pending Readoption.

I. If an agency files a notice pursuant to RSA 541-A:6 to readopt existing rules, with or without amendments, the currently effective rules in the filing which would otherwise expire prior to the completion of the readoption of the rules by the agency shall continue in effect until the proposed rules are adopted and effective.

II. If, after filing a notice pursuant to paragraph I, an agency fails to file a final proposal by the deadline specified in RSA 541-A:12, fails to file a response to objection as specified in RSA 541-A:13, or fails to adopt and file the proposed rule as specified in paragraph III, the existing rules which would otherwise expire prior to the completion of the readoption of the rules by the agency shall expire 30 days after such deadline unless the agency has obtained a waiver of the deadline pursuant to RSA 541-A:40, IV(a). If the agency has obtained a waiver to a deadline, such existing rules shall expire 30 days after the deadline established pursuant to RSA 541-A:40, IV(b) if the required action is not taken.

III. If rules are extended pursuant to this section, the agency shall:

(a) Adopt the proposed rules no later than 30 days after the date on which the agency is allowed to adopt the rules under RSA 541-A:14, I; and

(b) File the rules as required by RSA 541-A:14, III with an effective date that is not more than 60 days from the date of filing, except that an agency may specify an effective date that is more than 60 days from the date of filing if a waiver is obtained pursuant to RSA 541-A:40.

11 Agency Rules; Preregistration for Public Hearings. Amend RSA 541-A:16, I(b)(3) to read as follows:

(3) Rules governing public comment hearings for rulemaking, **including preregistration procedures if the agency intends to require preregistration for any rulemaking hearing.**

12 Filing Rules; Effective Date. Amend RSA 541-A:16, III to read as follows:

III. A rule shall become effective as of 12:01 a.m. on the day after the filing of the adopted rule or as of 12:01 a.m. on the date specified by the agency pursuant to RSA 541-A:14, IV, ***RSA 541-A:14-a, III***, or RSA 541-A:19, X, or such other date and time as specified, provided that filing occurs before such effective date and time. ***Except as provided in RSA 541-A:14-a***, a rule adopted under RSA 541-A:14, IV shall expire after the last day of the ~~[eighth]~~ ***tenth*** year following its becoming effective, unless sooner amended, readopted, or repealed.

13 Time Limit; Effective Period. Amend RSA 541-A:17, I to read as follows:

I. No rule shall be effective for a period of longer than ~~[8]~~***10*** years ***except as extended pursuant to RSA 541-A:14-a***, but the agency may adopt an identical rule under RSA 541-A:5 through RSA ~~[541-A:14]~~ ***541-A:14-a***, in conformance with the drafting and procedure manual adopted under RSA 541-A:8.

14 Emergency Rules. Amend RSA 541-A:18, I to read as follows:

I. ~~[If an]~~ ***An*** agency ***may proceed to adopt an emergency rule if it*** finds ***either*** that an imminent peril to the public health or safety requires adoption of a rule with less notice than is required under RSA 541-A:6 ***or that substantial fiscal harm to the state or its citizens could occur if rules are not adopted with less notice than is required under RSA 541-A:6.*** ~~[and states in writing its reasons for that finding, it may proceed to adopt an emergency rule.]~~ The rule may be adopted without having been filed in proposed or final proposed form and may be adopted after whatever notice and hearing the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are made known to persons who may be affected by them.

15 Emergency Rules; Adoption. Amend RSA 541-A:18, III(e) to read as follows:

(e) A signed and dated statement by the adopting authority explaining the nature of the ~~[imminent peril to the public health or safety]~~ ***basis for the emergency rule***, including ~~[a summary]~~ ***an explanation*** of the effect upon the state if the emergency rule were not adopted.

16 Interim Rules; New or Amended Statute. Amend RSA 541-A:19, I(a) to read as follows:

(a) Conform with a new or amended ***codified*** state statute ***or chaptered session law***, provided, however, that an agency shall not publish notice of a proposed interim rule more than ~~[90]~~ ***120*** days after the effective date of the new or amended ***codified state*** statute ***or chaptered session law***;

17 Expedited Process for Readoption of Rules. The director of legislative services shall develop an expedited process for readopting rules which contain no changes or contain only minor changes. Minor changes shall include renumbering, updating internal references, references to documents incorporated by reference, date and year changes, typographical or grammatical errors, and other editorial changes. The director shall consult with agency staff as necessary. The director shall provide a report on an expedited process and any proposals for legislation to the chairperson of the joint legislative committee on administrative rules not later than November 1, 2011.

18 Suspension of Provisions; Waiver. Amend RSA 541-A:40, IV as follows:

IV.(a) Notwithstanding any other provision of this chapter, the director of legislative services ***may***, after consultation with the chair and vice-chair of the joint legislative committee on administrative rules, ~~[may,]~~ ***and*** for good cause shown, waive any deadline ***or otherwise extend any time period*** contained in any provision of this chapter ***which relates to the rulemaking process.***

(b) If a deadline is waived or a time period is extended, the director shall, after consultation with the chair and the vice-chair of the committee and the agency whose rules are affected, establish a new deadline by which the required action shall be taken.

19 Transition; Application. The provisions of this act shall govern the following on or after the effective date of this act:

- I. All rulemaking initiated by filing a notice of rulemaking under RSA 541-A:6 or RSA 541-A:19-c.
- II. All emergency rules adopted under RSA 541-A:18.
- III. All interim rules initiated by filing a proposed interim rule under RSA 541-A:19, II.
- IV. All expedited repeal of rules under RSA 541-A:19-a.

V. All notices submitted to the director of legislative services for publication in the rulemaking register.

20 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. Adopted, bill ordered to Committee on Finance (Rule 4-3).

SB 177, relative to training of directors and officers of nonprofit corporations. Re-refer to committee, Vote 5-0. Senator Carson for the committee.

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

HEALTH AND HUMAN SERVICES

SB 147-FN, relative to Medicaid managed care. Ought to Pass with Amendment, Vote 5-0. Senator Bradley for the committee.

Health and Human Services

March 10, 2011

2011-0790s

01/09

Amendment to SB 147-FN

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

1 New Paragraph; Medicaid Managed Care. Amend RSA 126-A:5 by inserting after paragraph XVIII the following new paragraph:

XIX.(a) The commissioner shall employ a managed care model for administering the Medicaid program and its enrollees to provide for managed care services for all Medicaid populations throughout as much of New Hampshire as practicable consistent with the provisions of 42 U.S.C. 1396r-2. Models for managed care may include, but not be limited to, a traditional capitated managed care organization contract, an administrative services organization, an accountable care organization, or a primary care case management model, or a combination thereof, offering the best value, quality assurance, and efficiency, maximizing the potential for savings, and presenting the most innovative approach compared to other externally administered models. The department shall present the opportunities of the various models or combination of models to the oversight committee on health and human services with a recommendation for the best managed care model for New Hampshire, no later than June 15, 2011. Services to be managed within the model shall include all mandatory Medicaid covered services and may include, but shall not be limited to, care coordination, utilization management, disease management, pharmacy benefit management, provider network management, quality management, and customer services. After consultation with the oversight committee, the commissioner shall issue a 5-year request for proposals to enter into a contract with the vendor or vendors that demonstrates the greatest ability to satisfy the state's need for value, quality, efficiency, innovation and savings. The request for proposals shall be released no later than October 1, 2011. The vendor or vendors of the managed care model or combination of models demonstrating the greatest ability to satisfy the state's need for value, quality, efficiency, innovation, and savings shall be selected no later than December 1, 2011 with a final contract submitted to the governor and council as soon as practicable thereafter. After the bidding process, the commissioner shall establish a capitated rate based on the bids by the appropriate model for the contract that is full risk to the provider. The capitated rate shall be broken down into rate cells for each population including, but not limited to, the persons eligible for temporary assistance to needy families (TANF), aid for the permanently and totally disabled (APTD), breast and cervical cancer program (BCCP), home care for children with severe disabilities (HC-CSD), and those residing in nursing facilities. The capitated rate shall be approved by the fiscal committee of the general court. The managed care model or models' selected vendor or vendors providing the Medicaid services shall establish medical homes and all Medicaid recipients shall receive their care through a medical home. In contracting for a managed care model and the various rate cells, the department shall ensure no reduction in the quality of care of services provided to enrollees in the managed care model and shall exercise all due diligence to maintain or increase the current level of quality of care provided. The target date for implementation of the contract is July 1, 2012. The commissioner may, in consultation with the fiscal committee, adopt rules, if necessary, to implement the provisions of this paragraph. The department shall seek all necessary and appropriate waivers to implement the provisions of this paragraph.

