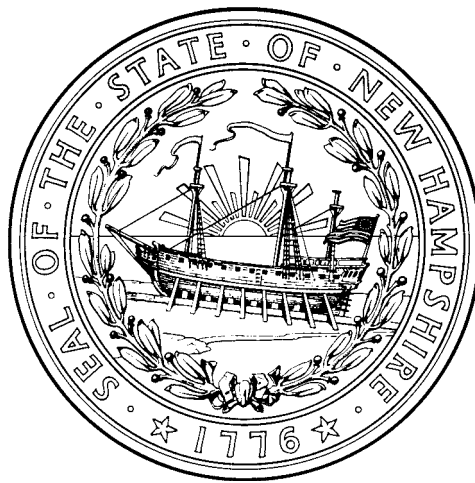


January 18, 2012
No. 2

STATE OF NEW HAMPSHIRE

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**Second Year of the 162nd Session of the
New Hampshire General Court**

Legislative Proceedings

SENATE JOURNAL

**ADJOURNMENT – JANUARY 4, 2012 SESSION
COMMENCEMENT – JANUARY 18, 2012 SESSION**

SENATE JOURNAL 1 *(continued)*

January 4, 2012

HOUSE MESSAGE

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

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

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

HOUSE MESSAGE

The House of Representatives has laid the following entitled Bills sent down from the Senate on the table:

SB 168-FN, conforming the interest and dividends tax to federal tax definitions.

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 108, relative to trees and roadside growth.

HB 127-FN, relative to the definition of oral communication.

HB 151, repealing the laws relative to marital masters.

HB 171, relative to restrictions on liquor licenses.

HB 193, relative to the Mount Washington commission.

HB 217-FN, amending the first and second degree murder statutes and the negligent homicide statute to include causing the death of a fetus.

HB 222-FN, relative to the specificity of certain statutory provisions granting rulemaking authority.

HB 236, establishing a committee to study workers' compensation benefits for illegal aliens.

HB 247, relative to seller financing of mortgages and making changes to the laws regulating mortgage bankers and brokers and debt adjustment services.

HB 256-FN, relative to the administrative appeals process of the department of environmental services and establishing a committee to study the appeal process of the department of environmental services.

HB 283-FN, relative to impaired drivers.

HB 309-FN, relative to certain insurance mandates and establishing a committee to study current insurance mandates.

HB 334, relative to the state's authority to prohibit or regulate firearms, firearms components, ammunition, firearms supplies, and knives.

HB 344-FN, relative to judicial performance evaluations.

HB 350-FN, updating laws relative to the fiscal committee of the general court.

HB 351-FN, relative to insurance reimbursement for doctors of naturopathic medicine.

HB 408, clarifying the exemption for attorneys from licensing requirements for mortgage brokers or bankers.

HB 420-FN, relative to the definition of employee and clarifying the criteria for exempting workers from employee status.

HB 449-FN, relative to reports on information available on the state website.

HB 458-FN-A, establishing a sunset review process for executive agency and judicial programs and making an appropriation therefor.

HB 517-FN, relative to the licensure of fuel gas fitters and plumbers by a mechanical licensing board established within the department of safety and transferring regulation of plumbers to the mechanical licensing board.

HB 518-FN-A, changing the prospective repeal date for the research and development tax credit.

HB 545, relative to the administrative rulemaking process governing home educated pupils.

HB 581, regulating guaranteed price plans and prepaid contracts for petroleum.

HB 624, relative to the rulemaking authority of state agencies to establish fees and costs and establishing a committee to study the rulemaking authority of state agencies to establish fees.

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 137-FN-L, relative to the state fire code and the state building code.

HB 194, relative to the prohibition on having or carrying a loaded crossbow, rifle, or shotgun in or on a vehicle.

HB 219, restricting the rulemaking authority of the state board of education and establishing a legislative oversight committee to review the rulemaking authority of the state board of education.

HB 269-FN, relative to the authority of departments to transfer funds among budget accounting units.

HB 325-FN, relative to the transfer of animals from licensed animal vendors.

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

HB 486-FN, relative to penalties for alcohol ignition interlock circumvention.

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

HB 618-FN, requiring state agencies to develop performance measures and to develop budgets for each biennium.

HB 628-FN, relative to searches conducted for purposes of transportation-related security.

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 242-FN-A, relative to the net operating loss carryover under the business profits tax.

HB 263-FN, relative to the time limits for assistance from the Temporary Assistance for Needy Families Program (TANF).

HB 342, relative to boat operation rules.

HB 440-FN, requiring that New Hampshire join the lawsuit challenging federal health care reform legislation.

HB 564, relative to the adoption of forms by the department of revenue administration for the filing of taxes and removing the requirement for electronic tax payments.

HB 582, relative to communication between employers and employees during bargaining negotiations.

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 194, relative to the prohibition on having or carrying a loaded crossbow, rifle, or shotgun in or on a vehicle. (Judiciary)

HB 334, relative to the state's authority to prohibit or regulate firearms, firearms components, ammunition, firearms supplies, and knives. (Judiciary)

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

Report of Committee on Enrolled Bills

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

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

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

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 2

January 18, 2012

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

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

With all due respect to the deliberations you have to do, it's important to let there be silence from time to time in the midst of deliberations. It allows for space to think and remain mindful of humility. The rule of life in the monastery where I lived before coming to New Hampshire says this about silence:

In silence we pass through the bounds of language to lose ourselves in wonder. In this silence we learn to revere ourselves, also. In silence we honor the mystery present in the hearts of our brothers and sisters, strangers and enemies. Only God knows them as they truly are, and in silence we learn to let go of the curiosity, presumption, and condemnation that pretend to penetrate the mystery of their hearts. Let us pray.

God of all silence, it was from silence You spoke the world into existence, and it was in silence that all our holy texts were contemplated and written. It is in silence that we know our true selves. It is in silence that we allow the possibility that what we have rehearsed to say next may possibly be wrong or mean or needless. Inspire our silence.
Amen.

Sen. Gallus led the Pledge of Allegiance.

INTRODUCTION OF GUESTS AND PRESENTATIONS

Sen. White introduced Taylor Marshall and Elizabeth Gadomski, students from The Brentwood School in Merrimack, serving as Senate Pages today.

Sen. White introduced his wife, Emily, his business partner, Sue Sullivan, and Lise Howson, guests in the Senate Gallery today.

Sen. Houde welcomed Sawyer Constantine, a student from Plainfield Elementary School, a guest in the Senate gallery today.

Sen. Stiles welcomed the Winnacunnet High School Girls Field Hockey Team, Division I State Champions.

FINANCE REPORT

Sen. Morse announces that the following bills will not come to Finance: SB 13-FN, SB 71-FN, SB 74-FN, SB 77-FN, SB 83-FN, SB 84-FN, SB 132-FN-A-L, SB 143-FN, SB 150-FN, SB 155-FN-A, SB 167-FN-A-L, SB 182-FN-A-L, SB 185-FN, SB 186-FN, SB 188-FN, HB 186-FN, HB 418-FN, HB 439-FN-L, HB 466-FN, HB 479-FN, HB 528-FN-L, HB 627-FN.

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

Recess. Out of recess.

SPECIAL ORDER

Without objection President Bragdon moved SB 74, SB 150, SB 191, and SB 41 be Special-Ordered to January 25, 2012 and HB 648 to the front of the Regular Calendar on January 25, 2012.

CONSENT CALENDAR REPORTS

The following bill was removed from the Consent Calendar:

SB 376, extending the committee to develop a plan for privatizing the department of corrections. Removed by Sen. D'Allesandro.

Sen. Bradley moved that the Consent Calendar with the relevant amendments as printed in the day's Calendar be adopted and that all bills adopted be ordered to Third Reading.

COMMERCE

SB 220, relative to external review under the managed care law.
Ought to Pass, Vote 5-0.
Senator White for the committee.

This bill is a request of the Insurance Department to clarify the external review process for the purposes of the managed care law, which were found not to be in compliance with federal standards following a recent Federal audit. This bill corrects that, and brings New Hampshire's external review law into compliance with federal minimum standards, to preserve the regulatory authority of the state of New Hampshire Department of Insurance in this area.

SB 223, to make technical revisions relative to the health information organization corporation.
Ought to Pass, Vote 5-0.
Senator White for the committee.

This bill makes technical revisions to the law regarding the health information organization corporation to comply with tax exempt organizational requirements set forth by section 501 (c)(3) of the Internal Revenue Code of 1986, as amended. It also contains language regarding the process for disposition of assets should dissolution of the Corporation ever become necessary in the event of failure.

FINANCE

SB 323, authorizing accounting transfers by the department of corrections.
Ought to Pass, Vote 7-0.
Senator Morse for the committee.

This bill authorizes the commissioner of the Department of Corrections to transfer funds within and among accounting units within the department for efficient management purposes. The department needs the ability to move funds to meet the budget reductions and to continue with the RFPs. The legislation is a request from the Department which at this time does not have the legal authority to effect these actions which we have deemed appropriate and necessary to address the back of the budget reductions. The authority granted by this bill is in effect for the current biennium only.

JUDICIARY

SB 274, removing the phrase "mentally defective" from the aggravated felonious sexual assault statute.
Ought to Pass with Amendment, Vote 5-0.
Senator Carson for the committee.

This bill merely revises objectionable language in our current statute; it makes no substantive or policy change.

Senate Judiciary
January 6, 2012
2012-0132s
04/09

Amendment to SB 274

Amend the bill by replacing section 1 with the following:

1 Aggravated Felonious Sexual Assault. Amend RSA 632-A:2, I(h) to read as follows:

(h) When, except as between legally married spouses, the victim ~~[is mentally defective]~~ **has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct**, and the actor knows or has reason to know that the victim ~~[is mentally defective]~~ **has such a disability**.

2012-0132s

AMENDED ANALYSIS

This bill replaces the phrase “mentally defective” for purposes of aggravated felonious sexual assault.

The question is on the adoption of the Consent Calendar. Adopted, bills ordered to Third Reading.

Sen. White asserts Rule 2-15 on SB 220.

REGULAR CALENDAR REPORTS

COMMERCE

SB 71-FN, relative to health care fees in workers’ compensation. Inexpedient to Legislate, Vote 5-0. Senator Sanborn for the committee.

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

SB 77-FN, relative to the special fund for payment for second injuries under workers’ compensation law. Ought to Pass with Amendment, Vote 3-2. Senator Sanborn for the committee.

Commerce

January 3, 2012

2012-0088s

01/04

Amendment to SB 77-FN

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

1 Workers’ Compensation; Payment for Second Injuries From Special Fund. Amend RSA 281-A:54, I and II to read as follows:

I. If an employee who has a permanent physical or mental impairment, as defined in RSA 281-A:2, XIV, from any cause or origin incurs a subsequent disability by injury arising out of and in the course of such employee’s employment on or after July 1, 1975 **and prior to January 1, 2012**, which results in compensation liability for a disability that is greater by reason of the combined effects of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or the employer’s insurance carrier shall in the first instance pay all awards of compensation provided by this chapter. However, the commissioner shall reimburse such employer or insurance carrier from the special fund created by RSA 281-A:55 for all compensation payments subsequent to those payable for the first 104 weeks of disability. Provided, however, that prior to the first 104 weeks of disability, the employer shall be reimbursed 50 percent after the first \$10,000 paid on all compensation for temporary total, temporary partial, permanent partial, permanent total, medical, or rehabilitation benefits for all injuries occurring on or after January 1, 1991 **and prior to January 1, 2012**.

II. If the subsequent injury of such an employee occurring on or after July 1, 1975 **and prior to January 1, 2012**, shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent physical or mental impairment, the employer or the employer’s insurance carrier shall in the first instance pay the compensation prescribed by this chapter. However, the commissioner shall reimburse such employer or insurance carrier from the special fund created by RSA 281-A:55 for all compensation payable in excess of 104 weeks, provided, however, that prior to the 104 weeks, the employer shall be reimbursed 50 percent over and above the first \$10,000 of all compensation, medical, rehabilitation benefits, or funeral expenses which the employer was required to pay for all injuries occurring on or after January 1, 1991 **and prior to January 1, 2012**.

2 Workers’ Compensation; Section Heading Amended. Amend the section heading of RSA 281-A:55 to read as follows:

281-A:55 Special Fund for *Concurrent Earnings, Job Modifications and* Second [Injuries] *Injury Payments*.

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

2012-0088s

AMENDED ANALYSIS

This bill provides that payments are to be made for all second injuries incurred prior to January 1, 2012 from the special fund for second injuries.

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

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

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

The following Senators voted Yes: Gallus, Forrester, Bradley, Forsythe, Groen, Sanborn, White, Lambert, Carson, Boutin, De Blois, Rausch.

The following Senators voted No: Houde, Odell, Kelly, Luther, Larsen, Barnes, D'Allesandro, Merrill, Morse, Prescott, Stiles, Bragdon.

Yeas: 12 - Nays: 12

Failed.

Sen. Houde moved Inexpedient to Legislate.

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

Sen. Bradley moved Refer to Interim Study.

The question is on the adoption of the motion of Refer to Interim Study. Adopted.

SB 163-FN, relative to the New Hampshire health benefit exchange. Ought to Pass with Amendment, Vote 5-0. Senator White for the committee.

