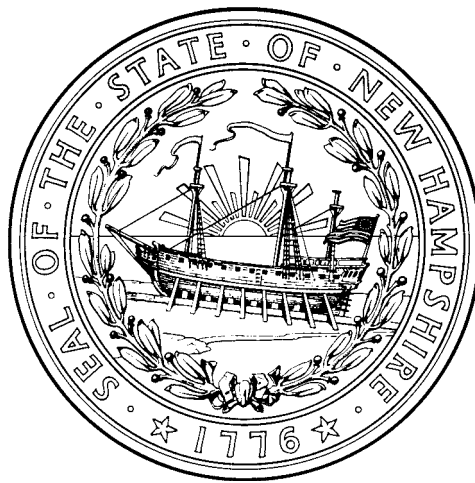


June 27, 2012  
Nos. 16-17

# **STATE OF NEW HAMPSHIRE**

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**Second Year of the 162<sup>nd</sup> Session of the  
New Hampshire General Court**

**Legislative Proceedings**

## **SENATE JOURNAL**

**ADJOURNMENT – JUNE 6, 2012 SESSION  
COMMENCEMENT – JUNE 27, 2012 SESSION**

# SENATE JOURNAL 16 *(continued)*

*June 6, 2012*

**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 17

*June 27, 2012*

The Senate reconvened at 10:30 a.m., a quorum being present.

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

The bad news is that I put my back out falling out of a tree yesterday. But, the good news is that I'm 48 and still climbing trees. My brother-in-law, on the other hand, is an avid fisherman, and he once showed me the various lures he uses—he's coming up to New Hampshire as most people do for its beauty, to fish. And those lures are amazing; they look just like the bugs, except that they've got a big barb sticking out of them. The fish sees this amazing thing and bites without awareness and gets hooked.

One of my great mentors, Pema Chodron, the Buddhist nun, reminds us that in life and human interaction we can so easily get hooked. We're encouraged not to bite the hook. It's hard for me; someone says something stupid or mean or wrong or manipulative and I am tempted to bite the hook. I respond with attachment or resistance or judgment. But, on my better days, I take a moment to be mindful—to pause, to breathe deeply, maybe count to ten, and then speak without anger, without attachment, without resistance, and without judgment. This is Spirituality 301, but it will make this room and this state and this world and your families a peaceful place. Let us pray.

*God of all grace, so fill us with Your grace, power, and gentleness so that we might live peaceful lives, speak peaceful words, and look at each other through peaceful eyes, so that when we are being hurt or manipulated, we respond in power rather than react in violence.* Amen.

Sen. Barnes led the Pledge of Allegiance.

## **INTRODUCTION OF GUESTS AND PRESENTATIONS**

Senator Kelly introduced her son, Zachary, and her granddaughter, Stella, guests in the Senate gallery today.

**Without objection, President Bragdon authorized the Senate to use the official Senate electronic devices on the floor of the Senate.**

## **SUSPENSION OF SENATE RULES**

**Sen. Bradley moved to suspend Senate Rule 8-1(h) to allow the Senate to act on HB 1354 after the Senate deadline.**

**The question is on the motion to suspend the rules.**

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

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

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

**Yeas: 16 - Nays: 7**

**Adopted by necessary 2/3 vote.**

**Sen. Bradley moved to remove HB 1354 from the table. Adopted.**

**PUBLIC AND MUNICIPAL AFFAIRS**

**HB 1354**, relative to a person's residence for voting and all other legal purposes.

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

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

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

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

**Yeas: 7 - Nays: 16**

**Failed.**

**Sen. Bradley moved Ought to Pass.**

**Sen. Prescott offered a floor amendment.**

**Sen. Prescott, Dist. 23**

**June 22, 2012**

**2012-2512s**

**03/09**

**Floor Amendment to HB 1354**

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

AN ACT relative to voter affidavits.

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

1 Contingency. If SB 289-FN of the 2012 regular legislative session does not become law, the provisions of this act shall not take effect. If SB 289-FN of the 2012 regular legislative session becomes law, the provisions of this act shall take effect in accordance with section 6 of this act.

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

659:13 Obtaining a Ballot.

I. A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction. The ballot clerk shall request that the voter present a valid photo identification meeting the requirements of paragraph II. If the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a [qualified] **challenged** voter affidavit. The voter, if still qualified to vote in the town or ward and having presented a valid photo identification verifying the voter's identity or executed a [qualified] **challenged** voter affidavit, and unless challenged as provided for in RSA 659:27 through 659:33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. The ballot clerk shall also mark the checklist using a ruler or other straight edge to ensure accuracy of the mark in order to show that the voter obtained his or her ballot. The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid photo identification and whether such voter executed a [qualified] **challenged** voter affidavit.

II. The following forms of identification bearing a photograph of the voter shall satisfy the identification requirements of paragraph I:

(a) A driver's license issued by the state of New Hampshire or any other state, regardless of expiration date.

(b) An identification card issued by the director of motor vehicles under the provisions of RSA 260:21.

(c) A United States armed services identification card.

(d) A United States passport, regardless of expiration date.

(e) Any other valid photo identification issued by federal, state, county, or municipal government.

(f) A valid student identification card.

(g) A photo identification not authorized by subparagraphs (a) through (f) but determined to be legitimate by the supervisors of the checklist, the moderator, or the town or city clerk, provided that if any person authorized to challenge a voter under RSA 659:27 objects to the use of such photo identification, the voter shall be required to execute a [qualified] **challenged** voter affidavit as if no identification was presented.

(h) Verification of the person's identity by a moderator or supervisor of the checklist or the town or city clerk, provided that if any person authorized to challenge a voter under RSA 659:27 objects to such verification, the voter shall be required to execute a challenged voter affidavit.

III. If a voter on the nonpublic checklist executes a [qualified] **challenged** voter affidavit in accordance with paragraph I, the affidavit shall not be subject to RSA 91-A.

IV.(a) The secretary of state shall cause a letter of identity verification to be mailed by first class mail to each voter who executed a [qualified] **challenged** voter affidavit in accordance with paragraph I. The letter shall be mailed within 60 days after the election, except that if the election is a state primary election, the letter shall be mailed 60 days after the general election, and if the election is a regularly scheduled municipal election, the letter shall be mailed by the July 1 or January 1 next following the election. The secretary of state shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the person that a person who did not present valid photo identification voted using his or her name and address and instruct the person to return the letter within 90 days with a written confirmation that the person voted or to contact the attorney general immediately if he or she did not vote. The letter shall also inform the person of the procedure for obtaining a free nondriver's picture identification card for voting purposes.

(b) The secretary of state shall cause any letters mailed pursuant to subparagraph (a) that are returned as undeliverable by the United States Post Office to be referred to the attorney general. The secretary of state shall also prepare and forward to the attorney general a list of all persons who were mailed letters under subparagraph (a) and have not confirmed that they voted. Upon receipt of notice from a person who receives a letter of identity verification that the person did not vote, or upon receipt of a referral from the secretary of state, the attorney general shall cause an investigation to be made to determine whether fraudulent voting occurred.

(c) Within 60 days after a state general election, the secretary of state shall compile a report of the number of voters that did not present valid photo identification at each election occurring since the previous state general election, and forward the report to the speaker of the house of representatives, the president of the senate, and the chairpersons of the appropriate house and senate standing committees with jurisdiction over election law.

3 Wrongful Voting; Penalties for Voter Fraud; Challenged Voter Affidavit. Amend RSA 659:34, I(a) to read as follows:

(a) When registering to vote; when obtaining an official ballot; when casting a vote by official ballot; or when applying for a photo identification card for voting purposes, purposely or knowingly makes a false material statement regarding his or her qualifications as a voter to an election officer or submits a voter registration form, an election day registration affidavit, a qualified voter affidavit, a domicile affidavit, **a challenged voter affidavit**, an affidavit of religious exemption, an identification card voucher, or an absentee registration affidavit containing false material information regarding his or her qualifications as a voter;

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

659:13 Obtaining a Ballot.

I.(a) A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name and address to one of the ballot clerks who shall, if the name is found on the checklist by the ballot clerk, repeat the name and address. If the address announced by voter is different from what appears on the checklist, but is in the same town or ward, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction.