(b) The department shall ensure that all eligible Medicaid members are enrolled in the managed care model under contract with the department no later than 12 months after the contract is awarded to the vendor or vendors of the managed care model.

(c) For the purposes of this paragraph:

(1) An “accountable care organization” means an entity or group which accepts responsibility for the cost and quality of care delivered to Medicaid patients cared for by its clinicians.

(2) “An administrative services organization” means an entity that contracts as an insurance company with a self-funded plan but where the insurance company performs administrative services only and the self-funded entity assumes all risk.

(3) A “managed care organization” means an entity that is authorized by law to provide covered health services on a capitated risk basis and arranges for the provision of medical assistance services and supplies and coordinates the care of Medicaid recipients residing in all areas of the state, including the elderly, those meeting federal supplemental security income and state standards for disability, and those who are also currently enrolled in Medicare. After the first 5 years, a “managed care organization” may include the department of health and human services, with the approval of the fiscal committee.

(4) “A primary care case management” means a system under which a primary care case management contracts with the state to furnish case management services, which include the location, coordination and monitoring of primary health care services, to Medicaid recipients.

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

2011-0790s

AMENDED ANALYSIS

This bill requires the commissioner of the department of health and human services to issue a 5-year request for proposal to enter into a contract with a vendor or vendors of a managed care model after consultation with the oversight committee on health and human services to provide for managed care services to the Medicaid population. The commissioner, in consultation with the fiscal committee of the general court, is granted rulemaking authority for the purposes of this bill.

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 Committee on Finance (Rule 4-3).

SB 151-FN, relative to contracts of the department of health and human services. Ought to Pass with Amendment, Vote 3-0. Senator Lambert for the committee.

Health and Human Services

March 10, 2011

2011-0791s

09/01

Amendment to SB 151-FN

Amend the bill by replacing section 1 with the following:

1 Contract Consolidation; Department of Health and Human Services.

I. No later than January 1, 2012, the commissioner of the department of health and human services shall develop a plan to consolidate contracts of the department including, but not limited to, contracts for the acquisition of goods and services and for the provision of services to clients of the department. The plan shall be provided for review and comment to the oversight committee on health and human services established pursuant to RSA 126-A:13. For the remainder of the biennium ending June 30, 2013, the commissioner shall provide reports on a quarterly basis to the oversight committee on implementation of the contract consolidation plan.

II. In addition, no later than January 1, 2012, the commissioner shall report the total number of full-time equivalent contract employees and the number of contractors employed at state-run facilities and shall submit such report to the oversight committee on health and human services.

2011-0791s

AMENDED ANALYSIS

This bill requires the commissioner of the department of health and human service to develop a plan to consolidate all outside contracts and to provide the plan for review and comment to the oversight committee on health and human services.

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 Committee on Finance (Rule 4-3).

JUDICIARY

SB 12-FN, relative to screening panels for medical injury claims. Ought to Pass with Amendment, Vote 4-0. Senator Groen for the committee.

Senate Judiciary

March 10, 2011

2011-0800s

06/01

Amendment to SB 12-FN

Amend the bill by replacing section 1 with the following:

1 Medical Malpractice Panel and Insurance Oversight. Amend RSA 519-B:11, VI(b) to read as follows:

(b) The committee shall make a final report of its findings about medical liability insurance rates and the mandatory panel process and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, [2010] **2013**. The report shall include a recommendation to terminate, continue, or amend RSA 519-B.

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 14-FN, relative to the brandishing of a firearm. Re-refer to committee, Vote 4-0. Senator Carson for the committee.

Sen. Carson moved to Table SB 14-FN.

The question is on the motion to Table. Adopted.

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 4-0. Senator Houde for the committee.

Senate Judiciary

March 11, 2011

2011-0804s

04/09

Amendment to SB 52-FN

Amend the bill by replacing all after the enacting clause 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*** 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.***

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

(c) ~~[All prisoners who have not been previously paroled]~~ ***A prisoner who has not been previously paroled***, or who ~~[were]~~ ***was*** recommitted to prison more than one year prior to the expiration of the maximum term of his or her sentence, shall be released on parole at least 9 months prior to the expiration of the maximum term of his or her sentence, ***unless the parole board votes to deny such release.*** This provision shall not apply to any prisoner who is the subject of a pending petition for civil commitment pursuant to RSA 135-E. In the event that the prisoner is not civilly committed, he or she shall be released on parole for the remainder of his or her sentence.

3 Effect of Recommitment. Amend RSA 651-A:19 to read as follows:

651-A:19 Effect of Recommitment.

I. A prisoner who is recommitted shall serve 90 days in prison before being placed back on parole or the remainder of his or her maximum sentence, whichever is shorter, ***or may be subject to an extended term of recommitment pursuant to paragraphs III and IV.*** The time between the return of the parolee to prison after arrest and revocation of parole shall be considered as time served as a portion of the maximum sentence.

II. Prisoners who are recommitted shall be ~~[housed separately in a prison housing unit that provides]~~ ***provided access to*** focused, evidence-based programming aimed at reengaging parolees in their parole plan.

III. The parole board may impose an extended term of recommitment for greater than 90 days if:

- (a) The prisoner has previously been recommitted for a parole violation; or***
- (b) The prisoner was on parole for a sexual offense as defined in RSA 651-B:1, V or an offense against a child as defined in RSA 651-B:1, VII; and***
 - (1) The conduct underlying the parole violation is related to his or her offense or offending pattern; or***

- (2) The prisoner has displayed a combination of dynamic risk factors, including but not limited to, homelessness, loss of supports, substance abuse, or non-compliance with treatment, as determined by the department of corrections sexual offender treatment program staff; or***

- (3) Both subparagraphs (1) and (2); or***

- (c) The prisoner was on parole for a violent crime as defined in RSA 651:5, XIII; or***

- (d) The nature of the conduct underlying the parole violation constitutes a criminal act or is otherwise so serious as to warrant an extended period of recommitment.***

IV.(a) A prisoner may be brought before the parole board at any time during the 90-day term of recommitment to determine whether a longer term is warranted if:

- (1) The prisoner did not meaningfully participate in the evidence-based programming during the 90-day recommitment period; or***

- (2) The prisoner received one or more major disciplinary violations during the 90-day recommitment period.***

- (b) The prisoner shall be provided notice of the hearing and the basis of the parole board's consideration of an extended term.***

V. The imposition of an extended term of recommitment pursuant to paragraph III or IV shall be supported by written findings and a written order.

VI. Any prisoner who is subject to an extended term of recommitment shall, upon request, be entitled to a hearing before the parole board after serving 6 months of his or her term of recommitment and every 6 months thereafter.

VII. At the revocation hearing, the parole board may impose a term of recommitment for less than 90 days if:

- (a) The prisoner has not been previously recommitted for a parole violation;***
- (b) The prisoner was not on parole for a sexual offense as defined in RSA 651-B:1, V or an offense against a child as defined in RSA 651-B:1, VII;***
- (c) The prisoner was not on parole for a violent crime as defined in RSA 651:5, XIII;***
- (d) The parole violation is not substantially related to his or her offense or offending pattern;***
and

- (e) The parole board determines that a lesser period of recommitment will aid in the rehabilitation of the parolee.***

4 Involuntary Civil Commitment of Sexually Violent Predators; Notice. Amend RSA 135-E:3, II to read as follows:

II. When a person who has committed a sexually violent offense is to be released from total confinement in New Hampshire, the agency with jurisdiction over the person shall give written notice to the person and the county attorney of the county where that person was last convicted of a sexually violent offense, or attorney general if the case was prosecuted by the attorney general. If the person is in custody on an out-of-state or federal sexually violent offense, the agency with jurisdiction shall give written notice to the person and the county attorney of the county where the person plans to reside upon release or, if no residence in this state is planned, the county attorney in the county where the facility from which the person to be released is located or to the attorney general if the person has been convicted of murder. Except as provided in RSA 135-E:4, the written notice shall be given at least 9 months prior to the [anticipated] **potential** release on parole pursuant to RSA 651-A:6, I(c), except that in the case of persons who are totally confined for a period of less than 9 months, written notice shall be given as soon as practicable.