Commerce

January 10, 2012

2012-0164s

01/04

Amendment to SB 163-FN

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

AN ACT relative to the New Hampshire health marketplace.

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

1 New Chapter; New Hampshire Health Marketplace. Amend RSA by inserting after chapter 415-J the following new chapter:

CHAPTER 415-K

NEW HAMPSHIRE HEALTH MARKETPLACE

415-K:1 Purpose and Intent. The purpose of this chapter is to establish a New Hampshire health marketplace that meets the health exchange requirements under the federal Patient Protection and Affordable Care Act, while preserving the commercial health insurance market and the constitutional integrity and sovereignty of the state of New Hampshire under the Tenth Amendment to the United States Constitution and part I, article 7 of the New Hampshire constitution. The marketplace shall facilitate the enrollment of eligible individuals in Medicaid, the Children's Health Insurance Program, and premium assistance tax credits and cost-sharing reductions; administer the purchase and sale of qualified health plans to qualified individuals; and establish a small business health options program to assist qualified small employers in enrolling their employees in qualified health plans. The intent of the health marketplace is to reduce the number of uninsured, provide a transparent process, facilitate consumer education, and assist individuals with access to programs, premium assistance tax credits and cost-sharing reductions.

415-K:2 Governing Principles.

I. The health marketplace shall operate in a manner that preserves the private, commercial delivery of health care through carriers and producers to the greatest degree possible under the Act. Nothing in this chapter shall prohibit the sale of health or dental coverage by carriers or producers in the private market directly to the consumer. This chapter shall also not preclude the establishment of separate, privately-run group purchasing mechanisms otherwise permissible under New Hampshire law.

II. It is the intent of this chapter that the health marketplace perform the health exchange functions necessary to prevent the state of New Hampshire from defaulting into establishment of a federally-run health exchange in New Hampshire. However, nothing in this chapter shall prevent the state from voluntarily entering into a state-federal partnership with respect to exchange functions, if that partnership is consistent with this section and with RSA 415-K:18, and is approved by the joint health care reform oversight committee established under RSA 420-N:3.

III. The health marketplace shall operate in a manner that minimizes overhead and administrative expenses.

IV. The health marketplace shall operate in a manner that promotes choice, by allowing all health and dental plans that meet the requirements necessary to be certified as qualified plans under this chapter to be offered in the marketplace.

V. The health marketplace shall operate in a manner that preserves the commissioner's insurance regulatory authority and the state's flexibility in determining Medicaid eligibility categories.

VI. In order to preserve the state of New Hampshire's autonomy and legislative intent to the greatest degree possible, the commissioners responsible for carrying out the duties, rules, and implementation contemplated under this chapter shall seek rule exceptions and waivers from the federal entities able to grant such exceptions and waivers, as directed or approved by the joint health care reform oversight committee established under RSA 420-N:3.

VII. Neither the commissioner, the health and human services commissioner, the board or the marketplace shall implement or enforce any provision of the Act that has been ruled unconstitutional or invalid by the United States Supreme Court.

415-K:3 Definitions. In this chapter:

I. "Act" means the federal Patient Protection and Affordable Care Act of 2009 (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any amendments thereto, or regulations or guidance issued under, those acts.

II. "Board" means the health marketplace board established under RSA 415-K:5.

III. "Commissioner" means the insurance commissioner.

IV. "Health benefit plan" means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse the cost of health coverage, as that term is defined in RSA 420-G:2, IX.

V. "Health carrier" or "carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care or dental services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, a nonprofit dental service corporation or any other entity providing a plan of health or dental insurance, health or dental benefits, or health or dental services.

VI. "Health insurance producer" or "producer" means an individual licensed by the commissioner under RSA chapter 402-J to sell health or dental insurance in the state.

VII. "Health marketplace" or "marketplace" means the New Hampshire health marketplace established pursuant to RSA 415-K:4, which is intended to function as the health benefit exchange for New Hampshire.

VIII. "Navigator" means a person or entity that has been awarded a grant by the health marketplace to conduct public education, assist with the eligibility and enrollment process, and perform other functions as laid out in section 1311(i) of the Act and in RSA 415-K:11.

IX. "Qualified employer" means a qualified employer as defined under the Act and in 45 C.F.R. section 155.20 including, if allowed by the board after 2017, a large employer, that meets the requirements of the Act and New Hampshire law for participation in the SHOP program in New Hampshire.

X. "Qualified health plan" means a health plan that has in effect a certification that the plan meets the criteria for certification described in section 1311(c) of the Act and in this chapter.

XI. "Qualified individual" means a qualified individual as defined under the Act and in 45 C.F.R. section 155.20 who meets the requirements of the Act for purchase of individual health insurance coverage through the health marketplace in New Hampshire.

XII. "Qualified stand-alone dental benefit plan" means a stand-alone dental benefit plan that has in effect a certification that the plan meets the criteria for certification described in RSA 415-K:14, VI.

XIII. "Secretary" means the Secretary of the federal Department of Health and Human Services.

XIV. "SHOP program" means the small business health options program established under RSA 415-K:13, IV.

XV. "Small employer" means a small employer as defined in RSA 420-G:2, XVI.

XVI. "Stand-alone dental benefit plan" means a policy, contract, certificate, or agreement offered or issued by a carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of limited scope dental benefits meeting the requirements of section 9832(c)(2)(A) of the Internal Revenue Code of 1986.

415-K:4 New Hampshire Health Marketplace Established.

I. The New Hampshire health marketplace is hereby established as a quasi-independent entity of the state.

II. The operating plan for the health marketplace shall consist of 3 parts:

- (a) The plan of administrative operations developed by the marketplace board under RSA 415-K:8;
- (b) The plan of insurance operations developed by the commissioner under RSA 415-K:9; and
- (c) The plan of Medicaid operations developed by the commissioner of health and human services under RSA 415-K:10.

III. Through implementation of its operating plan, the health marketplace shall:

- (a) Facilitate the enrollment of eligible individuals in government-funded health care programs;
- (b) Coordinate the purchase and sale of qualified health plans and qualified stand-alone dental benefit plans for individuals and small employers through a free market model in which carrier participation shall be voluntary for both the individual market and the SHOP program;
- (c) Assist qualified employers in this state in facilitating the enrollment of their employees in qualified health plans and qualified stand-alone dental benefit plans; and
- (d) Meet the requirements of the Act and any regulations adopted under the Act.

415-K:5 Marketplace Board.

I. The powers of the marketplace shall be vested in a board made up of 7 voting members and 2 non-voting members, as follows:

- (a) One person representing carriers, appointed by the commissioner.
- (b) One person representing producers, appointed by the commissioner.
- (c) One person representing health care providers and facilities in New Hampshire, appointed by the commissioner of health and human services.
- (d) Four public members appointed by the governor who are not employed by or affiliated with a carrier, a producer, or health care provider, other than incidentally as a covered person or purchaser of health coverage or health care, as follows:
 - (1) One person who can reasonably be expected to purchase individual coverage through the marketplace with the assistance of a premium tax credit and who can reasonably be expected to represent the interests of consumers purchasing individual coverage through the marketplace;
 - (2) One person representing a qualified employer that can reasonably be expected to purchase group coverage through the SHOP program and who can reasonably be expected to represent the interests of qualified employers purchasing group coverage through the SHOP program;

(3) One person representing navigators or entities likely to be licensed as navigators; and

(4) One person employed by a qualified employer who can reasonably be expected to purchase group coverage through the SHOP program and who can reasonably be expected to represent the interests of employees purchasing group coverage through the SHOP program.

(e) The commissioner of the department of health and human services, or designee, serving as a non-voting member.

(f) The commissioner, or designee, serving as a non-voting member.

II. Voting members of the board may serve up to 2 full 3-year terms. Of the initial members, 3 members shall serve an initial term of one year, 3 members shall serve an initial term of 2 years, and 3 members shall serve an initial term of 3 years in order to achieve a staggered set of terms.

III. The members shall elect a chairperson annually from among their number. If a vacancy occurs on the board, the vacancy for the unexpired term shall be filled in accordance with the above procedures with a person who has the appropriate qualifications to fill that position on the board.

IV. No member of the board of directors shall be liable for an act or omission performed in good faith in the performance of powers and duties under this section, and a cause of action shall not arise against a member for the action or omission.

V. In making appointments, the appointing authorities shall ensure that the board as a whole has relevant experience in health or dental benefits administration, health care finance and economics, actuarial science, health care and health coverage purchasing, health care delivery system administration, individual health care coverage, small employer health care coverage, and health policy issues related to small group and individual markets and the uninsured and outreach, eligibility and enrollment.

VI. Initial appointments shall be made within 30 days of the effective date of this chapter.

VII. Meetings of the board shall be held at the call of the chairperson or when 4 members so request. Four voting members of the board shall constitute a quorum.

VIII. The board shall be a public body subject to RSA 91-A, and its meetings shall be considered public proceedings.

IX. The board shall adopt and diligently follow a conflict of interest policy conforming to the requirements of the Act and procedures for recusal of a member in the case of an actual or potential conflict of interest, including policies prohibiting a member from taking part in official action on any matter in which the member has any financial involvement or interest.

X. The board shall hold its first meeting no later than April 1, 2012.

415-K:6 Marketplace Advisory Committee. The commissioner and the commissioner of health and human services shall have authority to appoint a marketplace advisory committee whose membership includes representation of the stakeholders identified in RSA 415-K:14, XIV to advise the board, the commissioner, and the commissioner of health and human services on matters relating to the operation of the marketplace.

415-K:7 General Powers. The health marketplace may:

I. Sue and be sued in its own name;

II. Maintain offices at such place within the state as it may designate;

III. Explore all sources of funding; apply for and accept loans, grants, contributions and other financial assistance; acquire, lease, hold, and operate real property; engage in and administer projects and programs including, but not limited to, programs and projects under the Act;

IV. Collect and correlate information;

V. Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter with any governmental agency, private corporation, lending institution, or other entity, or individual; such contracts shall not be considered state expenditures under RSA 4:15;

VI. Enter into agreements or other transactions with, and accept grants, property loans, financial or other assistance of any governmental agency, lending institution or other source in furtherance of the purposes of this chapter, without being subject to any requirement contained in RSA 4;

VII. Employ attorneys, accountants, actuaries, financial experts and such other advisors and employees, consultants and agents as may be necessary in its judgment and fix their compensation;

VIII. Provide advice, technical information, training and educational services and conduct research;

IX. Create and establish such funds or accounts as may be necessary or desirable for furtherance of the purposes of this chapter;

X. Contract with an entity, other than a carrier or an affiliate of a carrier, that has experience in individual and small group health insurance, benefit administration or other relevant experience to perform any of its functions described in this chapter;

XI. Enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities under this chapter provided such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations;

XII. With approval of the commissioner, develop a fair and equitable compensation plan for producers; and

XIII. Do any and all things necessary or convenient to carry out its purposes and exercise, implement and perfect the powers given and granted in this chapter.

415-K:8 Plan of Administrative Operations.

I. Within 3 months of appointment, the initial board of the health marketplace shall submit to the commissioner a plan of administrative operations, consistent with the federally approved state exchange plan, that shall assure the fair, reasonable, and equitable administration of the marketplace.

II. In addition to the other requirements of this chapter, the plan of administrative operations shall include procedures for:

(a) Operation of the marketplace, including all functions enumerated in RSA 415-K:13;

(b) Selecting an administrator;

(c) Creating a fund, under management of the board, for administrative expenses;

(d) Handling and auditing of money and other assets;

(e) Collecting and disbursing the assessment in accordance with RSA 415-K:15; and

(f) Other matters as may be necessary and proper for the execution of the board's powers, duties, and obligations under this chapter.

III. After notice and a hearing, the commissioner shall approve the plan of administrative operations if it is determined that the plan is suitable to assure the fair, reasonable, and equitable administration of the marketplace. The plan of administrative operations shall take effect on the date it is approved by the commissioner.

IV. If the initial board fails to submit a suitable plan of administrative operations before the 90th day following its appointment, the commissioner, after notice and hearing, may adopt all necessary and reasonable rules pursuant to RSA 541-A, to provide a plan for the administrative operations of the health marketplace. The rules adopted under this paragraph shall continue in effect until the initial board submits, and the commissioner approves, a plan of administrative operations under this section.

V. After notice and a hearing, the board may amend the plan of administrative operations as necessary to carry out this section and to comply with any federal requirements regarding the approved state exchange plan. The commissioner shall approve amendments to the plan of administrative operations before they become part of the plan.

VI. It is the responsibility of the board to carry out the functions of the plan of administrative operations and employ and set the compensation of any persons necessary to assist the board in carrying out its responsibilities and functions. Employees of the health marketplace shall not be considered classified state employees.

VII. Not later than June 1 of each year, the board shall make an annual report to the governor, the general court, the department of health and human services, and the commissioner. The report, which shall also be made publicly available, shall summarize the activities and finances of the marketplace in the preceding calendar year.

415-K:9 Plan of Insurance Operations; Authority of the Insurance Commissioner.

I. In consultation with the board and after notice and a hearing, the commissioner shall adopt a plan of insurance operations for the marketplace, which shall include all duties specified in this section. After notice and a hearing, the commissioner may amend the plan of insurance operations as necessary to carry out this section and to comply with any federal requirements regarding the approved state exchange plan.