(b) The voter, if the ballot clerk determines that he or she is qualified to vote in the town or ward, and unless challenged as provided for in RSA 659:27 through 659:33, shall then be asked to present proof of his or her identity meeting the requirements of paragraph II. If the voter presents such proof of identity to the ballot clerk, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state. The ballot clerk shall also mark the checklist using a ruler or other straight edge to ensure accuracy of the mark in order to show that the voter obtained his or her ballot. If the photo identification is an out-of state driver's license or nondriver's identification card, the ballot clerk shall record the state of issuance on the checklist in accordance with uniform procedures developed by the secretary of state in a color designated for such entries and the supervisors of the checklist or designee shall submit the information to the secretary of state within 30 days of the election. The voter shall then be allowed to enter the space enclosed by the guardrail to mark and cast his or her ballot.

(c)(1) If the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a [qualified] **challenged** voter affidavit [~~in accordance with RSA 654:12~~]. The voter shall receive an explanatory document prepared by the secretary of state explaining the proof of identity requirements. If the voter executes a [qualified] **challenged** voter affidavit, the ballot clerk shall mark the checklist in accordance with uniform procedures developed by the secretary of state.

(2) If the voter executes a [qualified] **challenged** voter affidavit, the moderator or the moderator's designee shall take a photograph of the voter and immediately print and attach the photograph to, and thus make it a part of, the affidavit form. The photograph shall be 2 inches by 2 inches, or larger, and be in color. The moderator or his or her designee who took the photograph and the voter shall then sign the [qualified] **challenged** voter affidavit. The moderator or designee shall delete the photograph from the camera in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a [qualified] **challenged** voter affidavit without a photograph.

(3) If the voter objects to the photograph requirement because of religious beliefs, he or she may execute an affidavit of religious exemption in accordance with RSA 659:13-b, which shall be attested to by an election officer and attached to the [qualified] **challenged** voter affidavit.

(4) The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid photo identification and has executed a [qualified] **challenged** voter affidavit.

II. A valid photo identification shall show the name of the individual to whom the identification was issued, and the name shall substantially conform to the name in the individual's voter registration record; it also shall show a photograph of the individual to whom the identification was issued; and it shall also have an expiration date that has not been exceeded by a period of more than 5 years from the current date. The following forms of identification bearing a photograph of the voter shall satisfy the identification requirements of paragraph I:

- (a) A driver's license issued by any state or the federal government.
- (b) A nondriver's identification card issued by the motor vehicles division, department, agency, or office of any state.
- (c) A United States armed services identification card.
- (d) A United States passport.
- (e) A [qualified] **challenged** voter affidavit in accordance with subparagraph I(c).

III. If a voter on the nonpublic checklist executes an affidavit in accordance with subparagraph I(c), the affidavit shall not be subject to RSA 91-A.

IV.(a) The secretary of state shall cause a letter of identity verification to be mailed by first class mail to each voter who executed a [qualified] **challenged** voter affidavit or affidavit of religious exemption in accordance with paragraph I, unless the same person is sent letter of identity verification pursuant to RSA 654:12, V(b). The letter shall be mailed within 60 days after the election, except that if the election is a state primary election, the letter shall be mailed 60 days after the general election, and if the election is a regularly scheduled municipal election, the letter shall be mailed by the July 1 or January 1 next following the election. The secretary of state shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the person

that a person who did not present valid photo identification voted using his or her name and address and instruct the person to return the letter within 30 days with a written confirmation that the person voted or to contact the attorney general immediately if he or she did not vote. The letter shall also inform the person of the procedure for obtaining a free nondriver's picture identification card for voting purposes.

(b) The secretary of state shall cause any letters mailed pursuant to subparagraph (a) that are returned as undeliverable by the United States Post Office to be referred to the attorney general. The secretary of state shall also prepare and forward to the attorney general a list of all persons who were mailed letters under subparagraph (a) and have not confirmed that they voted. Upon receipt of notice from a person who receives a letter of identity verification that the person did not vote, or upon receipt of a referral from the secretary of state, the attorney general shall cause an investigation to be made to determine whether fraudulent voting occurred.

(c) Within 60 days after any election held after November 1, 2012, the secretary of state shall compile a report by voting district of the number of voters who registered or voted on election day but did not present valid photo identification, and forward the report to the speaker of the house of representatives, the president of the senate, and the chairpersons of the appropriate house and senate standing committees with jurisdiction over election law.

V.(a) The secretary of state shall provide to each town or city the photography equipment, supplies, and printing device that are necessary to enable it to comply with the photograph provision of subparagraph I(c), along with instructions in their use.

(b) If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the secretary of state may waive a voter's compliance with the photograph requirement of subparagraph I(c).

5 Applicability of SB 289. Amend section 14 of SB 289-FN of the 2012 regular legislative session to read as follows:

14 Applicability. In accordance with RSA 659:13, as amended by this act, ballot clerks shall request that the voters present a valid photo identification at all elections after the effective date of this act. Notwithstanding the provisions of RSA 659:13, as amended by this act, prior to November 1, 2012, if the voter does not present such identification, he or she may vote without executing a [qualified] **challenged** voter affidavit, but the ballot clerk shall provide the voter with a copy of the explanatory document specified in RSA 652:26 and explain the need for photo identification after November 1, 2012. The ballot clerks shall tally the number of voters that do not present a valid photo identification at the September 2012 state primary election, and the town or city clerk shall report the number with the election return.

6 Effective Date.

I. Section 4 of this act shall take effect September 1, 2013, at 12:01 a.m.

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

**2012-2512s**

#### AMENDED ANALYSIS

This bill changes the affidavit requirement for voters without photo identification from a qualified voter affidavit to a challenged voter affidavit. This bill also adds submitting a challenged voter affidavit with false information to the voter fraud penalty statute.

**The question is on the adoption of the Floor Amendment. Adopted. The question is on the adoption of the motion of Ought to Pass as Amended.**

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

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

**The following Senators voted No: Houde, Groen, White, Kelly, Carson, Larsen, D'Allesandro, Merrill.**

**Yeas: 15 - Nays: 8**

**Adopted, bill ordered to Third Reading, Read a Third Time, and Final Passage in the Early Session.**

**Without objection, the Clerk shall read the title of the Veto Messages only.**

**GOVERNOR'S VETO MESSAGE REGARDING SB 409**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 21, 2012, I vetoed SB 409, an act relative to the use of marijuana for medical purposes.

In 2009, I vetoed HB 648, which would have established compassion centers in New Hampshire to cultivate and distribute marijuana for use by persons suffering from serious illness. I acknowledged then and continue to express my personal compassion for those that suffer from debilitating medical conditions who wish to use marijuana to help alleviate their symptoms and the side effects of medical treatment.

I also recognize the considerable work undertaken by the sponsors and committee members of both legislative bodies in trying to address the concerns I raised in my veto message of HB 648 in 2009. While SB 409 takes a different approach regarding how marijuana would be cultivated and distributed than the 2009 legislation, this new legislation will not ensure the limited use of marijuana for medical purposes.

Under this bill, the number of potential marijuana cultivation sites is virtually unlimited. The distribution of marijuana under SB 409 cannot effectively be controlled, with the result being the proliferation of marijuana for unlawful use. Marijuana remains among the most widely abused drugs in this state, and SB 409 will not provide tightly controlled access for medical use.

Law enforcement has serious concerns about preventing the unauthorized use of marijuana under this legislation. SB 409 requires that the cultivation locations be registered with the N.H. Department of Health and Human Services. But the bill restricts the identification of those cultivation locations to law enforcement only in the very narrow instances where an individual has been arrested and claims to be engaged in the medical use of marijuana, or where state and local law enforcement have probable cause that marijuana is being cultivated or used at a particular location and seek confirmation that the cultivation or use is for medical purposes.

While SB 409 requires that marijuana for medical use be cultivated in a "locked and enclosed site," neither state nor local law enforcement is authorized to generally inspect and confirm that these conditions are being maintained. The inspection and oversight of cultivation sites is assigned to the Department of Health and Human Services. The Department has neither the staff nor the statewide presence to adequately regulate the security of marijuana cultivation sites, which are unlimited in number. Effective and continuous oversight of cultivation sites is critical to prevent unlawful access to marijuana.