5 Involuntary Civil Commitment of Sexually Violent Predators; Release From Total Confinement. Amend RSA 135-E:4, I to read as follows:

I. In the event that a person who has been convicted of a sexually violent offense is eligible for immediate release on parole pursuant to RSA 651-A:6, I(c), or upon completion of the maximum term of incarceration, the agency with jurisdiction shall provide immediate notice to the county attorney or attorney general of the person's release. The county attorney or attorney general or the agency with jurisdiction may file a petition for an emergency hearing in the superior court requesting that the person subject to immediate release be evaluated by the multidisciplinary team to determine whether the person is a sexually violent predator. The hearing shall be held within 24 hours of the filing of the petition, excluding Saturdays, Sundays, and holidays. The person shall not be released from total confinement until after the hearing has been held. At the hearing, the court shall determine whether there is probable cause to believe that the person is a sexually violent predator. If the court finds probable cause, the person shall be held in an appropriate secure facility.

6 Probationers and Parolees; Risk Assessment and Length of Supervision. Amend RSA 504-A:15, III-IV to read as follows:

III. Any person placed on probation for a felony shall be subject to active supervision for up to the first 12 months and thereafter be placed on administrative supervision unless the probationer has been designated high risk [or], has been adjudicated by the court for a violation of the conditions of probation during the first 12 months under supervision, **or was placed on probation for a felony listed as a tier II or tier III offense in RSA 651-B:1, IX and X, respectively.**

IV. Any person placed on parole for a felony shall be subject to active supervision for up to the first 18 months and thereafter be placed on administrative supervision unless the parolee has been designated high risk [or], has violated the conditions of parole during the first 18 months under supervision, **or was placed on parole for a felony listed as a tier II or tier III offense in RSA 651-B:1, IX and X, respectively.**

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

2011-0804s

AMENDED ANALYSIS

This bill:

I. Excludes a prisoner convicted of a violent crime or a sexually violent offense from mandatory early supervised release if the parole board votes to do so.

II. Provides the parole board with greater discretion to recommit a person who reoffends while on mandatory early supervised release.

III. Requires that an offender placed on probation or parole for conviction of a felony offense that would require registration as a sexual offender or an offender against children shall not be placed on administrative supervision.

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 Committee on Finance (Rule 4-3).

SB 134-FN, relative to jury trials under the consumer protection act. Inexpedient to Legislate, Vote 4-0. Senator Luther for the committee.

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

PUBLIC AND MUNICIPAL AFFAIRS

SB 83-FN, enabling municipalities to create other post-employment benefits (OPEB) trusts. Re-refer to committee, Vote 5-0. Senator Merrill for the committee.

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

SB 129-FN, requiring valid photo identification to vote in person. Ought to Pass, Vote 4-1. Senator Barnes for the committee.

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

A roll call was requested by Sen. Merrill, 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 Committee on Finance (Rule 4-3).

TRANSPORTATION

SB 195, naming the Manchester Airport Access Road for Raymond Wieczorek. Ought to Pass, Vote 4-0. Senator Boutin 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).

WAYS AND MEANS

SB 13-FN, increasing the limit on single wagers for games of chance conducted by charitable organizations. Re-refer to committee, Vote 5-0. Senator Morse for the committee.

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

SB 56-FN, authorizing the department of revenue administration to accept credit card payments of taxes. Ought to Pass with Amendment, Vote 5-0. Senator Boutin for the committee.

Senate Ways and Means

March 7, 2011

2011-0688s

09/10

Amendment to SB 56-FN

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

AN ACT authorizing the department of revenue administration to accept credit card and debit card payments of taxes.

Amend the bill by replacing section 1 with the following:

1 New Section; Credit or Debit Card Payment. Amend RSA 21-J by inserting after section 43 the following new section:

21-J:43-a Credit or Debit Card Payment. The commissioner of the department of revenue administration and any authorized employee or agent of the commissioner may accept credit cards or debit cards in the payment of any of the taxes, penalties, interest, or fees administered by the commissioner or collected by the department. The department may add to the amount due, in addition to any tax, penalties, and interest payable, a service charge for the acceptance of the credit card or debit card, as approved by the department. The department, at the time of billing, shall disclose the amount of the service charge. The commissioner shall adopt rules, pursuant to RSA 541-A, as necessary for the administration of such electronic transactions.

2011-0688s

AMENDED ANALYSIS

This bill authorizes the department of revenue administration to accept credit card and debit card payments of taxes.

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 Committee on Finance (Rule 4-3).

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 5-0. Senator Luther for the committee.

Senate Ways and Means

March 7, 2011

2011-0686s

09/01

Amendment to SB 58-FN-A

Amend RSA 77-E:1, XIV(a)(4) as inserted by section 3 of the bill by replacing it with the following:

(4) A qualified community development entity as defined in section 45D of the United States Internal Revenue Code, which entity is owned, controlled, or managed, directly or indirectly, by the business finance authority of the state of New Hampshire.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 5:

4 Applicability. This act shall apply with respect to all taxable periods ending on or after December 31, 2010.

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 Committee on Finance (Rule 4-3).

SB 79-FN, authorizing the department of revenue administration to impose administrative fines for timber tax violations. Inexpedient to Legislate, Vote 5-0. Senator Morse for the committee.

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

SB 125-FN-A, relative to the business profits tax deduction for reasonable compensation. Ought to Pass, Vote 5-0. Senator Morse 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).

SB 132-FN-A-L, establishing exemptions from the real estate transfer tax. Re-refer to committee, Vote 5-0. Senator Rausch for the committee.

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

SB 136-FN, relative to games of chance. Ought to Pass with Amendment, Vote 5-0. Senator Luther for the committee.

Senate Ways and Means

March 7, 2011

2011-0687s

08/09

Amendment to SB 136-FN

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

1 Unclaimed Ticket Vouchers. Amend RSA 284:31 to read as follows:

284:31 Unclaimed Ticket Money. On or before January 31 of each year every person, association, or corporation conducting a race or race meet, whether live racing or simulcast racing, hereunder shall pay to the state treasurer all moneys collected during the previous year of pari-mutuel pool tickets *and vouchers* which have not been redeemed. The books or records of said person, association, or corporation, which clearly show the tickets entitled to reimbursement in any given race, live or simulcast, shall be forwarded to the commission. Such moneys shall become a part of the general funds of the state. The state treasurer shall pay the amount due on any ticket *or voucher* to the holder thereof from funds not otherwise appropriated upon an order

from the commission. Pari-mutuel tickets **and vouchers** which remain unclaimed after 11 months shall not be paid. ***Vouchers shall be remitted to the state treasurer on January 31 of the calendar year, 24 months after the year of the unclaimed voucher.***

2 Definitions; Game Operator. Amend RSA 287-D:1, V to read as follows:

V. "Game operator" means:

(a) "Primary game operator" which means any consultant or any person other than a bona fide member of the charitable organization, involved in conducting, managing, supervising, directing, or running the games of chance; or

(b) "Secondary game operator" which means any person other than a bona fide member of the charitable organization, involved in dealing, running a roulette wheel, [or] handling chips, ***or providing accounting services or security functions.***

(c) ***"Game operator employer" means a primary game operator or a business entity who employs, supervises, and controls game operators and who is hired by a charitable organization to operate games of chance on its behalf. The owner, partner, managing member, or chief executive of a business entity who serves as a game operator employer must be licensed as a primary game operator.***

3 Operation of Games of Chance; Game Operators. Amend RSA 287-D:2-b, I(d) to read as follows:

(d) Notwithstanding subparagraph (a), all charitable organizations that conduct games of chance for charitable purposes may employ, by means of a written agreement, a [primary] game operator ***employer or a primary game operator*** licensed under RSA 287-D:2-c to operate games of chance on their behalf.