II. In consultation with the board, the commissioner shall perform the health plan certification functions for the marketplace as required by the Act, including the development, adoption and application of standards for the certification, recertification and decertification of health benefit plans and stand-alone dental benefit plans, consistent with guidelines developed by the Secretary under section 1311(c) of the Act.

III. In consultation with the board, the commissioner shall establish standards for navigators consistent with Section 1311(i) of the Act and regulations implemented under the Act, including provisions to ensure that any private or public entity that is selected as a navigator avoids conflicts of interest and is appropriately qualified, licensed, and regulated to engage in the navigator activities described in RSA 415-K:11.

IV. The commissioner shall develop training requirements, consistent with RSA 415-K:9, V and RSA 415-K:11, IV, applicable to all persons, including but not limited to navigators and licensed health insurance producers, who assist consumers in accessing the marketplace and/or in purchasing health insurance coverage through the marketplace.

V. The commissioner shall develop and implement procedures that require any person who sells, solicits or negotiates insurance within the meaning of RSA 402-J:3 through the health marketplace to be licensed as a producer under RSA chapter 402-J, provided that nothing in this chapter shall prohibit the sale of health coverage by the health marketplace or health carriers directly to the consumer without the use of a producer.

VI. The commissioner shall require the use of a standardized format for presenting health and dental benefit options in the health marketplace, including for health benefit options the use of the uniform outline of coverage established under section 2715 of the PHSA.

VII. The commissioner shall review the rate of premium growth within the marketplace and outside the marketplace, and consider the information in developing recommendations on whether to continue limiting qualified employer status to small employers.

VIII. The commissioner shall consider whether it is in the best interest of consumers and the marketplace to require that a carrier offering a qualified health plan that includes the pediatric benefits described in section 1302(b)(1)(J) of the Act make disclosure separately of the price for the pediatric dental benefit, and upon such a finding may order that such disclosure be made as a condition of being certified as a qualified health plan.

IX. The commissioner shall consider whether qualified stand-alone dental plans shall be subject to the consumer protections and cost-sharing limits under the Act. If qualified stand-alone dental plans are not subject to such provisions, the commissioner shall require carriers offering such plans to make a prominent disclosure at the time it offers the plan, in a form approved by the health marketplace, that the plan does not comply with those protections.

X. The commissioner shall consider an appropriate mechanism for including dental carriers in the assessment under RSA 415-K:15, and may take whatever action necessary to implement the commissioner's findings.

XI. The commissioner may investigate the affairs of the health marketplace pursuant to RSA 400-A:16 and RSA 400-A:37, including examining the properties and records of the marketplace, and require the marketplace to provide periodic reporting to the commissioner in relation to the activities undertaken by the marketplace under this chapter.

XII. The commissioner may adopt rules, pursuant to RSA 541-A and in accordance with RSA 420-N:4, II, as necessary to perform the duties specified in this section and to protect against adverse selection by creating a level playing field between the health marketplace and the commercial health insurance market.

XIII. The commissioner may, through the plan of insurance operations, delegate to the board some or all of the duties set forth in paragraphs II and III of this section.

415-K:10 Plan of Medicaid Operations; Authority of the Health and Human Services Commissioner.

I. In consultation with the board and after notice and a hearing, the commissioner of health and human services shall adopt a plan of Medicaid operations for the marketplace, which shall include all duties specified in this section. After notice and a hearing, the commissioner of health and human services may amend the plan of insurance operations as necessary to carry out this section and to comply with any federal requirements regarding the approved state exchange plan.

II. The commissioner of health and human services shall have authority to establish New Hampshire eligibility standards, enrollment procedures and outreach mechanisms for the Medicaid program under title XIX of the Social Security Act and the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act.

III. In consultation with the board, the commissioner of health and human services shall establish navigator guidelines consistent with RSA 415-K:11, Section 1311(i) of the Act, and regulations implemented under the Act, to ensure that navigators are qualified to reach and assist the Medicaid-eligible and other populations served by the marketplace.

IV. The commissioner of health and human services may adopt rules, pursuant to RSA 541-A and in accordance with RSA 420-N:4, II, as necessary to perform the duties specified in this section.

415-K:11 Navigator Responsibilities.

I. A navigator shall:

(a) Distribute fair, accurate and impartial information concerning enrollment in qualified health plans and qualified stand-alone dental benefit plans, and the availability of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 of the Act; such information must acknowledge other health programs;

(b) Maintain expertise in eligibility, enrollment and programs specifications;

(c) Conduct public education activities to raise awareness of the availability of qualified health plans and qualified stand-alone dental benefit plans;

(d) Facilitate enrollment in qualified health plans and qualified stand-alone dental benefit plans, premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 of the Act, the Medicaid program under title XIX of the Social Security Act, the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act and any other federal, state or local public health coverage programs for which people can apply through the health marketplace;

(e) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act (PHSA), or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding a health or dental plan, coverage, or a determination under such plan or coverage;

(f) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the health marketplace;

(g) Be capable of carrying out at least those duties required under this chapter, the Act and any regulations implemented under this chapter or the Act; and

(h) Demonstrate an existing relationship, or the ability to readily establish a relationship, with employers, employees, consumers, including uninsured and underinsured consumers, or self-employed individuals likely to be eligible for enrollment in a qualified health plan.

II. A navigator shall not:

(a) Be a health carrier;

(b) Receive any consideration directly or indirectly from any health carrier in connection with the enrollment of any qualified individuals or employees of a qualified employer in a qualified health plan or qualified stand-alone dental plan through the marketplace during the term as navigator; or

(c) Have any other conflict of interest during the term as navigator.

III. The marketplace shall enter into navigator contracts with a broad range of entities that, as a whole, are well-suited to serve the full range of the population that is eligible to enroll in the marketplace, including

but not limited to small business employers and employees, including the self-employed, and consumers, including low-income and underserved individuals, the uninsured and individuals with disabilities and limited English proficiency. Navigators shall be selected from at least two of the following categories:

- (a) Community and consumer-focused nonprofit groups;
- (b) Trade, industry and professional associations;
- (c) Commercial fishing, ranching and farming organizations;
- (d) Chambers of commerce;
- (e) Unions;
- (f) Resource partners of the Small Business Administration;
- (g) Licensed producers; and
- (h) Other public or private entities that met the requirements of this section.

IV. All navigators and persons employed by navigators who perform any function under the navigator grant shall comply with all training requirements promulgated by the commissioner. All navigators shall be educated and certified on the full range of public and private health coverage options available including premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 of the Act, the Medicaid program under title XIX of the Social Security Act, the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act, the Medicare program under title XVIII of the Social Security Act and any other federal, state and local public health coverage programs.

V. Any person employed by or acting as a navigator who performs any function that requires an insurance producer license under the terms of RSA 402-J shall be fully licensed as a producer under that chapter.

VI. Nothing in this chapter shall prohibit a licensed producer from acting as a navigator, except that no producer may, during his or her term as a navigator, receive any commission or payment directly or indirectly from any health insurance issuer with respect to any coverage sold through the health marketplace.

415-K:12 General Requirements.

I. The marketplace shall make qualified health plans and qualified stand-alone dental benefit plans available to qualified individuals and qualified employers beginning with effective dates on or before January 1, 2014 and the initial open enrollment period specified in the regulations implemented under the Act.

II. The marketplace shall allow a carrier to offer a qualified stand-alone dental benefit plan that provides limited scope dental benefits meeting the requirements of section 9832(c)(2)(A) of the Internal Revenue Code of 1986 through the marketplace, either separately or in conjunction with a qualified health plan, if the plan provides pediatric dental benefits meeting the requirements of section 1302(b)(1)(J) of the Act.

III. No policy, certificate or contract of insurance or benefits offered through the marketplace may impose a charge or fee on an individual for termination of coverage if the individual enrolls in another type of minimum essential coverage because the individual has become newly eligible for that coverage or because the individual's employer-sponsored coverage has become affordable under the standards of section 36B(c)(2)(C) of the Internal Revenue Code of 1986.

415-K:13 Duties of the Marketplace. In accordance with the Act, the marketplace shall perform the following specific duties, which shall be included in the plan of administrative operations under RSA 415-K:8:

- I. Provide for the operation of a toll-free telephone hotline to respond to requests for assistance;
- II. Provide for enrollment periods, as provided under section 1311(c)(6) of the Act;
- III. Maintain an Internet website through which enrollees and prospective enrollees of qualified health plans and qualified stand-alone dental benefit plans may obtain standardized comparative information on such plans;
- IV. Assign a rating to each qualified health plan offered through the marketplace in accordance with the criteria developed by the Secretary under section 1311(c)(3) of the Act, and determine each qualified health plan's level of coverage in accordance with regulations issued by the Secretary under section 1302(d)(2)(A) of the Act;

V. In accordance with section 1413 of the Act, inform individuals of eligibility requirements for the Medicaid program under title XIX of the Social Security Act, the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act or any applicable state or local public program and if through screening of the application by the marketplace, the marketplace determines that any individual is eligible for any such program, enroll that individual in that program;

VI. Establish and make available by electronic means a calculator to determine the actual cost of coverage after application of any premium tax credit under section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under section 1402 of the Act;

VII. Establish a SHOP program as a component of the marketplace through which qualified employers may access coverage for their employees, which shall enable any qualified employer to specify a level of coverage so that any of its employees may enroll in any qualified health plan and/or qualified stand-alone dental benefit plan offered through the SHOP program at the specified level of coverage, but which shall not preclude a qualified employer from selecting a single qualified health plan and/or qualified stand-alone dental benefit plan to offer to its employees;

VIII. Subject to section 1411 of the Act, grant a certification attesting that, for purposes of the individual responsibility penalty under section 5000A of the Internal Revenue Code of 1986, an individual is exempt from the individual responsibility requirement or from the penalty imposed by that section because:

(a) There is no affordable qualified health plan available through the marketplace, or the individual's employer, covering the individual; or

(b) The individual meets the requirements for any other such exemption from the individual responsibility requirement or penalty.

IX. Transfer to the federal Secretary of the Treasury the following:

(a) A list of the individuals who are issued a certification of exemption from the individual mandate that shall include the name and taxpayer identification number of each individual;

(b) The name and taxpayer identification number of each individual who was an employee of an employer but who was determined to be eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 because:

(1) The employer did not provide minimum essential coverage; or

(2) The employer provided the minimum essential coverage, but it was determined under section 36B(c)(2)(C) of the Internal Revenue Code to either be unaffordable to the employee or not provide the required minimum actuarial value; and

(c) The name and taxpayer identification number of:

(1) Each individual who notifies the marketplace under section 1411(b)(4) of the federal Act that he or she has changed employers; and

(2) Each individual who ceases coverage under a qualified health plan during a plan year and the effective date of that cessation;

X. Provide to each employer the name of each employee of the employer described in subparagraph (k)(2) who ceases coverage under a qualified health plan during a plan year and the effective date of the cessation;

XI. Perform duties required of the marketplace by the Secretary or the Secretary of the Treasury related to determining eligibility for premium tax credits, reduced cost-sharing or individual responsibility requirement exemptions;

XII. Select entities qualified to serve as navigators and award navigator grants in accordance with section 1311(i) of the Act, RSA 415-K:10 and any applicable rules, regulations, policies or guidance documents;

XIII. Credit the amount of any free choice voucher to the monthly premium of the plan in which a qualified employee is enrolled, in accordance with section 10108 of the Act, and collect the amount credited from the offering employer;

XIV. Consult with stakeholders relevant to carrying out the activities required under this chapter, including, but not limited to:

(a) Health care consumers who are enrollees in qualified health plans and qualified stand-alone dental plans;

(b) Individuals and entities with experience in facilitating enrollment in qualified health plans and qualified stand-alone dental benefit plans;

(c) Small businesses and self-employed individuals;

(d) The office of Medicaid business and policy, department of health and human services; and

(e) Advocates for enrolling hard to reach populations, including individuals with a mental health or substance abuse disorder;

(f) Public health experts;

(g) Health care providers;

(h) Large employers;

(i) Health carriers; and

(j) Health insurance producers;

XV. Meet the following financial integrity requirements:

(a) Keep an accurate accounting of all activities, receipts and expenditures and annually submit to the Secretary, the governor, the commissioner and the general court a comprehensive financial report;

(b) Fully cooperate with any investigation conducted by the commissioner pursuant to RSA 400-A:16 or 37, or by the Secretary pursuant to the Secretary's authority under the Act and allow the Secretary, in coordination with the Inspector General of the United States Department of Health and Human Services, to:

(1) Investigate the affairs of the marketplace;

(2) Examine the properties and records of the marketplace; and

(3) Require periodic reports in relation to the activities undertaken by the marketplace; and

(c) In carrying out its activities under this chapter, not use any funds intended for the administrative and operational expenses of the marketplace for staff retreats, promotional giveaways, or excessive executive compensation;

XVI. Consider whether and the extent to which benefits for spiritual care services that are deductible under Section 213(d) of the federal Internal Revenue Code as of January 1, 2011 should be made available through the health marketplace; and

XVII. Develop and implement a program to publicize the existence of the health marketplace, the eligibility requirements for coverage under the health marketplace and for subsidies offered for individual coverage offered through the health marketplace, enrollment procedures, and to foster public awareness of the health marketplace.