In this regard, the fiscal note accompanying the bill omits any mention of the personnel and cost for inspection and oversight of the cultivation locations by the Department. I believe that the fiscal impact of this legislation is considerably understated, and I am concerned that the fees required to be charged to administer this program will be far greater than presently identified and may be prohibitive for some qualifying patients.

SB 409 also authorizes marijuana use by minors under the age of 18. At a time of increased use of marijuana by minors across the country, I am very concerned that legislation allowing marijuana use by teenagers even for medical purposes will downplay the perceived risk of use of this drug and will lead to increased adolescent use in New Hampshire. Even with parental consent and supervision, as the bill provides, allowing minors access to marijuana also increases the potential for its unlawful distribution.

SB 409 authorizes a patient to cultivate and transport up to 6 ounces of marijuana at any given time, and to possess for their use up to 2 ounces of marijuana at any point in time. While the bill requires the patient to obtain a written certification from a physician attesting to their qualifying medical condition before the patient is eligible to obtain a registry card authorizing medicinal marijuana use, the bill does not contemplate any medical guidance by the certifying physician concerning the amount or frequency of marijuana use. This is a significant difference from the prescription and use of any other controlled drug, where the patient is given specific medical guidance on how much of a drug to take and how often to take it.

Given that there are many types of marijuana with different degrees of potency, I am concerned that the absence of restrictions on the amount and frequency of use of marijuana combined with the amounts allowed under the bill for possession could pose significant health dangers.

This legislation also allows the transfer to and use of marijuana by "visiting qualifying patients," who are persons that have a qualifying medical condition but who are not residents of New Hampshire. Oversight and control of the medical use of marijuana by those who are not residents of New Hampshire is unclear in SB 409 and presents challenges for the verification of their status, qualifying conditions, and regulating the amount of marijuana provided to them by a qualifying patient. I do not believe that the bill contains sufficient protections against the potential re-distribution of marijuana by a visiting qualifying patient.

I continue to believe that the most effective manner in which to facilitate the safe and controlled use of marijuana for medical purposes is to distribute the drug like any other controlled substance through a regulated prescription system. I recognize that such a system is unlikely as long as marijuana use for medicinal purposes remains illegal under federal law. As well intentioned as the efforts reflected in SB 409 are, I cannot support establishing a system for the use of medical marijuana that poses risks to the patient, lacks adequate oversight and funding, and risks the proliferation of a serious drug.

For all of these reasons, I am vetoing SB 409.

Respectfully submitted,  
John H. Lynch  
Governor

Dated: June 21, 2012

**The question is, notwithstanding the Governor's Veto, shall SB 409 become law?**

**A roll call is required.**

**The following Senators voted Yes: Gallus, Bradley, Forsythe, Houde, Groen, White, Kelly, Luther, Lambert, De Blois, Merrill, Stiles, Bragdon.**

**The following Senators voted No: Forrester, Odell, Carson, Larsen, Boutin, Barnes, Rausch, D'Allesandro, Morse, Prescott.**

**Yeas: 13 - Nays: 10**

**Veto sustained lacking necessary 2/3 vote.**

#### **GOVERNOR'S VETO MESSAGE REGARDING SB 406**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 20, 2012, I vetoed SB 406, an act establishing an early offer alternative in medical injury claims.

SB 406 would be the first statutory early offer program in the nation. This legislation establishes a voluntary program to allow medical patients to waive their rights to certain remedies for a medical injury and obtain a payment from the provider for their economic damages (medical expenses and lost wages) plus an additional payment based on the level of harm. Injured patients who accept an early offer waive their right to a judicial determination of their damages and do not receive any compensation for lost earning capacity, loss of enjoyment of life, loss of consortium, physical impairment, and pain and suffering among other damages.

SB 406 was the subject of substantial effort by its sponsors and by committee members in the House and the Senate. It is intended to provide an alternative to the current system for resolving medical malpractice claims, and I support efforts to improve our tort system. While this legislation is well intentioned, I do not believe that it sufficiently and fairly balances the interests of the general public with the interests of medical providers in expeditiously resolving medical injury claims. SB 406, as presented to me, lacks certain fundamental safeguards that are necessary to protect injured patients. For that reason, I have decided to veto SB 406.

In order to participate in the early offer program, an injured patient must sign a waiver of their rights and submit a notice of injury to the medical provider. When those documents are submitted, the medical provider must then provide a "neutral advisor" to an injured patient who is unrepresented. The neutral advisor is an attorney or retired judge, who is required to offer assistance to the patient and encourage him or her to retain a private attorney.

After the first meeting with the neutral advisor, the patient then has only 5 business days to decide whether or not proceed with the early offer process, or to withdraw the waiver of rights and notice of injury in order to preserve all of their rights to a judicial determination. That is too short a period of time for an unrepresented patient to adequately consult with the advisor concerning his or her rights and merits of their case. It is particularly insufficient for patients who then choose to identify, hire and consult with a different private attorney. The medical provider is afforded at least 90 days to evaluate a patient's request for an early offer. Patients deserve more than five business days to obtain legal advice and decide to waive important rights.

SB 406 also contains a so-called "loser pays" provision. Under the bill, an injured patient who receives an early offer may reject that offer and seek damages in court. In that event, the injured patient must first submit his or her case to the medical screening panel established under RSA 519-B. SB 406 does not make any changes to current law for those injured patients who wish to adjudicate their medical injury claims in court,



and the screening panel remains a prerequisite to a judicial determination of damages for medical injuries in New Hampshire. When an injured patient who has rejected an early offer goes to court, he or she will be responsible to pay the medical provider's legal fees incurred in the early offer process unless the court awards the patient at least 125% of the early offer amount.

That standard is inappropriate for medical malpractice cases. For example, an injured patient submitted a claim for \$175,000 in economic damages. The medical provider disagrees on the costs of treatment and offers \$140,000. If a jury eventually agrees with the patient but awards only \$172,000 because there was a double billing error, the patient has won the case, but will still have to pay the medical providers legal fees because the award was less than 125% of the early offer. That is not the right result.

In addition, before the case proceeds in court, the injured patient who has rejected an early offer must post "a bond or other suitable security for payment of the medical provider's reasonable attorney's fees and costs before the case can proceed." This requirement for the posting of a bond or other security could have a chilling effect on a patient's ability to challenge an early offer he or she considered unfair.

I believe that the legislature's efforts to fashion a balanced, reasonable early offer program should continue. It needs more work in order to adequately protect the interests of injured patients.

For all of these reasons, I am vetoing SB 406.

John H. Lynch  
Governor

Dated: June 20, 2012

**The question is, notwithstanding the Governor's Veto, shall SB 406 become law?**

**A roll call is required.**

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

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

**Yeas: 18 - Nays: 4**

**Veto overridden by necessary 2/3 vote.**

**Sen. Houde asserts Rule 2-15 on SB 406.**

#### **GOVERNOR'S VETO MESSAGE REGARDING SB 372**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 18, 2012, I vetoed SB 372, an act establishing an education credit against the business profits tax.

SB 372 establishes an education tax credit against the State's business profits tax for business organizations that contribute to non-profit "scholarship organizations", which award scholarships to be used by students to defray the educational expenses of attending an independent school, as well as grants to defray the cost of home-schooling. Beginning in the first year of the program and for several years thereafter, a majority of the scholarships, which initially average \$2,500 per student, must be awarded to students who are switching from public to private schools. For each contribution to a non-profit scholarship organization, a business is eligible for an 85% tax credit against the business profits tax.

This bill shifts limited state funds away from public school districts, it will downshift the cost of reduced adequacy payments to local communities and property tax payers, it allows private organizations to determine the use of public education funds, and does not fully target scholarship funds to students most in need of help with tuition and other educational expenses. For all of these reasons, I have decided to veto this legislation.

SB 372 requires that for each student receiving a scholarship, the Department of Education reduce the per pupil adequacy payment (base per pupil aid, plus additional amounts for free and reduced lunch, special education, and English Language Learners) from the scholarship recipient's school district's grant for the upcoming school year. The recipient's school district will lose between \$3,450 and \$8,381 per recipient. Importantly, this will occur after the school district budget is passed for the coming year, but before the tax rate is set. Therefore, the loss of state funds for scholarship recipients will most likely be downshifted to local property taxpayers to make up for state funds anticipated but not received from the state.