4 Operation of Games of Chance; Game Operators. Amend RSA 287-D:2-d, III to read as follows:

III. An applicant for a primary game operator license under RSA 287-D:2-c shall apply to the racing and charitable gaming commission, and if the applicant meets all other requirements of this chapter and pays the fee established by the racing and charitable gaming commission in rules adopted pursuant to RSA 541-A, a license shall be issued. A ***primary game operator*** license issued under RSA 287-D:2-c shall expire on December 31. The racing and charitable gaming commission shall notify the attorney general and police chief of any city or town where games of chance are held of any applications approved. RSA 7:28-c shall not apply to game operator licensees subject to this chapter. An applicant for a secondary game operator license under RSA 287-D:2-c shall apply to the racing and charitable gaming commission, and if the applicant meets all other requirements of this chapter and pays the fee established by the racing and charitable gaming commission in rules adopted pursuant to RSA 541-A, which shall not exceed \$45, a license shall be issued. ***A secondary game operator license issued under RSA 284-D:2-c shall expire on the last day of the month of the licensee's birthday.***

5 Operation of Games of Chance; Game Operators. Amend RSA 287-D:2-d, VI to read as follows:

VI. Any license issued under RSA 287-D:2-a or RSA 287-D:2-c shall not be transferable and the fees for the license shall not be refunded except for good cause shown as specified in rules adopted by the racing and charitable gaming commission. ***Nothing in this section shall prevent a licensee from working for different licensed entities. A licensee who works for more than one game operator employer during the licensed period shall have a separate badge for each game operator employer and pay a separate fee for each badge.***

6 Bond; Game Operators. Amend RSA 287-D:2-b, VIII to read as follows:

VIII.(a) On game dates where the charitable organization operates the games, the charitable organization shall deposit cash and proceeds from a game of chance into the account required by RSA 287-D:2-a, VII(e). All expenses, including ~~[prizes of more than \$500]~~ ***prizes of \$500 or more*** and equipment and hall rental fees shall be paid by check from the account required by RSA 287-D:2-a, VII(e). The treasurer of the charitable organization shall document all prizes awarded as prescribed in rules adopted by the racing and charitable gaming commission.

(b) On game dates where the licensed game operator operates the games, the licensed game operator shall deposit cash and proceeds from a game of chance into the account required by RSA 287-D:2-c, VI. All expenses, including ~~[prizes of more than \$500 and]~~ equipment and hall rental fees shall be paid by check ***or electronic fund transfers*** from the account established in RSA 287-D:2-c, VI. The licensed game operator shall document all prizes awarded as prescribed in rules adopted by the racing and charitable gaming commission. ***Prizes of \$500 or more shall be paid by check from the account established in RSA 287-D:2-c, VI.***

7 Bond; Game Operators. Amend RSA 287-D:2-c, V to read as follows:

V. Prior to conducting any games of chance, the game operator or the game operator's employer shall submit a bond for each location where the game operator is conducting games of chance, conditioned upon the game operator running games of chance in conformity with this chapter and with the rules and regulations prescribed by the racing and charitable gaming commission, in the amount of up to ~~[\$300,000]~~ **\$500,000 but not less than \$25,000** to the racing and charitable gaming commission with the application form. **The amount of the bond in excess of \$25,000 established for each licensee shall be based on that licensee's normal outstanding obligations of charity payments and state taxes.**

8 New Paragraph; Licensing of Game Operators. Amend RSA 287-D:2-c by inserting after paragraph VII the following new paragraph:

VIII. Unless a provision to the contrary is part of a written agreement in place prior to the commencement of a game date between the charitable organization and the game operator or game operator employer, all moneys due to the charitable organization shall be paid over to the organization no later than 5 business days following the date on which a game was conducted. Notwithstanding the provisions of any agreement with the charitable organization, the game operator or game operator employer shall pay over all moneys due to the charitable organization no later than 15 business days following a game date.

9 Wagering; Game Operators. Amend RSA 287-D:3, VII to read as follows:

VII. Unless a charitable organization rents a facility from a ~~[primary]~~ game operator **employer or a primary game operator** licensed under RSA 287-D:2-c, the charitable organization shall only rent a facility by means of a fixed rental payment. The fixed rental payment shall not be based on a percentage of what the charitable organization receives from the game of chance and it shall reflect fair rental value of the property for any use not just as a place to hold a game of chance. If a charitable organization rents a facility from a licensed game operator under RSA 287-D:2-c, the charitable organization shall retain no less than 35 percent of the gross revenues from any games of chance minus any prizes paid in accordance with RSA 287-D:3, VIII. Any rental agreement entered into by the charitable organization shall be submitted with the charitable organization's license application for review by the racing and charitable gaming commission. Under no circumstances shall a charitable organization sustain any loss from games of chance, such that its share of the gross revenues minus any prizes paid is less than zero dollars, during a license period with a single game operator.

10 Wagering; Game Operators. Amend RSA 287-D:5, I to read as follows:

I. A charitable organization ~~[or]~~, a licensed ~~[primary]~~ game operator **employer, or a primary game operator** under contract to conduct games of chance on behalf of a charitable organization **and designated by the charitable organization to be responsible for submitting financial reports** shall submit a complete financial report for all game dates licensed under RSA 287-D:2 and RSA 287-D:2-a to the racing and charitable gaming commission on forms approved by the racing and charitable gaming commission within 15 days of the end of each month during which a game of chance was held.

11 Operation of Bingo Games; Penalty Added. Amend RSA 287-E:7, XVI to read as follows:

XVI. In not more than one game conducted in accordance with ~~[RSA 287-E:7;]~~ **paragraph XIII**, a carry-over, cover-all game may be run with the prize money rolled over to the successive game dates in the event that there is no winner on the original or preceding game dates. Notwithstanding any provision of law to the contrary, the prize money may accumulate until there is a winner. The prize shall be awarded to any winner covering all 24 numbers on the card in less than 50 numbers, or a greater number if so designated prior to the game. If there is no winner on a given game date, a pre-designated consolation prize shall be awarded to the game winner who first achieves cover-all. The balance of the ~~[monies]~~ **moneys** collected shall be carried over to subsequent game dates until there is a winner. **Any person who purposely, knowingly, or recklessly deprives a charitable organization of any of its moneys collected from bingo or lucky 7 or any person who purposely, knowingly, or recklessly deprives players of any prizes collected from bingo or lucky 7, shall be guilty of a class A felony.**

12 Reference Change; Financial Reports and Inspection Required. Amend RSA 287-E:9, I to read as follows:

I. A charitable organization which has been licensed to conduct bingo games shall submit a complete financial report to the commission for each license issued under RSA 287-E:6 within 15 days after the expiration of each license; provided, however, a complete monthly financial report shall be submitted in a timely fashion to the commission for each month covered by a license issued under ~~[RSA 287-E:6, I-a]~~ **RSA 287-E:6, II.**

13 Reference Change; Financial Reports and Inspection Required. Amend RSA 287-E:9, IV to read as follows:

IV. All charitable organizations licensed under this chapter shall maintain a separate checking account for the deposit and disbursement of all income relating to bingo and lucky 7, except cash prizes awarded at the games. All expenses shall be paid by check, ~~[and all prizes of \$500 or more shall be paid by check]~~ **or electronic funds transfers. All prizes of \$500 or more shall be paid by check.** There shall be no commingling of bingo and lucky 7 funds with other funds of the charitable organization. The organization shall retain all cancelled checks for the payment of expenses and prizes for at least 2 years. The organization may cash checks which it issues.

14 Campground Bingo. Amend RSA 287-E:12 to read as follows:

287-E:12 Bingo [~~License~~] for Private Campgrounds and Hotels. Any private campground or hotel may ~~[ap-
ply to the commission for a special campground or hotel bingo license. Licenses may be granted under the
following conditions]~~ **conduct bingo games provided:**

~~[I. The bingo license application fee shall be \$25 per year and shall be nonrefundable.]~~

~~[H. The provisions of RSA 287-E:6, IV and RSA 287-E:7, IV and VI relating to bingo licenses and the
operation of games for charitable organizations shall also apply to licenses issued under this section.]~~

~~[HH.]~~ **I.** The price to be paid for a single card or play under the license shall be \$.10.

~~[IV. A license shall permit no more than 2 game dates of bingo in any one calendar week and shall be
issued on an annual basis.]~~

~~[V.]~~ **II.** All revenues received from the sale of bingo cards in any game or series of games on any one calendar day shall be paid out to the players. The total value of all prizes, tokens, or awards used, given, offered, or awarded in connection with any game or series of games in any calendar day shall not exceed \$500.

~~[VI.]~~ **III.** Games shall be operated only by persons on the staff of the campground or hotel ~~[holding the
license under this section]~~. Such staff shall operate the games without compensation from the bingo revenues.

~~[VII.]~~ **IV.** The games of bingo shall be open only to persons 18 years of age or older who are bona fide guests at the campground or hotel.