415-K:14 Health Benefit Plan Certification.

I. The commissioner shall certify a health benefit plan as a qualified health plan if:

(a) The plan provides the essential health benefits package described in section 1302(a) of the Act, except that the plan is not required to provide essential benefits that duplicate the minimum dental benefits of qualified stand-alone dental benefit plans, if;

(1) The health marketplace has determined that at least one qualified stand-alone dental benefit plan is available, as determined pursuant to RSA 415-K:13, IV, to supplement the plan's coverage and offered through the health marketplace; and

(2) The carrier makes prominent disclosure at the time it offers the plan, in a form approved by the health marketplace, that the plan does not provide the full range of essential pediatric dental benefits, and that qualified stand-alone dental benefit plans providing those benefits and other dental benefits not covered by the plan are offered through the health marketplace.

(b) The plan, premium rates and contract language all comply with applicable health insurance laws of this state and rules adopted and orders issued by the commissioner;

(c) The plan provides at least a bronze level of coverage, as determined pursuant to RSA 415-K:13, V, unless the plan is certified as a qualified catastrophic plan, meets the requirements of the federal Act for catastrophic plans, and will only be offered to individuals eligible for catastrophic coverage;

(d) The plan's cost-sharing requirements do not exceed the limits established under section 1302(c)(1) of the Act, and if the plan is offered through the SHOP program, the plan's deductible does not exceed the limits established under section 1302(c)(2) of the Act;

(e) The carrier offering the plan:

(1) Is licensed and in good standing to offer health insurance in this state;

(2) Offers at least one qualified health plan in the silver level and at least one plan in the gold level through each component of the marketplace in which the carrier participates;

(3) Offers at least one qualified health plan that provides the essential health benefits package described in section 1302(a) of the Act except essential benefits that duplicate the minimum dental benefits of qualified stand-alone dental benefit plans, if the health marketplace has determined that at least one qualified stand-alone dental benefit plan is available through the health marketplace, as determined pursuant to RSA 415-K:13, IV, to supplement the plan's coverage;

(4) Charges the same premium rate for each qualified health plan without regard to whether the plan is offered through the marketplace and without regard to whether the plan is offered directly from the carrier or through an insurance producer;

(5) Does not charge any cancellation fees or penalties; and

(6) Complies with the regulations developed by the Secretary under 1311(d) of the Act and such other requirements as the marketplace may establish;

(f) The plan meets all certification requirements adopted for the health marketplace and by the Secretary under section 1311(c) of the Act, which include, but are not limited to, minimum standards in the areas of marketing practices, network adequacy, essential community providers in underserved areas, accreditation, quality improvement, uniform enrollment forms, and descriptions of coverage and information on quality measures for health benefit plan performance; and

(g) The commissioner determines that making the plan available through the marketplace is in the interest of qualified individuals and qualified employers in this state.

II. The commissioner shall not exclude a health benefit plan:

(a) On the basis that the plan is a fee-for-service plan; or

(b) Through the imposition of premium price controls.

III. The commissioner shall require each health carrier seeking certification of a plan as a qualified health plan to:

(a) Submit a justification for any premium increase before implementation of that increase. The carrier shall prominently post the information on its Internet website. The commissioner shall take this information into consideration when determining whether to allow the carrier to make plans available through the marketplace;

(b)(1) Make available to the public, in the format described in subparagraph (2), and submit to the marketplace, the Secretary, and the commissioner, accurate and timely disclosure of the following:

(A) Claims payment policies and practices;

(B) Periodic financial disclosures;

(C) Data on enrollment;

(D) Data on disenrollment;

(E) Data on the number of claims that are denied;

(F) Data on rating practices;

(G) Information on cost-sharing and payments with respect to any out-of-network coverage;

(H) Information on enrollee and participant rights under title I of the Act; and

(I) Other information as required under the Act.

(2) The information required in subparagraph (1) shall be provided in plain language as that term is defined in section 1311(e)(3)(B) of the Act;

(c) Permit individuals to learn, in a timely manner upon the request of the individual, the amount of cost-sharing, including deductibles, copayments, and coinsurance, under the individual's plan or coverage that the individual would be responsible for paying with respect to the furnishing of a specific item or service by a participating provider. This information shall be made available to the individual through an Internet website and through other means for individuals without access to the Internet; and

(d) If the plan provides a comprehensive essential health benefits package described in section 1302(a) of the Act, including pediatric dental benefits, and if the commissioner has determined under RSA 415-K:9, VIII that it is in the public interest to require that carriers make separate disclosure of the price for the pediatric dental benefit within such comprehensive packages, the carrier shall disclose the separate price for the pediatric dental benefit.

IV. After the health marketplace has been in operation for 2 years, the commissioner shall make recommendations to the general court as to whether the requirements of subparagraph III(b) should apply to the entire individual and small group markets.

V. The commissioner shall not exempt any carrier seeking certification of a qualified health plan or a qualified stand-alone dental benefit plan, regardless of the type or size of the carrier, from licensure or solvency requirements and shall apply the criteria of this section in a manner that assures a level playing field between or among carriers participating in the marketplace.

VI. The provisions of this chapter that are applicable to qualified health plans shall also apply to the extent relevant to qualified stand-alone dental benefit plans except as modified in accordance with the provisions of subparagraphs (a), (b) and (c) of this paragraph or by rules adopted by the commissioner.

(a) The commissioner may certify a stand-alone dental benefit plan as a qualified stand-alone dental benefit plan only if the carrier offering the stand-alone dental benefit plan is licensed and in good standing to offer dental plans, but the carrier need not be licensed to offer other health benefits.

(b) The stand-alone dental benefit plan shall be limited to dental and oral health benefits, without substantially duplicating the benefits typically offered by health benefit plans without dental coverage and shall include, at a minimum, the essential pediatric dental benefits prescribed by the Secretary pursuant to section 1302(b)(1)(J) of the Act, and such other dental benefits as the commissioner or the Secretary may specify by rule or regulation.

(c) Carriers may jointly offer a comprehensive plan through the health marketplace in which dental benefits are provided by a carrier through a qualified stand-alone dental benefit plan and the other benefits are provided by a carrier through a qualified health plan, provided that the plans are priced separately and are also made available for purchase separately. Nothing in this subparagraph shall be construed as prohibiting carriers from offering a discount rate on a qualified dental plan when purchased jointly with a qualified health plan.

415-K:15 Funding; Publication of Costs.

I. The marketplace shall generate funding necessary to support its operations through an assessment on all writers of health insurance in the state. The assessment base for purposes of this chapter shall be the same assessment base established for the New Hampshire health insurance high risk pool under RSA chapter 404-G.

II. The board's plan of operations shall include an assessment determination section that conforms with the following requirements:

(a) Assessment liabilities shall commence on the effective date of this chapter.

(b) Assessments shall be calculated based on the number of lives covered by a carrier, consistent with the definition of "covered lives" in RSA 404-G:2, V. The number of covered lives shall be determined each month during the calendar year.

(c) The assessment shall be calculated as the number of covered lives times a specified amount. The specified amount shall be fixed throughout the calendar year and shall be determined by the board no later than 14 months prior to the calendar year for which the assessment is calculated. The board shall provide a basis for recommending the specified amount, including a projection of the projected operational costs of the health marketplace and consideration of any prior year shortfalls or overages.

(d) The amount of the assessment set by the board shall be no greater than is necessary to fulfill the purposes of this chapter. For the purpose of making this determination, the board may seek independent actuarial certification of the need for the increase.

(e) Each covered life should be included in the assessment only once. The board shall adopt procedures by which affiliated carriers calculate their assessment on an aggregate basis and procedures to ensure that no covered life is counted more than once.

(f) The assessment shall be considered a state tax when calculating the carrier's medical loss ratio for purposes of the rebate provisions of the Act.

(g) Any assessment collected under this chapter shall be kept separate from general funds and used solely for the purpose of operating the marketplace.

III. The marketplace shall publish the assessment amounts and any other payments required by the marketplace, as well as the administrative costs of the marketplace, on an Internet website to educate consumers on such costs. This information shall include information on moneys lost to fraud, waste, abuse, and mismanagement within the marketplace system.

415-K:16 Relation to Other Laws. Nothing in this chapter, and no action taken by the marketplace pursuant to this chapter, shall be construed to preempt or supersede the authority of the commissioner to regulate the business of insurance within this state, or of the health and human services commissioner to establish Medicaid eligibility standards. Except as expressly provided to the contrary in this chapter or elsewhere in Title XXXVII, all carriers offering qualified health plans or qualified stand-alone dental benefit plans in this state shall comply fully with all applicable health insurance laws of this state and rules adopted and orders issued by the commissioner.

415-K:17 Approval of the State Plan. On behalf of the New Hampshire health marketplace, the commissioner, in consultation with the commissioner of health and human services, shall seek approval of the health marketplace as established in this chapter as the State Exchange Plan as required by 45 CFR Parts 155 and 156, Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans.

415-K:18 Contingencies.

I. In the event the United States Supreme Court overturns all or part of the Act or the Act is repealed (in whole or in part) after the date of enactment of this chapter, the joint health care reform oversight committee established under RSA 420-N:3 shall recommend appropriate action with respect to this chapter to the general court and the governor.

II. In the event the health benefit exchange provisions of the Act remain in effect, but the New Hampshire health marketplace is not approved by the federal Department of Health and Human Services under the Act as the health benefit exchange for New Hampshire, the commissioner and the commissioner of health and human services shall retain the authority set forth in this chapter, and the marketplace board shall function in an advisory capacity with the goal of moving toward a state marketplace, and in the interim taking whatever action it can to make any federal exchange implemented for New Hampshire conform as closely as possible to the governing principles laid out in RSA 415-K:2.

415-K:19 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or application of this chapter which can be given effect without the invalid provisions or applications, and to this end, the provisions of this chapter are severable.

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

2012-0164s

AMENDED ANALYSIS

This bill establishes the New Hampshire health marketplace as a quasi-independent entity of the state. The bill also establishes the marketplace board to provide procedures to facilitate the marketplace's purpose

which is to assist in the purchase and sale of qualified health plans and to meet the requirements of the Patient Protection and Affordable Care Act. The insurance commissioner is granted rulemaking authority for the purposes of the bill.

The question is on the adoption of the Committee Amendment.

Sen. Bradley moved to Lay on the Table SB 163-FN.

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

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

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

Yeas: 17 - Nays: 7

Adopted.

Sen. White asserts Rule 2-15 on SB 163-FN.

HB 405, relative to dissolving corporations. Inexpedient to Legislate, Vote 5-0. Senator Houde for the committee.

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

HB 627-FN, relative to "essential benefits" under federal health care reform. Ought to Pass with Amendment, Vote 4-0. Senator White for the committee.

Commerce

January 10, 2012

2012-0166s

01/09

Amendment to HB 627-FN

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Duty Added. Amend RSA 420-N:3 by inserting after paragraph III the following new paragraph:

III-a. In addition to the duties required under paragraph III, the committee shall also determine the "essential benefits" package which will be available to insured persons in the state of New Hampshire under the Act.

2012-0166s

AMENDED ANALYSIS

This bill requires the joint health care reform oversight committee to determine the "essential benefits" package which will be available to insured persons in the state of New Hampshire under the Patient Protection and Affordable Care Act of 2009 as amended.

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.

EDUCATION

HB 528-FN-L, requiring school districts to develop a facility maintenance and capital improvement program. Inexpedient to Legislate, Vote 4-0. Senator Stiles for the committee.

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

ENERGY AND NATURAL RESOURCES

SB 48, relative to filing of rates for certain telephone services. Ought to Pass with Amendment, Vote 5-0. Senator Odell for the committee.

Energy and Natural Resources
January 12, 2012
2012-0200s
06/10

Amendment to SB 48

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

AN ACT relative to state regulation of telephone service providers and clarifying the authority of the public utilities commission to regulate pole attachments.

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

1 New Sections; Telephone Utilities. Amend RSA 362 by inserting after section 6 the following new sections:
 362:7 Telephone Utilities.

I. In this title:

(a) "End user" means any telecommunications services customer that is not a telecommunications carrier or telecommunications public utility except that a telecommunications carrier or public utility shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes.

(b) "Incumbent local exchange carrier" shall have the meaning as defined in 47 U.S.C. section 251 (h).

(c) "Excepted local exchange carrier" means:

(1) An incumbent local exchange carrier providing telephone services to 25,000 or more lines; or

(2) An incumbent local exchange carrier providing service to less than 25,000 lines that elects to be excepted, upon the filing with the commission of a written notice advising of said election; or

(3) Any provider of telecommunications services that is not an incumbent local exchange carrier.

(d) "Voice over Internet Protocol ("VoIP") service" means any service that:

(1) Enables real-time, 2-way voice communications that originate from or terminate in the user's location in Internet Protocol or any successor protocol;

(2) Requires a broadband connection from the user's location; and

(3) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

(e) "IP-enabled service" means any service, capability, functionality, or application provided using Internet Protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet Protocol format or any successor format, regardless of technology; provided, however, that no service included within the definition of "Voice over Internet Protocol service" shall be included within this definition.