Proponents of this bill believe that school districts may save up to \$500 per student in operating costs due to students switching to private schools. But the vast majority of costs incurred in operating schools are fixed costs that are incurred even if some students switch to private school. The loss of students from the public schools as a result of these scholarships will not meaningfully reduce school operating costs. Even accounting for the state stabilization grants that would be paid to schools that lose state adequacy grants and the reduction of some variable costs from the loss of scholarship students, the Department of Education has calculated that bill will collectively cost school districts \$3,687,861 in year one, \$5,472,119 in year two and \$6,330,646 in year three. Struggling school districts and local taxpayers cannot afford that loss.

SB 372 will also allow private, non-profit corporations to determine where public education dollars are spent. This bill does not identify those organizations beyond requiring that they be non-profits, register with the state's Charitable Trust Division and comply with applicable state and federal anti-discrimination laws. But I believe that the executive and legislative branches should determine where public school money is spent, not a private corporation.

Lastly, while the intent of the bill, in part, is to provide financial assistance to less fortunate students in helping them switch to a private school, a substantial portion of scholarships are available with no income restrictions and to students already attending private school.

I believe that any tax credit program enacted by the legislature must not weaken our public school system in New Hampshire, downshift additional costs on local communities or taxpayers, or allow private companies to determine where public school money will be spent. I have vetoed SB 372 because the bill does not meet that test.

Respectfully submitted,  
John H. Lynch  
Governor

Dated: June 18, 2012

**The question is, notwithstanding the Governor's Veto, shall SB 372 become law?**

**A roll call is required.**

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

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

**Yeas: 16 - Nays: 7**

**Veto overridden by necessary 2/3 vote.**

**Recess. Out of recess.**

#### **GOVERNOR'S VETO MESSAGE REGARDING SB 356**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 21, 2012, I vetoed SB 356, an act limiting the authority of delegates to Article V conventions and recodifying the laws relative to religious societies.

SB 356 makes changes to New Hampshire laws regarding religious societies. I do not take issue with that portion of the bill.

SB 356 limits the authority of state delegates who participate in a convention called by the states for the purpose of considering amendments to the United States Constitution. This legislation has been brought forward because proponents of a balanced budget amendment to the United States Constitution see this as an important tool to limit the authority of delegates, were such a convention ever to occur. The bill is similar to model legislation promoted by the Balanced Budget Amendment Task Force, of New Smyrna Beach, Florida.

SB 356 requires every delegate from New Hampshire at an Article V convention to take an oath, which in part states, "I will accept and will act according to the limits of the authority as a delegate granted to me by New Hampshire law, and I will not vote to consider or approve any unauthorized amendment to the Constitution for the United States of America." Any delegate who violates the oath is subject to recall and criminal penalties under the law.

Regardless of one's viewpoint on a balanced budget amendment to the United States Constitution, we can agree that a convention to consider amending the constitution through a call of the states is not imminent. If we reach the point in our history when such a convention were to occur, it seems that would be the appropriate time to consider process issues for delegates. And even then, I would hope, New Hampshire would act with caution before applying potential criminal penalties to duly appointed or elected delegates.

For these reasons, I am vetoing SB 356.

Respectfully submitted,  
John H. Lynch  
Governor

Dated: June 21, 2012

**Recess. Out of recess.**

**The question is, notwithstanding the Governor's Veto, shall SB 356 become law?**

**A roll call is required.**

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

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

**Yeas: 17 - Nays: 5**

**Veto overridden by necessary 2/3 vote.**

#### **GOVERNOR'S VETO MESSAGE REGARDING SB 326-FN**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 20, 2012, I vetoed SB 326, an act relative to state reimbursement of towns and relative to taxation of trusts under the interest and dividends tax.

When SB 326 was first introduced in the Senate in January 2012, it did not pertain to trusts. At that time, and when it was passed by the Senate, the bill dealt with the reimbursement of New Hampshire municipalities for the loss of interstate flood control funds. In late April, a non-germane amendment was brought forward in the House that made several changes to our trust laws.

The final version of the bill maintained provisions repealing the reductions in reimbursements paid to towns and cities that have lost taxable valuation of lands subject to flood control, and allows monies that are owing to New Hampshire communities for flood control losses to be distributed to communities in accordance with current state laws. I have no objection to these provisions.

I am vetoing this legislation because I remain concerned about the potential fiscal impact and unintended consequences of the provisions amending our trust laws. The proposed tax policy changes lack clarity, have not been fully examined and may be unfair to some taxpayers. The final version of these changes was brought forward at the committee of conference on the bill in late May.

I have been an advocate of reforming New Hampshire trust laws in order to make our state first in the nation for trust services. That is why I strongly supported and signed into law in 2006 the Trust Modernization and Competitiveness Act, and why I will continue to support efforts to make New Hampshire a leader in trust services in the country. I want New Hampshire trust law to be transparent, straightforward and represent good policy.

The changes to our trust laws in the bill as passed by both bodies raise several issues. First, the bill changes how so-called "non-grantor" trusts are taxed under the state's Interest and Dividends tax. Non-grantor trusts generally are those trusts in which the person or entity establishing the trust has given up the right to the principle in the trust. Under SB 326, the I&D tax will be required to be paid only in a year in which a distribution from a non-grantor trust is made, and will now be paid not by the trust but by the New Hampshire beneficiary in accordance with federal tax rules. This change in law could significantly reduce the amount of I&D tax paid to the state.

Second, under SB 326, an owner will be able to transfer shares of an S corporation into certain non-grantor trusts and avoid entirely the payment of I&D tax on a dividend. But there is presently insufficient information concerning its potential impact for me to support this change.

The same is true with a third provision of SB 326. The bill would remove from I&D tax a distribution from any trust with transferable shares to a New Hampshire beneficiary. As a result, a real estate investment trust with transferable shares, for example, could make a distribution to a New Hampshire beneficiary who would no longer be required to pay I&D tax on that distribution. Here again, too little information has been developed on the potential fiscal impact to the state from this change in law.

Further changes to our trust laws may be advisable, including some of the ideas developed in SB 326. But I believe it is more prudent to study further the potential impact of these changes before enacting them into law. Once additional information is developed to demonstrate that these changes are fair, well thought out tax policy and would be revenue neutral, then legislation can be introduced next year.

For these reasons, I am vetoing SB 326-FN.

John H. Lynch  
Governor

Dated: June 20, 2012

**The question is, notwithstanding the Governor's Veto, shall SB 326-FN become law?**

**A roll call is required.**

**The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes,**

**De Blois, Rausch, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.**

**The following Senators voted No: (None).**

**Yeas: 23 - Nays: 0**

**Veto overridden by necessary 2/3 vote.**

#### **GOVERNOR'S VETO MESSAGE REGARDING SB 318**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 20, 2012, I vetoed SB 318, an act relative to voter registration.

"We need to encourage all New Hampshire citizens to vote and to participate fully in our democracy. We also need to ensure that our election laws do not unfairly burden those voters that have recently established a domicile in New Hampshire and are qualified to vote in this state." With those words, I vetoed HB 1566 in 2006 because that legislation tied the constitutional right to vote to the registration of a voter's motor vehicle in New Hampshire and thereby disenfranchised New Hampshire voters.

SB 318, as passed by the legislature and presented to me, is a different bill, but the end results are the same. It will also disenfranchise eligible voters in New Hampshire and will only lead to confusion concerning the meaning of "domicile" and "residency." These are the primary reasons for why I have vetoed this legislation.

SB 318 amends the voter registration form by requiring a person registering to vote to state: "In declaring New Hampshire as my domicile, I am subject to the laws of the state of New Hampshire, including the laws requiring a driver to register a motor vehicle and apply for a New Hampshire driver's license within 60 days of becoming a resident." Thus, in one short sentence, the legislature has used the terms "domicile" and "resident" in a manner that suggests that they are interchangeable, even though these terms have different, distinct meanings and legal implications.

The requirements to register a car and apply for a license, moreover, could be read to apply to a person regardless of whether the person had a car in New Hampshire or even drove in New Hampshire. For example, seniors who are residents of New Hampshire but maintain cars and second homes in other states could be confused as to whether they must now register their out of state cars here in order to continue to vote in New Hampshire. Persons who are 18 and older who attend college in New Hampshire should be able to vote regardless of where they drive or have a license. This provision is overly broad and will effectively require resident seniors, as well as retirees and young persons coming from out of state, to register a car and apply for a New Hampshire license in order to vote. There is no compelling state interest for this requirement.