~~[VIII. Licenses shall be granted only to campgrounds or hotels in cities or towns which have approved
bingo under RSA 287-E.]~~

~~[IX.]~~ **V.** No campground or hotel shall act as an agent for operating games of bingo when it is unlawful for such campground's or hotel's principal to operate bingo games.

~~[X. The campground or hotel holding the license issued under this section shall keep records and submit
a report as required for agricultural fairs under RSA 287-E:10, VIII, except that the report shall be submitted
to the commission within 15 days of the expiration of the bingo license. The report shall include the names
and addresses of persons from whom bingo equipment was rented or leased.]~~

~~[XI.]~~ **VI.** The campground or hotel shall have been in existence for at least 2 years in the city or town in which the bingo games are to be conducted.

~~[XII. The campground or hotel shall be in compliance at the time of application with all applicable state
and local requirements for the operation of private campgrounds or hotels.]~~

~~[XIII.]~~ **VII.** The campground or hotel shall maintain a current list of bona fide guests.

~~[XIV.]~~ **VIII.** The campground or hotel shall not have been established solely for the purpose of operating bingo games.

15 Campground Bingo. Amend the introductory paragraph RSA 287-E:13 to read as follows:

Any campground or hotel ~~[holding a license under RSA 287-E:12]~~ may conduct special bingo games for children under the conditions specified in RSA 287-E:12, except:

16 Payment to Distributor. Amend RSA 287-E:23-a to read as follows:

287-E:23-a Payment to Distributor. Licensees shall pay for purchased tickets no later than 30 **calendar** days after delivery. ***Unless a waiver is given by the commission for good cause shown, no charitable organization may purchase tickets from a different distributor when that charitable organization has failed to comply with the provisions of this section.***

17 Financial Reports and Inspection Required. Amend RSA 287-E:24, IV to read as follows:

IV. All expenses ***shall be paid by check, or electronic funds transfers***, and all cash prizes ~~over~~ of \$500 ***or more*** shall be paid by check, and the charitable organization shall retain cancelled checks ***or bank produced facsimiles of cancelled checks*** for the payment of expenses and ***checks or bank produced facsimiles of checks and receipts for the payment of prizes*** for a period of 2 years.

18 Pari-Mutuel Breakage; Cross Reference. Amend RSA 284:22-a, VII to read as follows:

VIII. RSA 284:22, I, II, ***and III***, ~~and IV~~ shall apply according to the type of race on which the simulcast wagers are made, excepting, however, interstate common pools as provided in RSA 284:22-a, V(b) and that the provisions made for purses made in RSA 284:22, I shall not apply to simulcast races. The commission on simulcast race pools shall be available to the simulcasting licensee to satisfy obligations to the racing association originating or transmitting such simulcast races or to the horsemen's group of such association.

19 Campground Bingo. Amend RSA 287-E:4, II to read as follows:

II. Such fee shall be submitted to the commission at the time the application for a bingo license is filed and ~~except as provided in RSA 287-E:12~~, shall be refunded if the application is denied.

20 Racing Purses. Amend RSA 284:22, I-II to read as follows:

I. The commission on all win, place, and show pari-mutuel pools at tracks or race meets at which running horse races are conducted for public exhibition shall be uniform throughout the state at the rate of 19 percent of each dollar wagered in such pools, and the commission on all other pari-mutuel pools at such tracks or race meets shall be at the rate of not less than 26 percent of each dollar wagered in such pools and not more than 27 percent of each dollar wagered in such pools as determined from time to time by the licensee which conducts live running horse races after written notice to the commission and, in the absence of written notice, at the rate of 26 percent of each dollar wagered in such pools. Except as provided in RSA 284:22-a, the amount of the purse at such tracks or race meets at which running horse races are conducted shall be 8 1/4 percent of each dollar wagered in all pari-mutuel pools, said 8 1/4 percent to be paid by the licensee out of the commission on such pools. In addition to the above commission, 1/2 of the odd cents of all redistribution based on each dollar wagered exceeding a sum equal to the next lowest multiple of 10, known as "breakage", shall be retained by the licensee, 1/4 paid to the state treasury for the use of the state in accordance with the provisions of RSA 284:2 and 1/4 shall be paid to the racing and charitable gaming commission. The racing and charitable gaming commission shall distribute such breakage to the licensee which paid such breakage ~~[to supplement purses of live races conducted by the licensee at the location from which such breakage was paid]~~. Each licensee shall pay the tax provided for in RSA 284:23.

II. The commission on all win, place, and show pari-mutuel pools at tracks or race meets at which harness horse races are conducted for public exhibition, including those conducted by agricultural fairs, shall be uniform throughout the state at the rate of 19 percent of each dollar wagered in such pools, and the commission on all other pari-mutuel pools at such tracks or race meets shall be at the rate of not less than 25 percent of each dollar wagered in such pools and not more than 26 percent of each dollar wagered in such pools as determined from time to time by the licensee which conducts live harness horse racing after written notice to the commission and, in the absence of such written notice, at the rate of 25 percent of each dollar wagered in such pools. In addition to the above commission, 1/2 of the odd cents of all redistribution based on each dollar wagered exceeding a sum equal to the next lowest multiple of 10, known as "breakage", shall be retained by the licensee, 1/4 paid to the state treasury for the use of the state in accordance with the provisions of RSA 284:2 and 1/4 shall be paid to the racing and charitable gaming commission. The racing and charitable gaming commission shall distribute such breakage ~~[to the licensee which paid such breakage]~~. Each licensee shall pay the tax provided for in RSA 284:23.

21 Repeal. RSA 284:22, IV relative to breakage on pari-mutuel pools, is repealed.

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

2011-0687s

AMENDED ANALYSIS

This bill:

I. Defines game operator employers.

II. Requires that game operators pay charities participating in charitable gaming no later than 15 business days following a game date.

III. Raises the amount of bond required for conducting games of chance.

IV. Requires charitable organizations to collect certain fees on lucky 7 deals and pay them to the racing and charitable gaming commission.

V. Allows private campgrounds and hotels to conduct certain bingo games without a license.

VI. Allows the racing and charitable gaming commission to distribute breakage to pari-mutuel licensees without consideration of live racing.

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 Committee on Finance (Rule 4-3).

SB 155-FN-A, relative to section 179 expense deductions under the business profits tax. Re-refer to committee, Vote 5-0. Senator Luther for the committee.

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

SB 167-FN-A-L, establishing a production jobs creation credit under the business enterprise tax and making changes affecting small business to the business profits tax, the business enterprise tax, and the meals and rooms tax. Re-refer to committee, Vote 5-0. Senator Morse for the committee.

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

SB 182-FN-A-L, relative to video lottery and table gaming, providing property tax relief for local economies, providing services for problem gamers, and promoting tourism and public safety. Re-refer to committee, Vote 6-0. Senator D'Allesandro for the committee.

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

Lunch recess. Out of recess.

AFTERNOON SESSION, COMMITTEE REPORTS RESUMED

Sen. Rausch moved to remove SB 194 from the table.

SB 194, transferring all real and personal property from the former department of regional community-technical colleges to the board of trustees of the community college system of New Hampshire.

The question is on the motion to remove SB 194 from the table. Adopted.

Sen. Carson asserts Rule 2-15 on SB 194.

EDUCATION

SB 194, transferring all real and personal property from the former department of regional community-technical colleges to the board of trustees of the community college system of New Hampshire. Ought to Pass, Vote 3-0. Senator Forsythe for the committee.

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

Sen. Carson asserts Rule 2-15 on SB 194.

SPECIAL ORDER

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 3-FN-A-L, making comprehensive changes to the state retirement system. Ought to Pass with Amendment, Vote 4-1. Senator Carson for the committee.

Senate Executive Departments and Administration

March 8, 2011

2011-0701s

10/04

Amendment to SB 3-FN-A-LOCAL

Amend the bill by replacing all after the enacting clause 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 July 1, 2011* 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 June 30, 2011 or who are not in vested status on July 1, 2011 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 3 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 July 1, 2011*, 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 June 30, 2011 or have not attained vested status on July 1, 2011*, "average final compensation" shall mean 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 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.***

3 Maximum Initial Benefit; Effective 2016. Amend RSA 100-A:6-a to read as follows:

100-A:6-a Maximum Retirement Benefit. Notwithstanding any other provision of this chapter to the contrary, ~~[for members who commenced service before July 1, 2009,]~~ a member's initial calculation of the retirement benefit granted under the provisions of RSA 100-A:5 or RSA 100-A:6 shall not exceed 100 percent of the member's highest year of ~~[earnable compensation]~~ ***full base rate of compensation paid.*** ~~[For members who commenced service on or after July 1, 2009, a member's maximum retirement benefit granted under the provisions of RSA 100-A:5 or RSA 100-A:6 shall not exceed \$120,000.]~~ Nothing in this section shall affect the ability of a member to receive disability benefits pursuant to RSA 100-A:6, II(b) and (c). This provision shall not limit the application of supplemental allowances under RSA 100-A:41-a.