II. Except as set forth in paragraph III, notwithstanding any other provision of law to the contrary, no department, agency, commission, or political subdivision of the state, shall enact, adopt, or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law that regulates or has the effect of regulating the market entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled service or any provider of VoIP service or IP-enabled service.

III. The prohibitions of paragraph II shall not be construed to:

(a) Affect or limit the application or enforcement of criminal or other laws that apply generally to the conduct of business in the state, including, without limitation, consumer protection, or unfair or deceptive trade practice protections;

(b) Affect, mandate, or prohibit the assessment of taxes or nondiscriminatory 911 fees, telecommunications relay service fees, or other fees of general applicability;

(c) Modify or affect the rights or obligations of any telecommunications carrier, or any duties or powers of the public utilities commission, under 47 U.S.C. section 251 or 47 U.S.C. section 252, as applicable;

(d) Affect the authority of the state or its political subdivisions, as applicable, to manage the use of public rights-of-way, including, but not limited to, any requirement for the joint use of poles or other structures in such rights-of-way;

(e) Affect or limit the application or enforcement of RSA 371:17 through RSA 371:24, RSA 374:2-a, RSA 374:28-a, RSA 374:34-a, RSA 374:48 through RSA 374:56, RSA 374:59, RSA 378:44 through RSA 378:48, or RSA 374:30, II;

(f) Affect or modify any obligations for the provision of video service by any party under applicable law.

IV. Nothing in this chapter shall be construed to give the commission any additional authority over wireless carriers.

362:8 Obligations on Excepted Local Exchange Carriers. Notwithstanding any other law, rule, or order, the commission shall have no authority to impose or enforce any obligation on any excepted local exchange carrier that is not also applicable to all other excepted local exchange carriers, excluding providers of commercial mobile radio service, except:

I. Such obligations that arise pursuant to the commission's authority under the Communications Act of 1934, as amended; or

II. Such obligations that arose prior to February 1, 2011 that relate to the availability of broadband services, soft disconnect processes and capital expenditure commitments within the state; or

III. Such obligations that relate to the provision of services to competitive local exchange carriers, interexchange carriers, and wireless carriers, regardless of technology; or

IV. Such obligations that arise under RSA 374:22-p and RSA 374:30, II.

2 Public Utilities Commission; Investigations of Interstate Matters. Amend RSA 363:22 to read as follows:

363:22 Investigations. ***Except as pertains to any end user of an excepted local exchange carrier or services provided to such end user***, the commission may investigate all existing or proposed interstate rates, fares, charges, classifications and rules and regulations relating thereto, where any act thereunder may take place within this state.

3 Office of the Consumer Advocate. Amend RSA 363:28, II to read as follows:

II. ***Except as pertains to any end user of an excepted local exchange carrier or services provided to such end user***, the consumer advocate shall have the power and duty to petition for, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, and consumer services before any board, commission, agency, court, or regulatory body in which the interests of residential utility consumers are involved and to represent the interests of such residential utility consumers.

4 Residential Ratepayers Advisory Board. Amend RSA 363:28-a, V(b) to read as follows:

(b) ***Except as pertains to any end user of an excepted local exchange carrier or services provided to such end user***, the board shall advise the consumer advocate on matters concerning residential ratepayers.

5 New Section; Complaints to the Commission; Exceptions. Amend RSA 365 by inserting after section 1 the following new section:

365:1-a Exceptions. Except for complaints about RSA 371:17 through RSA 371:24, 374:2-a, RSA 374:22-p, RSA 374:28-a, RSA 374:34-a, RSA 374:48 through RSA 374:56, RSA 374:59, and 378:44 through RSA 378:48, the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user. Such end users may, however, make complaints to the commission regarding the provision of basic service by excepted local exchange carriers.

6 New Section; Affiliates of Public Utilities; Exceptions. Amend RSA 366 by inserting after section 1 the following new section:

366:1-a Exceptions. The provisions of this chapter shall not apply to any excepted local exchange carrier.

7 New Section; Issuance of Stock and Securities; Exceptions. Amend RSA 369 by inserting after section 1 the following new section:

369:1-a Exceptions. The provisions of this chapter shall not apply to any excepted local exchange carrier.

8 New Section; Service Equipment of Public Utilities; Exceptions. Amend RSA 370 by inserting after section 1 the following new section:

370:1-a Exceptions. The provisions of this chapter shall not apply to any excepted local exchange carrier.

9 New Section; General Regulations; Exceptions. Amend RSA 374 by inserting after section 1 the following new section:

374:1-a Exceptions. Except as provided otherwise in this chapter, and except for RSA 374:2-a, RSA 374:28-a, RSA 374:34-a, RSA 374:48 through RSA 374:56, and RSA 374:59, the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user.

10 Other Public Utilities. Amend RSA 374:22, I to read as follows:

I. No person or business entity, ***including any person or business entity that qualifies as an excepted local exchange carrier***, shall commence business as a public utility within this state, or shall engage in such business, or begin the construction of a plant, line, main, or other apparatus or appliance to be used therein, in any town in which it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise not theretofore actually exercised in such town, without first having obtained the permission and approval of the commission.

11 Affordable Telephone Service; Rulemaking; Standards. Amend RSA 374:22-p, I to read as follows:

I.(a) For the purposes of this section, "Federal Telecommunications Act" means the federal Telecommunications Act of 1996, Public Law ~~[104-458]~~ **104-104**, 110 Stat. 56.

(b) For purposes of this section "basic service" means:

- (1) Safe and reliable single-party, single line voice service;***
- (2) The ability to receive all noncollect calls, at telephone lines capable of receiving calls, without additional charge;***
- (3) The ability to complete calls to any other telephone line, which is capable of receiving calls, in the state;***
- (4) The opportunity to presubscribe to interLATA toll carriers;***
- (5) The opportunity to presubscribe to intraLATA toll carriers;***
- (6) Dialing parity;***
- (7) Number portability;***
- (8) Enhanced 911, pursuant to the requirements of the department of safety bureau of emergency communications or its successor agency;***
- (9) Access to statewide directory assistance;***
- (10) Telecommunications relay service (TRS);***
- (11) A published directory listing, at the customer's election;***
- (12) A caller identification blocking option, on a per-call basis;***
- (13) A caller identification line blocking option that is available to all customers without a recurring charge and is provided upon customer request without charge to customers who have elected nonpublished telephone numbers and is available without a nonrecurring charge to customers who certify that caller identification threatens their health or safety and is available without a nonrecurring charge when requested with installation of basic service;***
- (14) A blocking option for pay-per-call calls, such as blocking all 900 or all 976 area code calls;***
- (15) The ability to report service problems to the customer's basic service provider on a 24-hour basis, 7 days a week; and***
- (16) Automatic Number Identification (ANI) to other carriers which accurately identifies the telephone number of the calling party.***

(c) Any combination of basic service along with any other service offered by the telecommunications service provider is nonbasic service.

(d) Any telecommunications service provider which is not an incumbent local exchange carrier shall not be required to provide basic service.

12 New Paragraph; Affordable Telephone Service. Amend RSA 374:22-p by inserting after paragraph VII the following new paragraph:

VIII. Notwithstanding the provisions of RSA 374:1-a,

(a) Incumbent local exchange carriers, whether qualified as an excepted local exchange carrier or otherwise, may not discontinue residential basic service, regardless of technology used, in any portion of their franchise area unless the commission determines that the public good will not be adversely affected by such withdrawal of service, and

(b) Rates for basic service of incumbent local exchange carriers which qualify as excepted local exchange carriers may not increase by more than 5 percent for Lifeline Telephone Assistance customers and by more than 10 percent for all other basic service customers in each of the 8 years after the effective date of this paragraph or the effective date of an existing alternative plan of regulation, except for additional rate adjustments, with public utilities commission review and approval, to reflect changes in federal, state, or local government taxes, mandates, rules, regulations, or statutes.

(c) Incumbent local exchange carriers which qualify as excepted local exchange carriers shall report the rates for basic service to the commission within 60 days of the effective date of this paragraph and upon any changes to the rates.

13 Other Public Utility Leases. Amend RSA 374:30 through 374:33 to read as follows:

374:30 Other Public Utility Leases, Etc.

I. Any public utility may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state, or contract for the operation of its works and system located in this state, when the commission shall find that it will be for the public good and shall make an order assenting thereto, but not otherwise, except that commission approval shall not be required for any such transfer, lease, or contract by an excepted local exchange carrier. The commission may, by general order, authorize a public utility to transfer to another public utility a part interest in poles and their appurtenances for the purpose of joint use by such public utilities.

II. An incumbent local exchange carrier that is an excepted local exchange carrier may transfer or lease its franchise, works, or system, or any part of such franchise, works, or system, exercised or located in this state, or contract for the operation of its works and system located in this state, when the commission finds the utility to which the transfer is to be made is technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier set forth in RSA 362:8 and 374:22-p.

374:31 Leases, Etc., When Void. ***If commission approval is required pursuant to RSA 374:30 for any transfer, lease, or contract,*** any such attempted transfer, lease, or contract shall be void unless the same shall have been approved by the commission.

374:32 Corporate Authorization. ***Except when the public utility is an excepted local exchange carrier,*** if such public utility, or the other party to any such transfer, lease, or contract, be a corporation and if the commission shall find that the public good so requires, such transfer, lease, or contract shall first be authorized by the vote of 2/3 of the shares of the capital stock of each of the interested corporations present and voting at meetings duly called to consider the subject; and all statutes regulating, protecting, and determining the rights of a dissenting stockholder of a railroad in the case of a lease or union with another railroad shall be applicable, and the rights of any stockholder of such corporation dissenting from such transfer, lease, or contract, if the same shall be authorized as above provided, shall be regulated, protected, and determined by such statutes.

374:33 Acquiring Stocks, Etc. No public utility or public utility holding company as defined in section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C. section 78-P, whichever is less, of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless the commission finds that such acquisition is lawful, proper, and in the public interest, ***except that commission approval shall not be required for any acqui-***

sition of an excepted local exchange carrier. Nothing in this section shall prevent a public utility being in fact the owner on June 1, 1911, of the majority of the capital stock of any other public utility, or leasing or operating such other public utility, from acquiring the balance or all of the outstanding capital stock of such other public utility a majority of which stock is so owned or which is so leased or operated.

14 New Paragraph; Pole Attachments. Amend RSA 374:34-a by inserting after paragraph VII the following new paragraph:

VIII. The commission shall retain its authority to regulate the safety, vegetation management, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of public utilities and other private entities located within public rights-of-way and on, over, or under state lands and water bodies.

15 New Section; Rates and Charges; Exceptions. Amend RSA 378 by inserting after section 1 the following new section:

378:1-a Exceptions. Except as provided otherwise within this chapter and except for RSA 378:44 through RSA 378:48, the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user. Excepted local exchange carriers shall post the rates, fares, charges, prices, terms, and conditions of all such services on its publicly available website.

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

2012-0200s

AMENDED ANALYSIS

This bill defines excepted local exchange carriers and modifies laws regulating rates, charges, and billing as pertain to such carriers.

This bill authorizes the public utilities commission to regulate the safety, vegetation management, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of public utilities and other private entities located within public rights-of-way and on, over, or under state lands and water bodies.

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 84-FN, relative to state regulation of the septic system installation process. Inexpedient to Legislate, Vote 4-0. Senator Lambert for the committee.

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

Sen. Groen is in opposition to the motion of Inexpedient to Legislate on SB 84-FN.

SB 142-FN, relative to reorganizing the permitting process within the department of environmental services. Ought to Pass with Amendment, Vote 4-0. Senator Bradley for the committee.

Energy and Natural Resources

January 11, 2012

2012-0186s

08/09

Amendment to SB 142-FN

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

1 New Chapter; Integrated Land Development Permit. Amend RSA by inserting after chapter 488 the following new chapter:

CHAPTER 489

INTEGRATED LAND DEVELOPMENT PERMIT

489:1 Purpose. This chapter is intended to:

I. Establish an integrated land development permit option that may be sought, at the discretion of the applicant, as an alternative to seeking one or more individual land development permits or approvals issued by the department of environmental services.

II. Provide a coordinated approach and holistic perspective in regulating land development activities to protect the quality and functions of New Hampshire's natural environment.

III. Establish an alternative project review and permitting process to improve communication and coordination between multiple organizations and entities involved in the permitting of proposed projects.

IV. Establish a structured pre-application process to provide enhanced guidance earlier in the project design process to facilitate compliance and improved environmental performance.

V. Encourage and facilitate implementation of environmentally superior projects.

489:2 Definitions. In this chapter:

I. "Abutter" means any person who owns land immediately contiguous to the subject property or who owns flowage rights on such land. The term does not include the owner of any land that is separated by a public road or public waterway from the subject property or, in the absence of a public road or waterway, is more than ¼-mile from the limits of the proposed work. If any land that is immediately contiguous to the subject property is owned in whole or in part by the person who is proposing the work or is necessary to meet any frontage requirement, the term includes the person owning the next contiguous property. If the project is located in an area where the project will directly affect the use of land, or its adjacent water, that is not immediately contiguous to the property due to the configuration of property lines, the term includes owners of such land.