The New Hampshire City and Town Clerks Association is strongly opposed to SB 318 and has urged me to veto it. The legislation provides that a "supervisor of the checklist" is available to address questions or concerns of a person registering to vote regarding motor vehicle registration and licensing requirements. While

the supervisors of the checklist are dedicated and hard working persons who work a few days each year to ensure the smooth operation of our election process, they neither are full-time employees nor are they trained in our motor vehicle laws.

Our election laws already establish that voters must be domiciled in New Hampshire in order to vote in this state, and that all New Hampshire residents must comply with motor vehicle registration and licensing requirements. This bill is unnecessary.

Any changes to our voting procedures must ensure a person's constitutional right to vote is protected. This bill does not meet that test.

For all of these reasons, I am vetoing SB 318.

John H. Lynch  
Governor

Dated: June 20, 2012

**The question is, notwithstanding the Governor's Veto, shall SB 318 become law?**

**A roll call is required.**

**The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, 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: 18 - Nays: 5**

**Veto overridden by necessary 2/3 vote.**

#### **GOVERNOR'S VETO MESSAGE REGARDING SB 175**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 12, 2012, I vetoed SB 175.

SB 175 would codify a New Hampshire citizen's right to control and transfer to beneficiaries the commercial use of his or her identity for 70 years after death. Because I believe that this legislation is overly broad, would potentially have a chilling effect on legitimate journalistic and expressive works that are protected by the New Hampshire and United States constitutions, and would invite rather than diminish litigation over legitimate journalistic and expressive use of a person's identity, I have decided to veto this bill.

The protections for free speech that are guaranteed to all citizens under the state and federal constitutions are central to democracy and a free society. Legislation that could have the impact of restricting free speech must be carefully considered and narrowly tailored. SB 175 does not meet that test, in that it fails to distinguish clearly between commercial versus journalistic or expressive uses of identity.

Many states that have codified a person's right to control the commercial use of his or her identity have specifically exempted the use of a person's identity in conjunction with news, public affairs and expressive speech. The version of SB 175 that was passed by the Senate included these very exemptions that would have plainly established the line between expressive or journalistic and commercial use of a person's identity.

SB 175 was further amended as it moved through the legislature, and the final version of the bill contains no statutory exceptions to the right to control one's identity. I believe that the omission of legitimate, clear exceptions for news and expressive works will inhibit constitutionally protected speech and result in needless litigation to judicially establish what should have been made explicit in this bill.

While I understand that the sponsors of the legislation intended to codify the rights to control the commercial use of one's identity that has already been recognized in New Hampshire common law, SB 175 appears to go beyond the established common law and establishes the right to control the use of identity retroactively for 70 years after death. Such a result may lead to uncertainty, not finality. New Hampshire common law has not recognized a posthumous or retroactive right to transfer control of one's identity to their heirs, and in this manner I believe the bill goes beyond its stated purpose.

For all of these reasons, I have vetoed SB 175.

Respectfully submitted,  
John H. Lynch  
Governor

Date: June 12, 2012

**The question is, notwithstanding the Governor's Veto, shall SB 175 become law?**

**A roll call is required.**

**The following Senators voted Yes: Bradley, Forsythe, Houde, Groen, Odell, White, Luther, Carson, Boutin, De Blois, Merrill, Morse, Prescott.**

**The following Senators voted No: Gallus, Forrester, Kelly, Lambert, Larsen, Barnes, Rausch, D'Allesandro, Stiles, Bragdon.**

**Yeas: 13 - Nays: 10**

**Veto sustained lacking necessary 2/3 vote.**

**Recess. Out of recess.**

#### **GOVERNOR'S VETO MESSAGE REGARDING SB 289**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 21, 2012, I vetoed SB 289, an act relative to presenting photo identification to vote in person.

The right to vote is a fundamental right that is guaranteed to all citizens of this State under the United States and New Hampshire Constitutions. Our election laws must be designed to encourage and facilitate voting by all eligible voters in New Hampshire.

SB 289 requires a voter to present valid photo identification or execute an affidavit in order to vote in person in a municipal, state and federal election beginning with the primary election this September. Under the final version of the bill, the acceptable forms of photo identification for this year's elections include a driver's license of any state, a non-driver's identification card, a U.S. armed services identification card, a U.S. passport, any other valid photo identification issued by federal, state, county or municipal government, a valid student identification, and any other photo identification determined to be legitimate by election officials. I was prepared to support this form of photo identification because the bill's provisions would ensure that every eligible voter who went to the polls on Election Day was able to cast a ballot that would be counted.

The legislature, however, adopted a more restrictive list of valid photo identifications that can be used in a municipal, state or federal election beginning September 1, 2013. After that date, photo identifications issued by state, county and municipal governments, valid student identifications, and other photo identification determined by election officials to be legitimate can no longer be used to obtain a ballot and vote on Election Day. SB 289 would put into place a photo identification system that is far more restrictive than necessary.

I am also vetoing SB 289 because the final version of the bill requires a voter who lacks the required photo identification for the upcoming primary and general elections, as well as future elections, to execute a qualified voter affidavit under RSA 654:12 in order to establish their identity to vote. Under New Hampshire law, a qualified voter affidavit is used only for those persons who are not already registered to vote and who are not able to produce "reasonable documentation" to establish their citizenship, which is a qualification for registering to vote. It is completely inappropriate for use by a registered voter on Election Day in order to establish the voter's identity to vote.

The use of this inappropriate affidavit will cause confusion, slow the voting process and may result in the inability of eligible voters to cast their vote.

For these reasons, I am vetoing SB 289.

Respectfully submitted,  
John H. Lynch  
Governor

Dated: June 21, 2012

**The question is, notwithstanding the Governor's Veto, shall SB 289 become law?**

**A roll call is required.**

**The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, 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: 18 - Nays: 5**

**Veto overridden by necessary 2/3 vote.**

**HOUSE MESSAGE**

The House of Representatives has voted to override the Governor's veto on the following entitled Bill(s):

**HB 1549**, prohibiting the use of motor vehicle records for any federal identification database.

**HB 1679-FN**, relative to partial-birth abortion.

**Without objection, the Clerk shall read the title of the Veto Messages only.**

**GOVERNOR'S VETO MESSAGE REGARDING HB 1549**

By the authority vested in me pursuant to part II, Article 44 of the New Hampshire Constitution, on May 23, 2012, I vetoed HB 1549.

HB 1549 when first introduced prohibited state participation in the E-Verify system for worker immigration status that has been implemented by the United States Citizenship and Immigration Service. This legislation, however, was entirely replaced and as now presented to me would prohibit the federal government from using or maintaining "in any federal identification database" information from New Hampshire motor vehicle records, including those available pursuant to a court order, or in response to a request from a state, the federal government, or a law enforcement agency. The bill, as passed, would prohibit the federal government from maintaining information from New Hampshire motor vehicle records for lawful public safety purposes.

Although this bill may have been well-intentioned, the New Hampshire Department of Safety believes it would have serious negative consequences for the apprehension of criminals, the recovery of stolen vehicles, and even for the prevention of terrorism and threats against the President and Vice-President of the United States. It could also impair the ability of New Hampshire's criminal justice agencies to receive such information from federal officials because New Hampshire would not be sharing this data reciprocally with them. The Department of Safety has provided several examples of the problems this could create.

For example, if a New Hampshire citizen or visitor has their car stolen, the police will determine from the motor vehicle records the registration number, vehicle identification number and description of the vehicle and request that the State Police enter this information into the National Crime Information Center (NCIC), which is a federal identification database maintained by the FBI. A police officer anywhere in the country stopping that vehicle for any purpose will know that the vehicle is a stolen car, and if a motor vehicle department of another state is asked to title or register that vehicle, they will know that it is stolen. HB 1549 is so broadly written that it could prevent the sharing of this information.

If a minor disappears from his or her home in New Hampshire, and that minor has a driver license or non-driver identification card, the police will request that minor's photo from the Division of Motor Vehicles and it will be entered into the database at the National Center for Missing and Exploited Children, to assist in locating the minor. This is a federal identification database.