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 July 1, 2011***, 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 June 30, 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 July 1, 2011 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 July 1, 2011***, who has attained age 45 and completed 20 years of creditable service, ***and any group II member who commenced service after June 30, 2011 who has attained age 50 and completed 25 years of creditable service, and group II members not in vested status on July 1, 2011 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 July 1, 2011***, 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 June 30, 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 July 1, 2011 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 July 1, 2011 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 June 30, 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 July 1, 2011 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 July 1, 2011 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 July 1, 2011 according to the following table:

<u><i>Creditable service</i></u> <u><i>on July 1, 2011</i></u>	<u><i>Minimum years of service</i></u>	<u><i>Minimum age attained</i></u>	<u><i>Annuity multiplier</i></u>
<i>(1) Less than 4 years</i>	<i>24</i>	<i>age 49</i>	<i>2.1%</i>
<i>(2) At least 4 years but less than 6 years</i>	<i>23</i>	<i>age 48</i>	<i>2.2%</i>
<i>(3) At least 6 years but less than 8 years</i>	<i>22</i>	<i>age 47</i>	<i>2.3%</i>
<i>(4) At least 8 years but less than 10 years</i>	<i>21</i>	<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 July 1, 2011, 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 June 30, 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 July 1, 2011 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 July 1, 2011*, 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 June 30, 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 July 1, 2011 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 July 1, 2011*, 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 June 30, 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 July 1, 2011 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 July 1, 2011 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 June 30, 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 July 1, 2011, 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 July 1, 2011 or at least 50 for members who commenced group II service after June 30, 2011, and group II members not in vested status on July 1, 2011 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:

~~[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-
Permanent Policemen 9.30-
Permanent Firemen 9.30]~~

Group I members, 7.00, provided that for any group I member whose contribution rate on June 30, 2011 was 5.00, the rate for the state fiscal year beginning July 1, 2011 shall be 6.00, and for the state fiscal year beginning July 1, 2012 and each state fiscal year thereafter the rate shall be 7.00.

Group II members, 11.30, provided that for any group II member whose contribution rate on June 30, 2011 was 9.30, the rate for the state fiscal year beginning July 1, 2011 shall be 10.30, and for the state fiscal year beginning July 1, 2012 and each state fiscal year thereafter the rate shall be 11.30.

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 July 1, 2011* with creditable service in excess of 40 years *and group II members who commenced service after June 30, 2011 with creditable service in excess of 50 years, and group II members not in vested status on July 1, 2011 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 July 1, 2011* with creditable service in excess of 40 years, *and any group II member who commenced service after June 30, 2011 with creditable service in excess of 50 years, and group II members not in vested status on July 1, 2011 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.

12 Retirement System; Administration; Membership of Board. Amend RSA 100-A:14, I to read as follows:

I. The administration of this system is vested in a board of ~~[14]~~ **13** trustees. Each newly appointed or reappointed trustee shall have familiarity with or experience in finance or business management. The state treasurer shall be an ex officio voting member of the board. The governor and council shall appoint 2 trustees, to be known as nonmember trustees, who shall be qualified persons with investment and/or financial experience as provided in this paragraph and not be members of the system, and who shall serve for a term of 2 years and until their successors are appointed and qualified. The nonmember trustees of the board shall have substantial experience in the field of institutional investment or finance, taking into account factors such as educational background, business experience, and professional licensure and designations. The original appointment of one of the nonmember trustees shall be for a term of one year. The remaining ~~[11]~~ **10** members of the board shall consist of ~~[2 employees, 2 teachers, 2 permanent policemen, 2 permanent firemen]~~: *one employee member, one teacher member, one permanent police member, one permanent fireman*

member, 4 employer members; one member of the senate who shall be appointed annually by the senate president, **and** one member of the house of representatives who serves on the executive departments and administration committee and who shall be appointed annually by the speaker of the house~~[-and one person representing management in local government]~~. Whenever a vacancy occurs **for a legislative member**, the senate president or the speaker of the house shall fill the vacancy in the same manner by appointing a senate or a house member who shall serve for the unexpired term. The New Hampshire state employees' association, the New Hampshire education association, the New Hampshire police association, **and** the New Hampshire state permanent firemen's association~~[-and the New Hampshire Local Government Center]~~ shall each annually nominate from their members a panel of 5 persons, all of whom ~~[except for the panel of the Local Government Center]~~ shall be active members of the retirement system~~[-or one of the 4 predecessor systems]~~, no later than May 31 of each year, and the panels so named shall be filed with the secretary of state no later than June 10 of each year. From ~~[each of]~~ the above named panels the governor and council shall appoint ~~[one person annually to]~~ **the active member trustees of the board**~~[-except for the panel of the Local Government Center, which shall have one person appointed every 2 years]~~ **as needed so as to maintain the representation on the board. The governor and council shall appoint the employer members of the board with one member nominated by the New Hampshire Association of Counties, one member nominated by the New Hampshire Municipal Association, one member nominated by the New Hampshire School Boards Association, and one member to represent management of state employees.** Members appointed to the board in the manner aforesaid shall serve for a term of 2 years. Each member so appointed shall hold office until his or her successor shall be appointed and qualified. Whenever a vacancy occurs, the governor and council shall fill the vacancy by appointing a member who shall serve for the unexpired term ~~[from the same panel from which the former member was appointed]~~. The governor shall designate one of the nonmember trustees to serve as chairman of said board of trustees.

13 Quorum. Amend RSA 100-A:14, IV to read as follows:

IV. Each trustee, including the chairman, shall be entitled to one vote in the board of trustees. ~~[Seven]~~ **Six** trustees shall constitute a quorum for the transaction of any business of the board of trustees. ~~[Seven]~~ **Six** votes shall be necessary for any resolution or action by the board at any meeting.

14 Application; Board of Trustees Membership. Members of the board of trustees for the retirement system on the effective date of this section shall serve for the remainder of their terms. In order to conform to changes to the retirement system board of trustees made by this act, upon a vacancy occurring in the membership on the board of trustees after the effective date of this section, the appointment of a trustee shall be made to reasonably conform to the trustee designations in RSA 100-A:14, I.

15 Repeal of Special Account Funding. RSA 100-A:16, II(h)(2), relative to the method of allocating funds to the special account, is repealed.

16 Return of Members' Contributions; Reference to Assumed Rate of Return. Amend RSA 100-A:11, I(a) to read as follows:

(a) If a group I member ceases to be an employee or teacher for reasons other than retirement or death and if he or she has not elected to receive a vested deferred retirement allowance under RSA 100-A:10, the amount of his or her accumulated contributions shall be paid within 3 months after his or her written request therefor, provided that the member may not file a written request for such payment until at least 30 days from the date the member ceases to be an employee or a teacher and provided that the member may not again become a group I member during said 30-day period. A group I member shall cease to be an active member if he or she is absent from service for more than 180 days, without requesting return of the amount of his or her accumulated contributions, and the retirement system shall retain his or her accumulated contributions. The annual return credited on inactive, vested members shall be paid pursuant to RSA 100-A:16, II(g). The board shall hold and invest such accumulated contributions on behalf of the inactive member, provided that the annual return credited on the inactive member's accumulated contributions shall be 2 percentage points less than either the assumed rate of return determined ~~[under RSA 100-A:16, II(h)]~~ **by the trustees** or the actual rate of return, whichever is lower, for the immediately preceding fiscal year as reported in the comprehensive annual financial report (CAFR), provided the rate of return shall not be less than zero. The inactive member may make a written request for his or her total accumulated contributions, provided he or she is not on a leave of absence, and he or she shall be paid within 3 months after his or her written request. In the event an inactive member who has not withdrawn his or her contributions under this section returns to become an active member in service, his or her previous service shall count toward that member's creditable service to the extent that his or her accumulated contributions have remained in the retirement system.