II. "Affected programs" means the following programs implemented by the department:

(a) The terrain alteration program established under RSA 485-A:17 and rules adopted pursuant thereto;

(b) The subdivision and individual sewage disposal systems program established under RSA 485-A:29-44 and rules adopted pursuant thereto;

(c) The wetlands program established under RSA 482-A and rules adopted pursuant thereto; and

(d) The shoreland water quality protection program established under RSA 483-B and rules adopted pursuant thereto.

III. "Applicant" means the person who initiates the application process for an integrated land development permit. If the applicant is not the owner of the property on which the project is proposed to occur, the applicant shall be authorized in writing by the property owner to undertake all actions and representations required under this chapter.

IV. "Department" means the department of environmental services.

V. "Integrated land development permit" means a single permit issued by the department in lieu of issuing separate permits under one or more of the affected programs.

VI. "Permittee" means a person who obtains an integrated land development permit under this chapter.

VII. "Subject property" means the property on which a project is proposed.

489:3 Authorization.

I. There is hereby established an integrated land development permit, for which application may be made as an alternative to applying for separate, individual permits under the affected programs.

II. Municipalities may review materials, provide comments, and, at the request of an applicant, attend meetings during any or all phases of the integrated land development permit program to provide advisory input to the department, as part of, or in conjunction with, municipal review requirements.

III. If administrative requirements or procedures contained in this chapter, or adopted by rule to execute this chapter, conflict with administrative requirements or procedures of any other statute or rule implemented by the department, the provisions under this chapter shall apply.

IV. The time limits prescribed in this chapter, or adopted by rule to execute this chapter, shall supersede any time limits provided in any other applicable provision of law.

V. Electronic communications and electronic document management may be employed to facilitate correspondence, application, notification, and coordination under this chapter.

VI. Submission of materials for the pre-application technical review or for final application under this chapter shall constitute the property owner's express authorization for the department, through its agents or employees, to enter upon the property that is the subject to the application for purposes of evaluating site conditions and application made under this chapter.

489:4 Applicability.

I. Any person who wishes to conduct an activity requiring a permit or other approval from the department under 2 or more of the affected programs may choose to apply for an integrated land development permit from the department in lieu of all individual program permits or approvals otherwise required under the affected programs, subject to the following conditions and limitations:

(a) All permits or approvals otherwise required under the affected programs shall be included in the integrated land development permit.

(b) No person shall be eligible under this chapter if the person is the subject of an administrative, civil, or criminal enforcement action for violating any of the affected programs at the time of initiating the application process.

(c) No person shall be eligible under this chapter if the person was the subject of an administrative, civil, or criminal enforcement action for violating any of the affected programs within the 5 years prior to initiating the application process, unless the action was withdrawn or overturned on appeal.

(d) No property shall be eligible under this chapter if the property is or has been the subject of an administrative enforcement action for violations of any of the affected programs, unless the violations have been remediated or will be remediated as part of the proposed project and any outstanding fees, fines, and penalties assessed against the same person who owns the property at the time of the application have been paid in full.

(e) No property shall be eligible under this chapter without the prior consent of the attorney general if the property is, at the time of initiating the application process, or has been, within the 5 years prior to initiating the application process, the subject of a civil or criminal enforcement action for violations of any of the affected programs. This paragraph shall not apply to any action that was withdrawn or overturned on appeal.

(f) This chapter shall not apply if any of the work that is part of the project, other than preliminary site evaluation activities such as surveys or test pits not requiring a permit from the department, has been initiated or completed prior to the application process being initiated.

(g) This chapter shall not apply to permits for shoreline structures unless they are part of a larger project.

(h) This chapter shall not apply to emergency authorizations.

II. For projects that would otherwise require only a single permit from the department under the affected programs, the applicant may request a waiver of the requirement for 2 or more permits provided the project incorporates low-impact or minimum-impact design practices and the applicant demonstrates that the proposed project will achieve a superior overall environmental outcome in accordance with the requirements and procedures specified in RSA 489:10.

489:5 Initiation of Integrated Land Development Permit Process.

I. Any person interested in pursuing an integrated land development permit may consult with the department regarding the applicable procedures and requirements. Applicants may request and participate in conceptual pre-application discussions with the department prior to initiating the formal pre-application technical review process. Such conceptual pre-application discussions shall not replace the formal pre-application technical review process.

II. An applicant shall initiate the integrated land development permit process by conducting certain activities, as specified by the department in rules adopted under this chapter, in advance of requesting pre-application technical review by the department. These activities shall include the following:

(a) Inquiry and, when required by RSA 212-A:9, III, consultation with the department of resources and economic development's natural heritage bureau and the department of fish and game;

(b) Notification of and provision of materials on the proposed project to the planning department, planning board and conservation commission of the municipality or, where applicable, municipalities in which the proposed project is located;

(c) Notification of and provision of materials on the proposed project to the local river management advisory committee, when applicable;

(d) Notification of and consultation with federal regulatory entities, when applicable;

(e) Notification of, and, when requested, provision of materials on the proposed project, to the New Hampshire division of historic resources;

(f) Assessment of site characteristics and location, as defined by the department in rules adopted under this chapter; and

(g) Other assessments, inquiries, notifications, and consultations as defined by the department in rules adopted under this chapter.

489:6 Pre-Application Technical Review.

I. Any person who is eligible under RSA 489:4 who wishes to develop property that is eligible under RSA 489:4 and who elects to apply for an integrated land development permit shall participate in a pre-application technical review with the department regardless of whether the applicant has previously participated in one or more prior pre-application discussions with the department.

II. After conducting the notifications, consultations, and assessments required under RSA 489:5, II, the applicant shall submit to the department such materials as the department requires under rules adopted pursuant to RSA 541-A, together with the pre-application technical review fee required by RSA 489:8, II.

III. As part of the pre-application technical review, the department shall review preliminary design plans, supporting information, and advisory input from persons notified or consulted pursuant to RSA 489:5, II to identify critical issues regarding site development and design and any requested waivers that may affect compliance with technical standards and the overall environmental outcome of the project. The department also shall discuss any mitigation that may be needed and review the final permit application requirements with the applicant.

IV. The department may request that persons from the department of resources and economic development's natural heritage bureau, the department of fish and game, and applicable federal regulatory entities, participate in the pre-application technical review. Other persons may be included at the request of the applicant. All persons providing comments or otherwise participating in the pre-application technical review may provide advisory input to the department relative to the site conditions, the application of or compliance with technical requirements of the affected programs, or any waiver request under RSA 489:10.

V. Participation in the pre-application technical review shall not establish any presumption that the department will approve the application.

489:7 Submission and Review of Final Application.

I. Following the pre-application technical review, the applicant shall submit a complete application, as defined by the department in rules, together with the application fee specified in RSA 489:8, I, to the department. The proposed activities shall not be undertaken unless and until the applicant receives a permit from the department.

II. Incomplete applications shall not be accepted and shall be returned, along with the fee, to the applicant to be made complete and resubmitted to the department.

III. Concurrent with the submission of the final application to the department, the applicant shall:

(a) Provide a complete copy of the final application and all supporting materials, by certified mail or other delivery method that provides proof of receipt, to the municipality, or if applicable, municipalities in which the project is located and, when applicable, the local river management advisory committee or committees.

(b) Notify all abutters by certified mail or other delivery method that provides proof of receipt regarding the application. If any question arises as to whether all abutters were notified, the burden shall be on the applicant to show that notification was made.

IV. The department shall apply the technical standards established in the affected programs.

V. The department may waive, in accordance with RSA 489:10, any requirement or standard established by statute or rule under the affected programs, if such waiver is necessary to achieve a superior overall environmental outcome, or achieve an equivalent overall environmental outcome at reduced cost.

VI. Within 45 days of receiving a complete application, the department shall:

- (a) Approve the application and issue a permit, which shall include such conditions as the department deems necessary to comply with this chapter or rules adopted under this chapter;
- (b) Deny the application and issue written findings in support of the denial;
- (c) Identify the need for and schedule a public hearing on the draft permit for the proposed project, and within 30 days of the public hearing approve or deny the application in accordance with subparagraph (a) or (b); or
- (d) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

VII. The department shall adopt rules, under RSA 541-A regarding terms and conditions for any permit issued under this chapter to ensure compliance with this chapter and the affected programs.

489:8 Fees. Fees for the integrated land development permit shall be as follows:

I. The integrated land development permit application fee for a project shall be equal to the total of the permit fees specified in statute and in rules for each of the individual permits or approvals being replaced by the integrated land development permit. The permit application fee, minus funds previously paid for the technical pre-application review, shall be submitted to the department with the permit application.

II. The pre-application technical review fee shall be 30 percent of the expected permit application fee or \$500, whichever is greater, up to a maximum of \$5,000. The pre-application technical review fee shall be applied toward the final permit application fee for the project. If the applicant does not submit a final permit application, the pre-application technical review fee shall not be refunded or transferred to another project.

III. The applicant shall submit an additional fee, equal to 5 percent of the final permit application fee for the project up to a maximum of \$500, to cover the additional costs incurred by the department for any project requiring a public hearing.

IV. The applicant shall submit an additional fee, equal to 5 percent of the final permit application fee for the project up to a maximum of \$500, for any project requiring an amendment to a permit issued under this chapter.

V. The fees collected pursuant to this chapter shall be deposited into the accounts associated with the affected programs on a pro rata basis.

489:9 Rulemaking. The commissioner of the department shall adopt rules under RSA 541-A relative to:

I. Requirements and procedures for the pre-application process and technical review, including requirements for notification of and coordination with municipalities, other state and federal agencies, local river management advisory committees, and other entities.

II. Application requirements and procedures for processing a final application for an integrated land development permit, including requirements for notification of and coordination with municipalities, other state and federal agencies, local river management advisory committees, and other entities.

III. Technical standards and requirements for technical review of applications.

IV. Procedures and requirements for amending a permit issued pursuant to this section, including time extensions.

V. Procedures and requirements for projects requiring a public hearing.

VI. Terms and conditions for permits issued under this chapter to ensure compliance with this chapter and affected programs.

489:10 Waivers.

I. No waiver from any affected program's requirement in rule or statute shall be granted unless the applicant requesting the waiver demonstrates that there will be:

- (a) No substantial loss of wetland functions and values;
- (b) No additional degradation of water quality of impaired surface waters or outstanding resource waters; and

(c) A superior overall environmental outcome or an equivalent overall environmental outcome at reduced cost.

II. The demonstration required by paragraph I shall be made based on project design, mitigation, submission of modeling results, engineering calculations, relevant scientific studies, or such other documentation the applicant believes supports the requested waiver.

III. No waiver shall be granted if doing so results in a violation of any federal requirement or any state statute outside those governing the affected programs, unless the state statute expressly provides that the provisions may be waived.

IV. Municipalities may adopt procedures to grant a variance of zoning under RSA 674:33, I(b), or waive land use regulations under RSA 674:44, III(e) or RSA 674:36, II(n), or adopt an innovative land use control ordinance pursuant to RSA 674:21, to allow a project to proceed as approved by the department under this chapter.

489:11 Appeals.

I. Any person aggrieved by a decision made under RSA 489:7, V or VI(a) or (b) and any person subject to an order of the department under RSA 489:12 who wishes to appeal shall file a notice of appeal with the council appeals clerk for a hearing before a joint water-wetland council described in paragraph II. At the time the notice of appeal is filed, the person shall send a copy of the appeal to the commissioner of the department. If the appeal is of a decision to issue a permit, the person shall also send a copy of the appeal to the permittee. The notice of appeal shall be considered timely filed if sent or delivered to the council appeals clerk by a delivery method that provides proof of receipt on or before the 30th day from the date of the department's decision, provided that if the 30th day falls on a Saturday, Sunday, or state legal holiday then the appeal shall be considered timely filed if filed the next business day. The notice of appeal shall clearly state that it is being filed pursuant to this paragraph.

II. Upon receipt of an appeal filed pursuant to paragraph I, the council appeals clerk shall notify the chairman of the water council established under RSA 21-O:7 and the chairman of the wetlands council established under RSA 21-O:5-a. The chairmen shall each designate 4 members of their respective councils to sit with a hearing officer appointed under RSA 21-M:3, VIII as a joint council for purposes of the appeal. To the extent practicable, the council members appointed shall represent a diversity of environmental, business, and public health interests and legal expertise.

III. The appeal shall set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the appeal shall be considered by the joint council.

IV. The joint council shall conduct an adjudicative proceeding as provided in RSA 21-M:3, IX and X, RSA 541-A, and the rules of the councils. In the event of a conflict between the councils' rules, the provision favoring the appellant shall apply. The burden of proof shall be on the party seeking to set aside the department's decision to show that the decision is unlawful or unreasonable. All findings of the department upon all questions of fact properly before it shall be prima facie lawful and reasonable.

V. Any person whose rights will be directly affected by the outcome of the appeal may appear and become a party to the appeal. Any person whose rights may be directly affected by the outcome of the appeal may file a request to intervene as provided in RSA 541-A:32.

VI. On appeal, the joint council may affirm the decision of the department or may remand to the department with a determination that the decision complained of is unlawful or unreasonable. In either case, the council shall specify the factual and legal basis for its determination and shall identify the evidence in the record created before the council that supports its decision.