When a person is arrested for a crime committed in New Hampshire, that person is fingerprinted by the arresting agency and the prints are forwarded to the State Police Criminal Records Unit and entered into IAFIS, the Integrated Automated Fingerprint Identification System maintained by the FBI. If the person is subsequently found innocent or the charges are dropped, the prints are destroyed. The fingerprints of convicted criminals are routinely matched up with latent fingerprints lifted at the scenes of crimes and used to convict the perpetrator of the crime. IAFIS is a federal identification database.

If New Hampshire law enforcement becomes aware of a credible threat against the President or Vice-President or any candidate for those offices who is eligible for Secret Service protection, this information along with a photo, physical description and information as to vehicles owned or driven by this individual is shared with the Secret Service and if they investigate and also deem the threat to be credible, it will go into their file on the case, which could be considered a federal identification database. The same applies to sharing information with the FBI on a credible terrorist threat originating in New Hampshire.

These are just some examples of the real concerns that Commissioner Barthelmes and the Department of Safety have brought to my attention concerning how HB 1549, as passed, could interfere or complicate valid law enforcement efforts and public safety.

New Hampshire has in place some carefully crafted restrictions on the collection or sharing of motor vehicle information, such as RSA 260:14, which governs access to motor vehicle records, and 2007 Laws Chapter 243, which prohibits New Hampshire's participation in Real ID. Based on the concerns expressed by the Department of Safety, HB 1549 will have serious negative consequences for public safety, and would disrupt routine, time-honored law enforcement procedures.

For all of these reasons, I have vetoed HB 1549.

Respectfully submitted,  
John H. Lynch  
Governor

Date: May 23, 2012

**The question is, notwithstanding the Governor's Veto, shall HB 1549 become law?**

**A roll call is required.**

**The following Senators voted Yes: (None).**

**The following Senators voted No: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes,**

**De Blois, Rausch, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.**

**Yeas: 0 - Nays: 23**

**Veto sustained lacking necessary 2/3 vote.**

#### **GOVERNOR'S VETO MESSAGE REGARDING HB 1679**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 15, 2012, I vetoed HB 1679, an act relating to partial birth abortion.

I am not a proponent of so-called partial birth abortion. The practice is exceedingly rare, and highly restricted by federal law. HB 1679 is unnecessary in light of the federal ban on partial birth abortion that was enacted by Congress in 2003. I am also concerned that HB 1679 could unnecessarily jeopardize the life of the mother in emergency circumstances.

HB 1679, like the federal Partial Birth Abortion Act of 2003, would ban the practice of partial birth abortion by physicians and non-physicians except to save the life of the mother, whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

But unlike the federal ban, HB 1679 would first require that a qualified physician examine and determine whether a pregnant woman suffered from a life-threatening condition. Before that physician could perform the partial birth abortion, he or she would then have to identify a second physician at another hospital or practice that is "not legally or financially affiliated" with the physician and the second physician would also have to determine and document that the life of the mother is endangered before the abortion could be performed.

The added requirement for a documented referral from a second, non-affiliated physician could have serious consequences in emergency situations. Under HB 1679, a physician in a rural hospital that admitted a pregnant woman with a life-threatening condition would be prohibited from proceeding with a procedure permitted by federal law, unless the physician identified another physician who was unaffiliated and who could determine and document her life-threatening condition. The lapse of time in finding that second physician and obtaining the needed referral could be significant and could result in the death of the pregnant woman.

I believe the federal law is appropriately more protective of the life of the pregnant woman.

For all of these reasons, I have vetoed HB 1679.

Respectfully submitted,  
John H. Lynch  
Governor

Date: June 15, 2012

**The question is, notwithstanding the Governor's Veto, shall HB 1679 become law?**

**A roll call is required.**

**The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, 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: 18 - Nays: 5**

**Veto overridden by necessary 2/3 vote.**



**HOUSE MESSAGE**

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

**SB 350-FN**, relative to the sale of portable electronics insurance.

**Sen. Carson moves concurrence.**

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

**The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes,**

**De Blois, Rausch, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.**

**The following Senators voted No: (None).**

**Yeas: 23 - Nays: 0**

**Adopted.**

**Recess. Out of recess.**

**Recess to the Call of the Chair. Out of recess.**

**HOUSE MESSAGE**

The House of Representatives has voted to override the Governor's veto on the following entitled Bill(s):

**HB 1607-FN-L**, establishing an education tax credit.

**GOVERNOR'S VETO MESSAGE REGARDING HB 1607**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 21, 2012, I vetoed HB 1607, an act establishing an education credit against the business profits tax. I vetoed a nearly identical bill, SB 372, on June 18, 2012.

HB 1607 establishes an education tax credit against the state's business profits tax for business organizations that contribute to non-profit "scholarship organizations," which award scholarships to be used by students to defray the educational expenses of attending an independent school, as well as grants to defray the cost of home-schooling. Beginning in the first year of the program and for several years thereafter, a majority of the scholarships, which initially average \$2,500 per student, must be awarded to students who are switching from public to private schools. For each contribution to a non-profit scholarship organization, a business is eligible for an 85 percent tax credit against the business profits tax.

This bill shifts limited state funds away from public school districts and downshifts the cost of reduced adequacy payments to local communities and property tax payers.

HB 1607 requires that for each student receiving a scholarship, the Department of Education reduce the per pupil adequacy payment (base per pupil aid, plus additional amounts for free and reduced lunch, special education, and English Language Learners) from the scholarship recipient's school district's grant for the upcoming school year. The recipient's school district will lose between \$3,450 and \$8,381 per recipient. Importantly, this will occur after the school district budget is passed for the coming year, but before the tax rate is set. Therefore, the loss of state funds for scholarship recipients will most likely be downshifted to local property taxpayers to make up for state funds anticipated but not received from the state.

Proponents of this bill believe that school districts may save up to \$500 per student in operating costs due to students switching to private schools. But the vast majority of costs incurred in operating schools are fixed costs that are incurred even if some students switch to private school. The loss of students from the public schools as a result of these scholarships will not meaningfully reduce school operating costs. Even accounting for the state stabilization grants that would be paid to schools that lose state adequacy grants and the reduction of some variable costs from the loss of scholarship students, the Department of Education has calculated that the bill will collectively cost school districts \$3,687,861 in year one, \$5,472,119 in year two and \$6,330,646 in year three. Struggling school districts and local taxpayers cannot afford that loss.

Diverting public funds to private schools and downshifting costs to cities and towns is the wrong policy for our state and taxpayers, and is the main reason I have vetoed this bill and SB 372. But I have other concerns as well.

HB 1607, like SB 372, will also allow private, non-profit corporations to determine where public education dollars are spent. This bill does not identify those organizations beyond requiring that they be non-profits, register with the state's Charitable Trust Division and comply with applicable state and federal anti-discrimination laws. The bill also fails to establish a system of accountability for these private entities. I believe that the executive and legislative branches should determine where public school money is spent, not a private corporation.

Finally, HB 1607 and SB 372 initially set aside about 30 percent of the scholarship funding for children whose families qualify for the federal free and reduced lunch program. Although these bills do limit eligibility to students from families at 300 percent of the federal poverty level, the proportion of funding required to be dedicated to free and reduced lunch-eligible students diminishes to zero over the course of 15 years.

I strongly believe that any tax credit program enacted by the legislature must not weaken our public school system in New Hampshire or downshift additional costs onto local communities or taxpayers. Accordingly, I am vetoing HB 1607, and the nearly identical SB 372, because they do not meet that test.

Respectfully submitted,  
John H. Lynch  
Governor

Dated: June 21, 2012

**The question is, notwithstanding the Governor's Veto, shall HB 1607 become law?**

**A roll call is required.**

**The following Senators voted Yes: (None).**

**The following Senators voted No: Gallus, Forrester, Bradley, Forsythe, Houde, Groen, Odell, White, Kelly, Luther, Lambert, Carson, Larsen, Boutin, Barnes,**

**De Blois, Rausch, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.**

**Yeas: 0 - Nays: 23**

**Veto sustained lacking necessary 2/3 vote.**

#### **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**

**HB 1354**, relative to voter affidavits.

#### **LIST OF RULE 2-15'S FOR THE DAY**

Sen. Houde: SB 406.

#### **ANNOUNCEMENTS**

(The Chair recognized Sen. Lambert.)