17 Return of Members' Contributions; Reference to Assumed Rate of Return. Amend RSA 100-A:11, II(a) to read as follows:

(a) If a group II member ceases to be a permanent policeman or permanent fireman for reasons other than retirement or death and if he or she has not elected to receive a vested deferred retirement allowance under RSA 100-A:10, the amount of his or her accumulated contributions shall be paid within 3 months after his or her written request therefor. A group II member shall cease to be an active member if he or she is absent from service for more than 180 days, without requesting return of the amount of his or her accumulated contributions, and the retirement system shall retain his or her accumulated contributions. The annual return credited on inactive, vested members shall be paid pursuant to RSA 100-A:16, II(g). The board shall hold and invest such accumulated contributions on behalf of the inactive member, provided that the annual return credited on the inactive member's accumulated contributions shall be 2 percentage points less than either the assumed rate of return determined ~~[under RSA 100-A:16, II(h)]~~ **by the trustees** or the actual rate of return, whichever is lower, for the immediately preceding fiscal year as reported in the comprehensive annual financial report (CAFR), provided the rate of return shall not be less than zero. The inactive member may make a written request for his or her total accumulated contributions, provided he or she is not on a leave of absence, and he or she shall be paid within 3 months after his or her written request. In the event an inactive member who has not withdrawn his or her contributions under this section returns to become an active member in service, his or her previous service shall count toward that member's creditable service to the extent that his or her accumulated contributions have remained in the retirement system.

18 Medical Benefits Subsidy; Payment by Retirement System. Amend RSA 100-A:52, II to read as follows:

II. However, for the fiscal year beginning July 1, 1990, the maximum amount payable by the retirement system under this subdivision on account of each person qualified under paragraph I who is not entitled to Medicare benefits, shall be \$101.50 per month, and on account of each person qualified under paragraph I who is entitled to Medicare benefits, shall be \$64 per month. As of July 1, 1991, and on each July 1 until and including July 1, 2007, the maximum amount payable by the retirement system as provided in this paragraph shall be increased by 8 percent, compounded on previous increases. After July 1, 2007 ~~[and until and including July 1, 2011]~~, the rate payable under this paragraph shall not be increased. ~~[As of July 1, 2012, and on each July 1 thereafter, the maximum amount payable by the retirement system as provided in this paragraph shall be increased by 4 percent, compounded on previous increases.]~~

19 New Sections; Retirement System; Return to Work; Statement Required. Amend RSA 100-A by inserting after section 27 the following new sections:

100-A:27-a Return to Work; Suspension of Benefits. 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. 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.

100-A:27-b Statement Required. The retirement system shall provide to employers a form to be signed, dated, and submitted by persons hired by the employer containing a statement establishing that the person is not currently receiving an allowance under this chapter. Employers shall submit such forms to the retirement system.

20 Repeal. 2002, 137:7, relative to the application of the repeal of former RSA 100-A:3, I(c), is repealed.

21 Transfer Required; Retirement System. The board of trustees of the retirement system shall forthwith transfer the sum of \$89,000,000 from the group II components of the special account established under RSA 100-A:16, II(h) to the state annuity accumulation fund.

22 Study Committee Established; Voluntary Defined Contribution Plan. There is established a committee to study the establishment of a federal tax qualified voluntary defined contribution plan.

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

(a) One member of the senate, who shall be from the executive departments and administration committee, appointed by the president of the senate.

(b) Three members of the house of representatives, each of whom shall be from the executive departments and administration committee, appointed by the speaker of the house of representatives.

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

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

IV. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2011.

23 Repeal. The following are repealed:

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

II. RSA 100-A:4-b, relative to group I employees and teachers purchase of credit for out-of-state service.

III. RSA 100-A:4-c, relative to group II members purchase of credit for out-of state service.

24 Severability. If any provision of this act or the application of such provision to any person or circumstance is held invalid or is deemed not to comply with applicable law or regulations of the Internal Revenue Service so as to jeopardize the retirement system's status as a qualified governmental pension plan, the invalidity or non-compliance does not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable.

25 Applicability; Contingent Amendment. If any provision in sections 1-10 of this act is found by the New Hampshire Supreme Court to be invalid as to active members of the New Hampshire Retirement System on the effective date of this act, section 26 shall take effect for the first payroll period beginning 10 days from the date of such decision. The board of trustees of the retirement system shall certify to the secretary of state and the director of legislative services the date of such occurrence.

26 Member Contribution Rates; Contingent Version. The introductory paragraph of RSA 100-A:16, I(a) and the contribution rates following the introductory paragraph are repealed and reenacted 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:

Group I members, 8.00.

Group II members, 12.30.

27 Effective Date.

I. Sections 1, 2, and 4-18 of this act shall take effect July 1, 2011.

II. Sections 19 and 20 of this act shall take effect January 1, 2012.

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

IV. Section 26 of this act shall take effect as provided in section 25 of this act.

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

2011-0701s

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 a voluntary defined contribution plan administered by the board of trustees.

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

Recess. Out of recess.

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

Sen. Carson offered a floor amendment.

Sen. Carson, Dist. 14

Sen. Bradley, Dist. 3

March 10, 2011

2011-0797s

10/03

Floor Amendment to SB 3-FN-A-LOCAL

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

25 Effective Date.

I. Sections 1, 2, and 4-18 of this act shall take effect July 1, 2011.

II. Sections 19 and 20 of this act shall take effect January 1, 2012.

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

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

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

Sen. Larsen moved to Table SB 3-FN-A-L.

The question is on the motion to Table.

A roll call was requested by Sen. Larsen, seconded by Sen. D'Allesandro.

The following Senators voted Yes: Houde, Kelly, Larsen, D'Allesandro, Merrill.

The following Senators voted No: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

Yeas: 5 - Nays: 19

Motion failed.

Sen. Houde offered a floor amendment.

Sen. Houde, Dist. 6

March 15, 2011

2011-0895s

05/10

Floor Amendment to SB 3-FN-A-LOCAL

Amend the bill by replacing section 3 with the following:

3 Maximum Initial Benefit; Effective 2016. Amend RSA 100-A:6-a to read as follows:

100-A:6-a Maximum Retirement Benefit.

I. Notwithstanding any other provision of this chapter to the contrary, [~~for members who commenced service before July 1, 2009,~~] a member's initial calculation of the retirement benefit granted under the provisions of RSA 100-A:5 or RSA 100-A:6 shall not exceed 100 percent of the member's highest year of [earnable compensation] **full base rate of compensation paid**. [~~For members who commenced service on or after July 1, 2009, a member's maximum retirement benefit granted under the provisions of RSA 100-A:5 or RSA 100-A:6 shall not exceed \$120,000.~~]

II. In addition to any other benefit or payment under this chapter, if a member has reported compensation for any year of the member's creditable service which exceeds the member's maximum initial calculation of benefit under this paragraph, the member's contributions attributable to the amount exceeding the maximum initial benefit for each of those years shall be repaid to the member as a lump sum within 90 day of the member's retirement date.

III. Nothing in this section shall affect the ability of a member to receive disability benefits pursuant to RSA 100-A:6, II(b) and (c).

IV. This ~~[provision]~~ **section** shall not limit the application of supplemental allowances under RSA 100-A:41-a.

The question is on the adoption of the Floor Amendment.

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

The following Senators voted Yes: Houde, Kelly, Larsen, D'Allesandro, Merrill.

The following Senators voted No: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

Yeas: 5 - Nays: 19

Floor Amendment failed.

Sen. Houde offered a floor amendment.

Sen. Houde, Dist. 5

March 15, 2011

2011-0905s

10/09

Amendment to SB 3-FN-A-LOCAL

Amend the bill by replacing section 19 with the following:

19 New Sections; Retirement System; Return to Work; Form Required. Amend RSA 100-A by inserting after section 27 the following new sections:

100-A:27-a Return to Work; Suspension of Benefits. 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. 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.

100-A:27-b Form Required. The retirement system shall provide to employers a form to be signed, dated, and submitted by persons hired by the employer containing such information as determined necessary by the retirement system and a statement establishing that the person is not currently receiving an allowance under this chapter. Employers shall submit such forms to the retirement system.

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

Sen. Merrill offered a floor amendment.