VII. Any party aggrieved by a decision of the joint council may apply to the joint council for reconsideration as specified in RSA 541.

VIII. Any party aggrieved by a decision of the joint council after reconsideration may appeal to the supreme court as specified in RSA 541.

IX. In the case of a remand to the department by the joint council, the department may accept the council's determination and reissue the subject decision or order, imposing such conditions as are necessary and consistent with the purposes of this chapter, or may appeal as provided in paragraphs VII and VIII.

489:12 Compliance.

I. The following shall constitute noncompliance with this chapter:

- (a) Failure to comply with this chapter or any rule adopted or permit issued under this chapter.
- (b) Failure to comply with an order of the commissioner issued relative to this chapter or any rule adopted or permit issued under this chapter.
- (c) Misrepresentation by any person of a material fact made in connection with any application filed under this chapter or any permit issued under this chapter.

II. The permittee shall be responsible for ensuring that all work done under the permit complies with the permit and all other applicable requirements. Any person who performs work under an integrated land development permit shall comply with the permit and all other applicable requirements.

III. The department may issue a written order to any person in noncompliance with this chapter as specified in paragraph I to cease any continuing noncompliance and to remediate or restore any land or water areas affected by the noncompliance.

IV. Any noncompliance with this chapter as specified in paragraph I may be enjoined by the superior court upon application of the attorney general.

V. Any person who purchases or otherwise becomes the owner of land affected by noncompliance with this chapter shall be responsible for remediation or restoration of the land or water affected. If the new owner did not know or have reason to know about the noncompliance, the new owner may seek compensation for the costs of remediation or restoration from the person or persons who caused the noncompliance.

VI. Any person who knowingly fails to comply with this chapter as specified in paragraph I shall be subject to all potential remedies available under current law in the applicable affected programs. For purposes of this provision, a permit issued under this chapter shall constitute a permit issued under each of the applicable affected programs

2 Transfer of Resources and Establishment of Positions. For the purposes of implementing this chapter, the department may:

- I. Transfer positions, funds, and resources from within the department of environmental services.
- II. Establish positions with the required expertise to establish and execute the integrated land development permit program, including:

(a) An administrator III (labor grade 31) position, to be supported by general funds, to implement and manage the integrated land development permit program, coordinate the involvement of appropriate administrative and technical staff, facilitate communications with applicants, and serve as an ombudsman for the affected programs.

(b) Up to 3 environmentalist V (labor grade 30) positions, one of which shall be supported by general funds, to provide technical, multi-disciplinary expertise in the permitting review of large, complex projects under the integrated land development permit program.

3 Planning Board Procedures. Amend RSA 676:4, I(b) to read as follows:

(b) The planning board shall specify by regulation what constitutes a completed application sufficient to invoke jurisdiction to obtain approval. A completed application means that sufficient information is included or submitted to allow the board to proceed with consideration and to make an informed decision. A completed application sufficient to invoke jurisdiction of the board shall be submitted to and accepted by the board only at a public meeting of the board, with notice as provided in subparagraph (d). An application shall not be considered incomplete solely because it is dependent upon **submission of an application to or** the issuance of permits or approvals from other governmental bodies; however, the planning board may condition approval upon the receipt of such permits or approvals in accordance with subparagraph (i). The applicant shall file the application with the board or its agent at least 15 days prior to the meeting at which the application will be accepted. The application shall include the names and addresses of the applicant, all holders of conservation, preservation, or agricultural preservation restrictions as defined in RSA 477:45, and all abutters as indicated in the town records for incorporated towns or county records for unincorporated towns or unorganized places not more than 5 days before the day of filing. Abutters shall also be identified on any plat submitted to the board. The application shall also include the name and business address of every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board.

4 New Paragraph; Powers of the Zoning Board of Adjustment. Amend RSA 674:33 by inserting after paragraph V the following new paragraph:

VI. The zoning board of adjustment shall not require submission of an application for or receipt of a permit or permits from other governmental bodies prior to accepting a submission for its review or rendering its decision.

5 Conservation Commission; Powers. Amend RSA 36-A:4 to read as follows:

36-A:4 Powers.

I. Said commission may receive gifts of money, personal property, real property, and water rights, either within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes.

II. *The conservation commission, in reviewing an application to provide input to any other municipal board, shall not require submission of an application for or receipt of a permit or permits from other governmental bodies prior to accepting a submission for its review or providing such input.*

6 Effective Date.

I. Sections 2 and 3 of this act shall take effect July 1, 2012.

II. Section 1 of this act shall take effect January 1, 2014.

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

2012-0186s

AMENDED ANALYSIS

This bill establishes an integrated land development permit option that may be sought at the discretion of the applicant as an alternative to applying for multiple land development permits from the department of environmental services.

This bill is a request of the department of environmental 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).

SB 237-FN, relative to field purchases and transfers of funds for the state park system and the bureau of trails, and the use of gifts and donations to the division of parks and recreation. Ought to Pass, Vote 4-0. Senator Lambert 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 297, relative to the apprentice hunting license. Ought to Pass, Vote 4-0. Senator Lambert for the committee.

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

HB 387, requiring providers of prepaid cellular telephone service to provide subscriber information to the enhanced 911 system. Inexpedient to Legislate, Vote 4-0. Senator Gallus for the committee.

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

HB 439-FN-L, relative to claiming an invasive species as a habitat. Inexpedient to Legislate, Vote 5-0. Senator Merrill for the committee.

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

Sen. Morse asserts Rule 2-15 on HB 439-FN-L.

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 4, requiring legislative approval of cost items for state employee contract negotiations. Interim Study, Vote 4-0. Senator Carson for the committee.

The question is on the adoption of the Committee recommendation of Refer to Interim Study. Adopted.

SB 143-FN, requiring the commissioner of administrative services to develop a proposal for state employees to make monetary contributions to a health savings account or other tax-advantaged account. Inexpedient to Legislate, Vote 4-0. Senator White for the committee.

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

SB 177, relative to training of directors and officers of nonprofit corporations. Ought to Pass with Amendment, Vote 5-0. Senator Carson for the committee.

Senate Executive Departments and Administration

December 8, 2011

2012-0011s

03/09

Amendment to SB 177

Amend RSA 292:6-c, I as inserted by section 2 of the bill by replacing it with the following:

I. Every publicly supported voluntary corporation shall ensure that the chairperson or presiding officer of its board of directors, or his or her designee, shall receive training on a biennial basis with respect to the fundamental management and administrative requirements for nonprofit and charitable organizations. Under this section training shall be conducted by a person or entity independent from and not connected to the corporation whose representatives are being trained. Training shall be of at least 4 hours duration and shall include, but not be limited to, instruction on fiduciary responsibilities, financial controls, relative responsibility and authority of boards of directors and corporation employees, ethics, and federal and state laws and regulations governing nonprofit corporations. Any person assuming a position covered by this section shall complete the required training within 4 months of assuming such position. A nonprofit corporation's board of directors may defer, for no more than one year, training for any person who received the required training during the prior year.

Amend RSA 292:6-c, III-IV as inserted by section 2 of the bill by replacing it with the following:

III. Every voluntary corporation covered by this section shall report annually to the New Hampshire department of justice, division of charitable trusts on its compliance with the requirements of this section. The report shall include information on the person required to be trained, the person or entity providing the training, and the date, duration, and subject matter of the training provided and shall be in such form as determined by the division of charitable trusts.

IV. The director of the division of charitable trusts may impose a penalty on any publicly supported voluntary corporation for each failure to comply with a provision of this section. The division of charitable trusts shall adopt administrative rules pursuant to RSA 541-A regarding the policy and procedures for penalties under this section.

2012-0011s

AMENDED ANALYSIS

This bill requires that every publicly supported voluntary corporation ensure that the chairperson or presiding officer of its board of directors, or his or her designee, receives biennial management training.

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

Sen. Kelly moved to Lay on the Table SB 177.

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

The following Senators voted Yes: Forsythe, Houde, Groen, Kelly, Lambert, Larsen, D'Allesandro, Merrill, Bragdon.

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

Yeas: 9 - Nays: 15

Failed.

Sen. Barnes called the question. Without objection, President Bragdon closed debate with remaining speakers.

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

SB 185-FN, establishing a restitution fund for victims of financial fraud and continually appropriating a special fund. Inexpedient to Legislate, Vote 5-0. Senator White for the committee.

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

Sen. White asserts Rule 2-15 on SB 185-FN.

SB 186-FN, repealing the exemption from the consumer protection act for certain regulated trade and commerce. Interim Study, Vote 5-0. Senator Carson for the committee.

The question is on the adoption of the Committee recommendation of Refer to Interim Study. Adopted.

Sen. White asserts Rule 2-15 on SB 186-FN.

SB 188-FN, relative to the authority and roles of the banking department, the attorney general, and the bureau of securities regulation in state regulation of securities. Ought to Pass with Amendment, Vote 4-0. Senator Carson for the committee.

Senate Executive Departments and Administration

January 12, 2012

2012-0201s

09/10

Amendment to SB 188-FN

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

AN ACT establishing a committee to study establishing an office of the inspector general.

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

1 Committee Established. There is established a committee to study and develop a plan for establishing an office of the inspector general.

2 Membership and Compensation.

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

(a) Four members of the senate, 2 of whom shall be members of the judiciary committee and 2 of whom shall be members of the executive departments and administration committee, appointed by the president of the senate.

(b) Four members of the house of representatives, 2 of whom shall be members of the judiciary committee and 2 of whom shall be members of 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.

3 Duties. The committee shall study establishing an office of the inspector general. Upon majority agreement, the committee shall develop a plan which establishes an office of the inspector general.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2012.

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

2012-0201s

AMENDED ANALYSIS

This bill establishes a committee to study and, upon majority agreement, develop a plan for establishing an office of the inspector general.

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

Sen. White asserts Rule 2-15 on SB 188-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 188-FN.

SB 226, transferring the administration of the electricians' board to the joint board for licensure and certification. Ought to Pass with Amendment, Vote 4-0. Senator Carson for the committee.

Senate Executive Departments and Administration

January 12, 2012

2012-0203s

10/05

Amendment to SB 226

Amend the bill by replacing sections 2 and 3 with the following:

2 Electricians' Board; Administration. RSA 319-C:4, IV is repealed and reenacted to read as follows:

IV. All administrative, clerical, and business processing functions, and personnel and equipment of the board shall be transferred to the joint board of licensure and certification, established in RSA 310-A:1, on July 1, 2013.

3 Employment of Inspectors. Amend RSA 319-C:5, I to read as follows:

I. The ~~[state fire marshal and the]~~ board~~[-with the approval of the commissioner of safety,]~~ shall be empowered to appoint such inspectors as may be necessary to carry out the purposes of this chapter. Any person so employed shall be under the administration and supervisory direction of the ~~[state fire marshal]~~ **board**.

Amend the bill by replacing all after section 6 with the following:

7 Effective Date. This act shall take effect July 1, 2013.

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 239, relative to the powers and duties of the installation standards board. Ought to Pass with Amendment, Vote 4-0. Senator Carson for the committee.

Senate Executive Departments and Administration

January 12, 2012

2012-0198s

05/10

Amendment to SB 239

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

AN ACT relative to the membership and duties of the installation standards board.

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

4 Membership of the Installation Standards Board. Amend RSA 205-D:2, I to read as follows:

I. There is hereby created an installation standards board consisting of ~~[the commissioner of the department of safety or the commissioner's designee and 12 additional]~~ **11** members appointed by the ~~[commissioner of safety]~~ ***governor and council*** as follows:

(a) Two public members who are not tenants or owners of a manufactured house, owners or operators of a manufactured housing park, or in any way associated with the manufactured housing industry.

(b) One installer of manufactured housing, nominated by the New Hampshire Manufactured Housing Association.

(c) One structural engineer or architect licensed in this state for a minimum of 5 years, nominated by the board of professional engineers established under RSA 310-A:3.

(d) One dealer or retailer, nominated by the New Hampshire Manufactured Housing Association.

(e) ~~[One owner or operator]~~ ***Two owners or operators*** of a manufactured housing park with 100 or fewer lots, nominated by the New Hampshire Manufactured Housing Association.

(f) One owner or operator of a manufactured housing park with more than 100 lots, nominated by the New Hampshire Manufactured Housing Association.

(g) One member of a cooperative manufactured housing park, nominated by the Mobile/Manufactured Homeowner and Tenants Association of New Hampshire.

(h) One municipal building code official, nominated by the New Hampshire Building Officials Association.

(i) ~~[One municipal fire chief, nominated by the New Hampshire Association of Fire Chiefs.]~~

~~(j) One civil engineer licensed in this state for a minimum of 5 years, nominated by the board of professional engineers established under RSA 310-A:3.~~

~~(k)~~ One homeowner of a manufactured house, nominated by the Mobile/Manufactured Homeowner and Tenants Association of New Hampshire.

5 Membership and Terms of Board. RSA 205-D:2, II-IV are repealed and reenacted to read as follows:

II. Each member shall serve a 3-year term and until a successor is appointed and qualified. If there is a vacancy on the board, the provisions of RSA 21:33-a and RSA 21:34 shall apply.

III. The board shall biennially elect a chairperson and vice-chairperson. Five members of the board shall constitute a quorum.