SENATOR LAMBERT: Thank you very much, Mister President. I'd like to do a 2-17. I can't leave without saying goodbye, so I want to do that; I want to, you know, thank some people and that type of thing. But, I've got to tell you, this whole experience, from the campaign all the way through this session here, has been one of the most enjoyable experiences of my life, and it's been an honor and a privilege to serve with all of you, to be elected as a State Senator, to be up here, and I'm going to miss it dearly—I'm going to miss it a lot. Wednesdays were my favorite day during the work week, and I know for some perhaps it wasn't, but everything from that quick caucus in the morning to coming through the gauntlet and getting all the material out here from lobbyists, protesters, and then coming in here to make decisions and to vote and to move the state in the direction we all thought it should go—the experience is priceless, because I...Before I came up here, there was only one job I had where I would have paid my employer to work at, and that was with

the Marine Corps. But now I've got two, because I know we get a measly \$100 and I know we put a lot of financial sacrifice into this job, but I would have paid the State \$100 or more to be in this position right here. So, I consider the \$100 a gift.

I've got a lot of 'thank you's; you know, I'd like to thank all of you, but just a few people in particular. Senator Bradley, Senator Bragdon—I've got to... You know, I thought I knew all about leadership, and I've been a student of leadership for pretty much my whole life, especially in the Marine Corps, but you guys are in the top five percent. Senator Bragdon, I thought I knew everything there was about running a meeting and how to run a meeting and how to control 19 people and 24 people, but I came away learning a lot more than I thought I would ever learn. And, Senator Bradley, in addition to being a great Majority Leader... Of course I served with you not only in here and in the caucus but on three different committees, and I was just shocked at how... You know, there'd be one party over here, one party there, one party over there, and you'd pull a rabbit out of your hat, and everybody would say: "I can get along with that; I can go with that." And, it just fascinated me every time you could do that, when you could bring a consensus in, which is what it's about, you know? Because there's so much talk out there in the media about how the politicians can't get along, and I know sometimes the House gets a lot of press, D.C. gets press—nobody ever does a study of the Senate: Everybody's getting along, everybody's respectful, no matter how... you know, Republican, Democrat, right-wing, left-wing, or whatever.

Senator Groen, Senator White: You guys have been the best roomies that I could ever ask for. And, Gail, I hope you're listening if you haven't taken off yet: You've been the best assistant, secretary, organizer that I've ever had in my life; I only wish I could take you back to my law firm with me. But, Gail's done and retired, and we just had a great going away party for her. But, Senator White, Senator Groen, thanks for allowing me to have my deer head on the wall. Thank you for allowing me to have Schlitz in the refrigerator, even though I know you guys do not like alcoholic beverages normally, but thank you very much for that. And then, you know, Senator Carson, Senator Luther: You guys are great wingmen. A lot of times, you know, you turn to someone for advice when you're up here in the heat of it all, and you've been great friends, great mentors, and thank you very much.

And, Tammy and the whole staff, the Clerk's staff: Every single time I came in here, everything was just perfect—I mean, all the time. I don't know how you kept the clock running so smooth, and you made it look easy. And, Tammy, you've got to be the fastest and clearest talker I've ever heard in my life, but it makes things just go so efficiently through here, and I couldn't have done it without people making things efficient.

And, the whole Senate staff—a lot of which are missing: Could not have done it without you guys. I mean, you gave me help when I didn't even think I needed help. And, the same thing with you guys: I wish I could bring you back to my law firm and have you work down there, because I know I'd be more productive and I know I'd do a lot more than I'm doing now.

So, I just want to thank everyone for this experience. Thanks for your friendship, and hopefully I'll see you around. Thank you.

(The Chair recognized Sen. Kelly.)

SENATOR KELLY: Thank you, Mister President. I hate to follow Senator Lambert with such an upbeat message, and it has really, truly, been an honor to work with you; I know we worked on Health and Human Services, and it was great to work together, and thank you for all your service.

But, I have just received in the break a message in regard to Representative Dan Carr, who passed away yesterday morning. And, he has served Winchester, Hinsdale, and Chesterfield for about four years. And, I know he hasn't been well, but it was very fast and it was very quick: cancer. And, I just wanted to say on his behalf here in the Senate that what I know of Representative Carr in working with him and watching him work in the House is that he truly understood the people that he represented; if you ever met with Dan, I think you would agree with that. He was committed to serving his constituents and he always did it with a huge, huge heart. And, he is going to be missed by his constituents, for sure. Also, just professionally, I don't know if all of you know, but Dan was a letter press printer. And, one of the things he did that was, I think, that was a little different than others, is that he actually created his own font for the print, and it was called the Carr Font. He and his wife Julia worked together on this business through their married life. And, they were a team together in all of their efforts in serving our community. Dan is going to be seriously missed; we're all going to miss him in the community, his family, as well. And, I just want to honor his service and honor Representative Carr as the man that he has been, and he will be missed. Thank you.

(The Chair recognized Sen. Forsythe.)

SENATOR FORSYTHE: Thank you, Mister President. I think I mentioned a couple times that I'd be waiting to speak kind of on my perspective after the Veto Day, because I turned out to be the most vetoed Senator I guess—a source of pride, I've got to say. And, Jeb will tell me that in baseball, a 50/50 average is a pretty good average, so I should be happy. But, it reminds me: When I went to pilot training, people said it would be the best year of your life and it would be the worst year of your life, and that turned out definitely to be true. And, the Senate I think has topped that: It some senses it was the best two years of my life; in some senses the worst, not necessarily because of Senate reasons but personal reasons, and also because some of the Senate issues as well.

Because of my personal issues, I struggled with being able to do this on top of the other things I had to do, and I really want to give a big thanks to Senator Bradley. I mean, he really took me under his wing, convinced me to stay, convinced me to do it, helped me get through those first days, first months, and Andy and Ray White were there right with him to help get me through that. And, given today's vote on the education tax credit, I'm glad they did, because that's something I started working on six years ago. I know some people in this body have actually worked on it longer than that, but that was very gratifying. At the same time, the failure of medical marijuana is certainly very disappointing. However, we changed a lot of minds this year, and a lot of minds that we haven't changed are still discussing it with us, and I'm very happy about that. Some minds are closed, and I find that unfortunate. But, hopefully those that are willing to listen will continue to listen and find a way to do this properly.

In terms of looking back at the Senate and some of the things that I found frustrating, I would say that we need to not always be so timid: medical marijuana I think is a good example. It's good to be cautious on bills and make sure that you get it right, but a lot of times there are issues that people are out there facing that lack of action is worse than doing something that's not quite perfect, and I think that's one of those. I feel like the House is not collegial enough: There's a lot of infighting over there. The Senate may be a little bit too collegial in my mind. We should really be focusing on issues, and loyalty should only go so far on issues. And, the House and Senate need to show some better respect for each other in order to get things through and do the people's work. There's been problems with that this year; hopefully that will improve. And finally, I have been frustrated with people in the House, people in the Senate often deferring to authority, whether it's the police chiefs, certain lobbyists—sometimes you philosophically agree but sometimes you don't necessarily and you can get pushed into one direction; I'm certainly guilty of that myself. So, there are a lot of issues where the people are really unrepresented because they don't really have a group. The education tax credit was a good example of that, where, you know, the Teacher's Union came out heavily against; there's really no organized group that would deal with an issue like that. So, I urge my colleagues in the future to make sure that just because somebody's not coming to talk to you about an issue, think about how it deals with all the people of New Hampshire and how it could help or hurt them.

I do want to thank...So, I apologize for a little bit of criticism, but it's, I think, constructive. I'm very impressed with everybody here, and it's been an honor to work with everybody, but there have been frustrations.

I do want to say thanks to my Committee Chairs: Senator Stiles, Jim Rausch, and Matt Houde all were really excellent Chairs, and it was really an honor to work with them. And, you know, thanks to those that came along with...I think I've had some ideas that were a little further out than people are used to, and thanks so much to the people that actually listened on those, and I think that's most people. I ran on the platform of no new taxes, a balanced budget—those are things that I really didn't do that much to do; the fine folks in Finance really worked hard on that, and I appreciate their efforts in helping me fulfill that campaign promise. The one other big promise was school choice; it was part of my printed material, and I appreciate all the support that I got for that, both in the Senate and the House. I do think it will make a fundamental difference for kids for years and years to come here in New Hampshire; I've seen it work in other states and I know it will work here. I started working on that five or six years ago, so, as I said, it's just wonderful. So, I just really appreciate all the personal support people have done. Whether I've butted heads on issues, everybody's always been very supportive personally, and I really deeply appreciate that. I am very hopeful that I will continue to be involved; my family is here, so while I will be moving out of town, I'll be maintaining a residency here in New Hampshire and I will be back often and I will be keeping in touch and seeing how things are going. So, thank you, Mister President.