Sen. Merrill, Dist. 21

March 15, 2011

2011-0910s

10/04

Floor Amendment to SB 3-FN-A-LOCAL

Amend the bill by replacing section 12 with the following:

12 Retirement System; Administration; Membership of Board. Amend RSA 100-A:14, I to read as follows:

I. The administration of this system is vested in a board of ~~[14]~~ **13** trustees. Each newly appointed or reappointed trustee shall have familiarity with or experience in finance or business management. The state treasurer shall be an ex officio voting member of the board. The governor and council shall appoint 2 trustees, to be known as nonmember trustees, who shall be qualified persons with investment and/or financial experience as provided in this paragraph and not be members of the system, and who shall serve for a term

of 2 years and until their successors are appointed and qualified. The nonmember trustees of the board shall have substantial experience in the field of institutional investment or finance, taking into account factors such as educational background, business experience, and professional licensure and designations. The original appointment of one of the nonmember trustees shall be for a term of one year. The remaining ~~[11]~~ **10** members of the board shall consist of ~~[2 employees, 2 teachers, 2 permanent policemen, 2 permanent firemen]~~: **one employee member, one teacher member, one permanent police member, one permanent fireman member, 4 employer members**; one member of the senate who shall be appointed annually by the senate president, **and** one member of the house of representatives who serves on the executive departments and administration committee and who shall be appointed annually by the speaker of the house~~[-and one person representing management in local government]~~. **Provided, however, that the senate and house of representatives appointees shall be nonvoting members of the board, and** whenever a vacancy occurs **for a legislative member**, the senate president or the speaker of the house shall fill the vacancy in the same manner by appointing a senate or a house member who shall serve for the unexpired term. The New Hampshire state employees' association, the New Hampshire education association, the New Hampshire police association, **and** the New Hampshire state permanent firemen's association~~[-and the New Hampshire Local Government Center]~~ shall each annually nominate from their members a panel of 5 persons, all of whom ~~[except for the panel of the Local Government Center]~~ shall be active members of the retirement system~~[-or one of the 4 predecessor systems]~~, no later than May 31 of each year, and the panels so named shall be filed with the secretary of state no later than June 10 of each year. From ~~[each of]~~ the above named panels the governor and council shall appoint ~~[one person annually to]~~ **the active member trustees of the board**~~[-except for the panel of the Local Government Center, which shall have one person appointed every 2 years]~~ **as needed so as to maintain the representation on the board. The governor and council shall appoint the employer members of the board with one member nominated by the New Hampshire Association of Counties, one member nominated by the New Hampshire Municipal Association, one member nominated by the New Hampshire School Boards Association, and one member to represent management of state employees.** Members appointed to the board in the manner aforesaid shall serve for a term of 2 years. Each member so appointed shall hold office until his or her successor shall be appointed and qualified. Whenever a vacancy occurs, the governor and council shall fill the vacancy by appointing a member who shall serve for the unexpired term ~~[from the same panel from which the former member was appointed]~~. The governor shall designate one of the nonmember trustees to serve as chairman of said board of trustees.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Sen. D'Allesandro, seconded by Sen. Merrill.

The following Senators voted Yes: Houde, Kelly, Larsen, D'Allesandro, Merrill.

The following Senators voted No: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

Yeas: 5 - Nays: 19

Floor Amendment failed.

Sen. D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

March 15, 2011

2011-0896s

05/10

Floor Amendment to SB 3-FN-A-LOCAL

Amend the bill by deleting section 21 and renumbering the original sections 22-27 to read as 21-26, respectively.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Sen. D'Allesandro, seconded by Sen. Barnes.

The following Senators voted Yes: Houde, Kelly, Larsen, D'Allesandro, Merrill.

The following Senators voted No: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

Yeas: 5 - Nays: 19

Floor Amendment failed.

Sen. Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

March 15, 2011

2011-0916s

10/04

Floor Amendment to SB 3-FN-A-LOCAL

Amend the bill by replacing sections 1-11 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 commenced service prior to July 1, 2011*, the full base rate of compensation paid 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. 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 commenced service after June 30, 2011, 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 commenced service prior to July 1, 2011, 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.

(b) For members who commenced service after June 30, 2011, 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.

3 Maximum Initial Benefit; Effective 2016. Amend RSA 100-A:6-a to read as follows:

100-A:6-a Maximum Retirement Benefit.

I. Notwithstanding any other provision of this chapter to the contrary[;]:

(a) For members who commenced service before July 1, 2009, a member's initial calculation of the retirement benefit granted under the provisions of RSA 100-A:5 or RSA 100-A:6 shall not exceed 100 percent of the member's highest year of earnable compensation.

(b) For members who commenced service on or after July 1, 2009 and before July 1, 2011, a member's maximum retirement benefit granted under the provisions of RSA 100-A:5 or RSA 100-A:6 shall not exceed \$120,000.

(c) For members who commenced service on or after July 1, 2011, a member's maximum retirement benefit granted under the provisions of RSA 100-A:5 or RSA 100-A:6 shall not exceed the member's highest year of full base rate of compensation paid.

II. Nothing in this section shall affect the ability of a member to receive disability benefits pursuant to RSA 100-A:6, II(b) and (c). This [provision] **section** shall not limit the application of supplemental allowances under RSA 100-A:41-a.

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 commenced service before July 1, 2011*, 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 June 30, 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.*

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 commenced service before July 1, 2011, who has attained age 45 and completed 20 years of creditable service, and any group II member who commenced service after June 30, 2011 who has attained age 50 and completed 25 years of creditable service, 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) 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.

(c)(1) Notwithstanding any provision of RSA 100-A to the contrary, any group II member who ***commenced service before July 1, 2011 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 June 30, 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,*** 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.]

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, 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, 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. For 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.

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

(b) ***For members who commenced service before July 1, 2011,*** 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 June 30, 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,*** 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 commenced service before July 1, 2011 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 June 30, 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.

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 commenced service before July 1, 2011 or at least 50 for members who commenced after June 30, 2011*, 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:

Employees of employers other than the state *hired on or before June 30, 2011*, 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 *hired on or before June 30, 2011*, 5.00

Permanent Policemen *hired on or before June 30, 2011*, 9.30

Permanent Firemen *hired on or before June 30, 2011*, 9.30

Group I members hired after June 30, 2011, 7.00

Group II members hired after June 30, 2011, 11.30

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 commenced service before July 1, 2011* with creditable service in excess of 40 years *and group II members who commenced service after June 30, 2011 with creditable service in excess of 50 years*, 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 commenced service before July 1, 2011* with creditable service in excess of 40 years, *and any group II member who commenced service after June 30, 2011 with creditable service in excess of 50 years*, 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.

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: Houde, Kelly, Larsen, D'Allesandro, Merrill.

The following Senators voted No: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, Odell, White, Luther, Lambert, Carson, Boutin, Barnes, De Blois, Rausch, Morse, Prescott, Stiles, Bragdon.

Yeas: 5 - Nays: 19

Floor Amendment failed.

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

A roll call was requested by Sen. Gallus, 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 Committee on Finance (Rule 4-3).

Recess. Out of recess.

Sen. Barnes moved to remove SB 160-FN from the table.

SB 160-FN, relative to the definition and regulation of installment loans.

The question is on the motion to remove 160-FN from the table. Adopted.

COMMERCE

SB 160-FN, relative to the definition and regulation of installment loans. Ought to Pass with Amendment, Vote 3-1. Senator Sanborn for the committee.

The pending 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: Forrester, Bradley, Forsythe, Sanborn, White, Luther, Lambert, Carson, Boutin, De Blois, Morse, Stiles, Bragdon.

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

Yeas: 13 - Nays: 11

Adopted, bill ordered to Committee on Finance (Rule 4-3).

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

SB 12-FN, relative to screening panels for medical injury claims.

SB 70-FN, relative to remedies in landlord-tenant actions.

SB 105, exempting highway trail crossing from evaluation requirements for certain all terrain and trail bike trails.

SB 106, naming the visitor center at Jericho Mountain state park for Robert Danderson.

SB 152-FN, relative to participation in state employees' group insurance by members of the general court.

SB 162-FN, relative to federal health care reform 2010.

SB 192, establishing a commission to identify strategies needed for delivering a 21st century education.

SB 194, transferring all real and personal property from the former department of regional community-technical colleges to the board of trustees of the community college system of New Hampshire.

LIST OF RULE 2-15'S FOR THE DAY

Sen. Bradley: SB 154-FN.

Sen. White: SB 162-FN.

Sen. Carson: SB 194.

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.