PRESIDENT BRAGDON: I can't let the opportunity go by without also expressing my thanks to certainly the Senate staff in general, the staff on the third floor as well, including Ange and Kristy, who I dragged upstairs from the first floor two years ago; I couldn't have done it without their help, without the help of the

Senate Clerk and the staff of the Senate Clerk's Office, who make things look like they run real smoothly; most times they do, but even when they don't, it still looks like it does. And, thank you to the 24, or I guess the 23 of you, plus the 24<sup>th</sup>, who was here a little while ago, for your support; it's been certainly my privilege to serve as your Senate President, and I thank you for your cooperation and support in that.

(The Chair recognized Sen. Prescott.)

SENATOR PRESCOTT: Thank you very much—Rule 2-17. Thank you. I have to say that being a Senator two terms before this was a lot different than being a Senator this term. And, I have to thank especially my Senate President and Majority Leader for doing their job as well as I've ever seen. And, that's one of the reasons why I've decided to run again, because through what you guys did, you were able to allow a businessman to still run their business, allow a person to have the means of having a great brother and partner in a business and be able to support me there, and yet not be so removed from my business, because you made it so that I could be up here two days a week—you brought the caucuses in, you ran them on time, and I was amazed the first month or so that we were here, because the first month or so that I was a Senator for the first time, I couldn't even get back to work. So, I want to thank you two for a great and wonderful job and allowing me the freedom to run again. Thank you so much. Thank you very much.

(The Chair recognized Sen. Larsen.)

SENATOR LARSEN: In addition to kudos to the Senate President and the Majority Leader, I would also say that we are missing the Senator from the 17<sup>th</sup>, and his announcement that he in fact is not coming back came as a surprise to at least some of us, and I have to say that, while I have frequently disagreed with the Senator from the 17<sup>th</sup>, I know that he's a man of great compassion and conviction, and that the years he has served here have been years where he truly dedicated himself to the people of his District and his state. I just want to extend our best wishes to him and to stay that he's leaving me as the Senate Dean, which is not making me really very happy. So, we wish him all the best, and I hope that his future days are happy days.

(The Chair recognized Sen. Morse.)

SENATOR MORSE: Mister President, I know we were asked not to speak, and all I'm going to say is—because he's left the building—is it's been an honor to serve with Senator Barnes, and I think we should give him a round of applause that he can hear from his car.

**Without objection President Bragdon moved that all Rule 2-17's shall be entered into the permanent *Journal* of the Senate.**

#### **MOTION TO RECESS TO CALL OF THE CHAIR**

Sen. Bradley moved that the business of the day being completed, that the Senate recess for the purposes of sending and receiving messages, and processing enrolled bill reports and amendments, upon completion, the Senate will stand adjourned to the call of the Chair.

**Adopted. The Senate is adjourned to the Call of the Chair.**

#### **HOUSE MESSAGE**

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

**HB 1354**, relative to voter affidavits.

#### **HOUSE MESSAGE**

The House of Representatives has voted to sustain the Governor's veto on the following entitled House Bill(s):

**HB 217-FN**, including "fetus" in the definition of "another" for the purpose of certain criminal offenses.

**HB 1666-FN**, relative to legislative approval of collective bargaining agreements entered into by the state.

#### **HOUSE MESSAGE**

The House of Representatives has voted to override the Governor's veto on the following entitled Senate Bill(s):

**SB 289-FN**, relative to presenting photo identification to vote in person.

**SB 318-FN**, relative to voter registration.

**SB 372-FN-L**, establishing an education tax credit.

**SB 406**, relative to establishing an early offer alternative in medical injury claims, relative to confidentiality of police personnel files, and establishing a committee to study the referral of patients for use of implantable medical devices.

#### HOUSE MESSAGE

The House of Representatives has voted to override the Governor's veto on the following entitled Senate Bill(s):

**SB 326-FN**, relative to state reimbursement of towns and relative to taxation of trusts under the interest and dividends tax.

#### HOUSE MESSAGE

The House of Representatives has voted to sustain the Governor's veto on the following entitled Bill(s):

**SB 356**, limiting the authority of delegates to Article V conventions and recodifying the laws relative to religious societies.

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#### Enrolled Bill Amendment to SB 350-FN

The Committee on Enrolled Bills to which was referred SB 350-FN

AN ACT relative to the sale of portable electronics insurance.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

#### Explanation to Enrolled Bill Amendment to SB 350-FN

This bill makes 2 grammatical corrections.

#### Enrolled Bill Amendment to SB 350-FN

Amend RSA 402-K:4, I(b)(1) as inserted by section 1 of the bill by replacing line 1 with the following:

(1) The training shall be delivered to employees and authorized representatives of

Amend RSA 402-K:7, II as inserted by section 1 of the bill by replacing lines 1 and 2 with the following:

II. The application shall provide:

(a) The name, residence address, and other information required by the

**Sen. Boutin moved adoption of the Enrolled Bill Amendment. Adopted.**

#### REPORT OF COMMITTEE ON ENROLLED BILLS

**The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:**

**SB 350**, relative to the sale of portable electronics insurance.

**Sen. Odell moved adoption of the Report of Committee on Enrolled Bills. Adopted.**

#### REPORT OF COMMITTEE ON ENROLLED BILLS

**The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill:**

**HB 1354**, relative to voter affidavits.

**Sen. Prescott moved adoption of the Report of Committee on Enrolled Bills. Adopted.**

**The 2012 Senate Session is adjourned.**

**OUTSTANDING BILLS**

**At the time of adjournment on June 27, 2012, the following Senate Bills remained on the table in the Senate:**

**CACR 33**, relating to biennial legislative sessions. Providing that the general court shall meet biennially.

**SB 74-FN**, relative to the life settlements act.

**SB 163-FN**, relative to the New Hampshire health benefit exchange.

**SB 279-FN**, establishing registers of probate as clerks of the probate division of the circuit court.

**SB 292-FN**, relative to property taxation of certain manufactured housing.

**SB 293-FN**, relative to notice requirements and payment of interest by the department of revenue administration for overpayments and underpayments of tax.

**SB 341**, authorizing electronic payment of payroll.

**SB 355**, clarifying the exemption for attorneys from licensing requirements for mortgage brokers or bankers.

**SB 377-FN**, relative to unemployment compensation eligibility for participants in the return to work program.

**At the time of adjournment on June 27, 2012, the following House Bills remained on the table in the Senate:**

**HB 121**, relative to eligibility for the property tax exemption for the disabled.

**HB 228-FN**, prohibiting the use of public funds for abortion services.

**HB 383**, prohibiting the collection of certain agency fees from state employees who are not members of the state employees' association.

**HB 536-FN**, relative to the natural right to carry a firearm, openly or concealed, without a license.

**HB 1182**, prohibiting the sale of baby food products containing bisphenol A in New Hampshire.

**HB 1206**, relative to continuing obligations under expired public employee labor agreements.

**HB 1263**, relative to the termination of tenancy and repealing the requirement that landlords of restricted residential property provide service of process information.

**HB 1300**, relative to removing public officials for cause.

**HB 1410**, relative to securities regulation.

**HB 1460**, establishing a defined contribution retirement plan for public employees.

**HB 1461**, requiring school officials to notify parents of a class or event involving an outside speaker and allowing parents to opt for their child not to participate in the class or event.

**HB 1478**, relative to the definitions of resident for motor vehicle law purposes and domicile for voting purposes and relative to vehicle registration and driver's license requirements.

**HB 1560**, relative to the interstate Health Care Compact.

**HB 1642-FN**, relative to destination specialty hospitals.

**HB 1671**, apportioning congressional districts.

**HB 1677-FN**, relative to choice as to whether to join a labor union and eliminating the duty of a public employee labor organization to represent employees who elect not to join or to pay dues or fees to the employee organization.