IV. Members of the board shall receive \$25 for each day they are engaged in the duties of their office and shall be reimbursed for mileage at the legislative rate as well as all incidental and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

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

2012-0198s

AMENDED ANALYSIS

This bill transfers responsibility for manufactured housing inspections from the state fire marshal to the manufactured housing installation standards board. The bill also revises the membership of the installation standards board and provides a stipend and mileage reimbursement to board members.

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).

HB 102, establishing a committee to study certain issues relative to the insurance department, banking department, and bureau of securities regulation of the office of the secretary of state. Ought to Pass with Amendment, Vote 4-0. Senator White for the committee.

Senate Executive Departments and Administration
January 12, 2012
2012-0199s
10/04

Amendment to HB 102

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

AN ACT relative to interagency information sharing by financial services regulators.

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

1 New Chapter; Interagency Information Sharing By Financial Services Regulators. Amend RSA by inserting after chapter 21-T the following new chapter:

CHAPTER 21-U
 INTERAGENCY INFORMATION SHARING BY
 FINANCIAL SERVICES REGULATORS

21-U:1 Purpose. The purpose of this chapter is to provide a mechanism for information sharing between the state agencies responsible for regulating financial services and to promote improved communication and cooperation between agencies with respect to the enforcement of financial services, statutes, and regulations. Under this chapter, these agencies shall meet regularly to share complaint, investigation, and enforcement data and to create and maintain a cooperative information-sharing database to ensure effective oversight and regulation of individuals and entities subject to regulatory jurisdiction, maximize agency effectiveness and avoid unnecessary duplication of effort.

21-U:2 Definitions. In this chapter:

I. "Agency data" means information originally received, created, or held by a member agency regarding consumer complaints, agency investigations, and agency enforcement actions. For the department of justice, "agency data" means complaint, investigation and enforcement data received, created, or held by the consumer protection and antitrust bureau and does not apply to privileged documents between any agency and the department of justice, nor does it apply to any documents related to an active criminal investigation. "Agency data" does not include any information received from foreign, federal, or state governmental agencies or other third parties that is protected from further disclosure by statute, regulation, or a nondisclosure or non-dissemination agreement entered into by the member agency in possession of the information. "Agency data" does not include records of examination, except to the extent such records are included in an investigation file.

II. "Cooperative information-sharing database" means a shared system designed, developed, or purchased using data standards developed by the member agencies to make complaint data from each member agency accessible to all member agencies.

III. "Interagency group" means the New Hampshire financial services regulators group.

IV. "Member agency" or "member agencies" means the department of justice, the insurance department, the banking department, and the bureau of securities regulation, department of state.

V. "Shared data" means agency data submitted and held within the cooperative information-sharing database.

21-U:3 Interagency Information.

I. The member agencies shall cooperate with one another to share relevant agency data for the purpose of conducting audits, examinations, investigations, administrative enforcement proceedings, and/or civil agency enforcement actions.

II. A member agency is not required to cooperate with another member agency to share agency data if the 2 member agencies are engaged, or about to be engaged, in a contested action or proceeding in contradictory roles.

III. A member agency, except as otherwise provided in this chapter, shall preserve any privilege or confidentiality regarding agency data or shared data it receives from another member agency pursuant to this chapter. In the case where the providing member agency itself received the information or documents from another source whether the source is a New Hampshire agency or an agency of another state, the federal government, or any foreign government, the receiving member agency shall preserve any such privilege or

confidentiality placed on the use of the information or documents by such source. In addition, except as provided in this chapter, the receiving member agency may assert on its own behalf any legal limitation upon release or privilege to which it is entitled.

21-U:4 Interagency Group Created. There is hereby established the New Hampshire financial services regulators group.

I. The interagency group shall consist of the attorney general or designee, the insurance commissioner or designee, the banking commissioner or designee, and the director of the bureau of securities regulation or designee.

II. The interagency group shall facilitate strategic planning among member agencies regarding regulatory and enforcement efforts and the sharing of agency data, including confidential or privileged records and legal analysis.

III. The interagency group shall elect a chair from among its member agency representatives and shall provide for the periodic rotation of the chairmanship.

21-U:5 Duties. The duties of the interagency group shall be to:

I. Meet at least quarterly.

II. Develop and use a cooperative information-sharing database that makes summary agency data from each member agency accessible to all member agencies.

III. Use the cooperative information-sharing database to ensure efficient use of the state's financial services enforcement resources and effective strategic planning of financial services regulatory and enforcement efforts among member agencies.

IV. Enter into a memorandum of agreement in accordance with this chapter and protect the confidentiality of confidential shared information.

21-U:6 Confidentiality. No waiver of any applicable privilege or claim of confidentiality shall occur as a result of the disclosure or sharing of agency data and shared data with member agencies under this chapter. Each member agency shall maintain the confidentiality of agency data and shared data. The agency data of each member agency held in the cooperative information-sharing database shall be retained in accordance with the member agency's records retention requirements. In the event that the interagency group receives a request for information under RSA 91-A, the interagency group shall not be defined as, or considered to be, a custodian of the documents or information requested. The member agency which originally possessed a document shall be deemed to possess and control it for purposes of RSA 91-A and shall be responsible to respond to the request for information received under RSA 91-A. Whether or not a document or information requested shall be released pursuant to a request under RSA 91-A shall be made by the member agency originally possessing the document or information, in accordance with the statutes, rules, and procedures of such agency. Member agencies shall enter into a memorandum of agreement consistent with this chapter and with all applicable statutes governing the member agencies in order to provide for the confidentiality of agency data and shared data and to ensure that confidential information is appropriately handled to prevent disclosure, except as may be necessary for law enforcement purposes.

21-U:7 Cooperative Information-Sharing Database; Funding. Each member agency shall be responsible for providing an equal amount of funding for the planning, development, acquisition, and management of the cooperative information-sharing database under a shared service program to be administered by the department of information technology.

21-U:8 Notification. Except for a request under RSA 91-A for information under RSA 21-U:3, upon receipt of a request by a third party to release, view, or copy information and documents, whether confidential or privileged, the receiving agency shall promptly notify any agency which would be affected by the release, viewing, or copying of the information and documents. The receiving agency shall not grant the request until the agency or agencies notified have indicated in writing that there is no objection to the granting of the request, in whole or part; provided that the receiving agency may release the information upon receiving an order of a federal or New Hampshire state court which has jurisdiction.

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

2012-0199s**AMENDED ANALYSIS**

This bill facilitates information sharing among the department of justice, the insurance department, the banking department, and the bureau of securities regulation, department of state. The bill provides procedures for the confidentiality of the shared information. The bill establishes an interagency group which is to develop and use a cooperative information-sharing database that makes summary agency data from each member agency accessible to all member agencies.

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

Sen. White asserts Rule 2-15 on HB 102.

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 HB 102.

HB 418-FN, relative to the use of open source software and open data formats by state agencies and relative to the adoption of a statewide information policy regarding open government data standards. Ought to Pass with Amendment, Vote 5-0. Senator Luther for the committee.

Senate Executive Departments and Administration

December 8, 2011

2012-0009s

05/04

Amendment to HB 418-FN

Amend the introductory paragraph of RSA 21-R:10, I as inserted by section 2 of the bill by replacing it with the following:

I. "Open source software" means software that guarantees the user:

Amend RSA 21-R:10, IV as inserted by section 2 of the bill by replacing it with the following:

IV. "State agency" means any department, commission, board, institution, bureau, office, or other entity, by whatever name called, including the legislative branch of state government, established in the state constitution, statutes, or executive orders. The judicial branch of state government is explicitly exempted from this definition.

Amend RSA 21-R:11, I as inserted by section 2 of the bill by replacing it with the following:

I. For all software acquisitions, each state agency, in consultation with the department of information technology, shall:

(a) Consider whether proprietary or open source software offers the most cost effective software solution for the agency, based on consideration of all associated acquisition, support, maintenance, and training costs;

(b) Except as provided in subparagraphs (d) and (e), acquire software products primarily on a value-for-money basis, based on consideration of the cost factors as described in subparagraph (a);

(c) Provide a brief analysis of the purchase decision, including consideration of the cost factors in subparagraph (a), to the chief information officer;

(d) Avoid the acquisition of products that do not comply with open standards for interoperability or data storage; and

(e) Avoid the acquisition of products that are known to make unauthorized transfers of information to, or permit unauthorized control of or modification of a state agency's computer.

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.

FINANCE

SB 159-FN-L, establishing a state infrastructure bank. Interim Study, Vote 6-0. Senator Barnes for the committee.

The question is on the adoption of the Committee recommendation of Refer to Interim Study. Adopted.

SB 181-FN-L, relative to distribution of funds for education. Inexpedient to Legislate, Vote 6-0. Senator Morse for the committee.

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

SB 309-FN-A, making appropriations to the university system of New Hampshire and the community college system. Inexpedient to Legislate, Vote 6-1. Senator Morse for the committee.

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

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

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.

Yeas: 19 - Nays: 4

Adopted.

Sen. Merrill asserts Rule 2-15 on SB 309-FN-A.

HB 72-FN-A, establishing a state aeronautical fund. Inexpedient to Legislate, Vote 6-0. Senator Forrester for the committee.

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

Sen. Morse moved Refer to Interim Study.

The question is on the adoption of the motion of Refer to Interim Study. Adopted.

HB 508-FN, establishing a performance measurement system for state agencies. Ought to Pass with Amendment, Vote 6-0. Senator D'Allesandro for the committee.

President Bragdon ruled Amendment 0012s non-germane.

Sen. D'Allesandro moved to suspend Rule 3-7 to allow for the introduction of non-germane Amendment 0012s to HB 508-FN. Adopted by necessary 2/3 vote.

**Senate Finance
December 8, 2011
2012-0012s
05/04**

Amendment to HB 508-FN

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

AN ACT relative to funds administered by the division of higher education and the higher education commission.

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

1 Dedicated Funds; Transcript Request Fees. RSA 6:12, I(b)(229) is repealed and reenacted to read as follows:

(229) Moneys received by the department of education, division of higher education, higher education commission under RSA 292:8-kk, II.

2 New Subparagraph; Dedicated Funds. Amend RSA 6:12, I(b) by inserting after subparagraph (307) the following new subparagraph:

(308) Moneys deposited by the department of education, division of higher education, higher education commission in the administration fees fund established under RSA 21-N:8-a.

3 New Subparagraph; Higher Education Commission; Administration Fees Fund Established. Amend RSA 21-N:8-a, II(e) by inserting after subparagraph (6) the following new subparagraph:

(7) Establish and collect reasonable fees related to the performance of its degree-granting and research and studies functions. There is established the administration fees fund, which shall be administered by the department of education, division of higher education, higher education commission, and into which fees related to degree-granting and research and studies shall be deposited. The fund shall be non-lapsing and continually appropriated to the department of education, division of higher education, higher education commission for expenses related to its degree-granting and research and studies functions.

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

2012-0012s

AMENDED ANALYSIS

This bill establishes a dedicated fund in the department of education for the deposit of fees related to degree-granting and research and studies functions of the division of higher education and the higher education commission. The bill also removes an obsolete reference to the postsecondary education commission.

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

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

HB 520-FN, requiring certain bills to have performance standard notes. Interim Study, Vote 6-0. Senator Morse for the committee.

The question is on the adoption of the Committee recommendation of Refer to Interim Study. Adopted.

HEALTH AND HUMAN SERVICES

HB 479-FN, relative to receivership of nursing homes and other residential health care facilities. Ought to Pass with Amendment, Vote 5-0. Senator Sanborn for the committee.

President Bragdon ruled Amendment 2648s non-germane.

Sen. Bradley moved to suspend Rule 3-7 to allow for the introduction of non-germane Amendment 2648s to HB 479-FN. Adopted by necessary 2/3 vote.

Health and Human Services

September 30, 2011

2011-2648s

01/09

Amendment to HB 479-FN

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

AN ACT relative to receivership of nursing homes and other residential health care facilities and relative to annual inspections of health care facilities.

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

1 New Chapter; Receivership of Nursing Homes and Other Residential Care Facilities. Amend RSA by inserting after chapter 151-G the following new chapter:

CHAPTER 151-H RECEIVERSHIP OF NURSING HOMES AND OTHER RESIDENTIAL CARE FACILITIES

151-H:1 Definitions. In this chapter:

I. "Administrator" means any individual who is charged with the general administration of a facility, as defined in RSA 151-H:1, V, whether or not such individual has an ownership interest in such facility and whether or not such individual's functions and duties are shared with one or more other individuals.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Department" means the department of health and human services.

IV. "Emergency" means a situation or condition which presents imminent danger of death or serious physical harm to residents, including but not limited to, imminent or actual abandonment of an occupied

facility, and excluding a crisis due solely to a natural disaster beyond the control of the licensee where the licensee is taking appropriate remedial steps. An organized labor activity conducted for union recognition or as a tactic in contract negotiations shall not, of itself, constitute an emergency. Voluntary withdrawal from participation as a provider of services under the Medicaid program, established under Title XIX of the Social Security Act, or under the Medicare program established under Title XVIII of the Social Security Act where such withdrawal was not occasioned by the denial of certification to the facility, shall not, of itself, constitute an "emergency."

V. "Facility" means any nursing home or other residential care facility subject to licensing under RSA 151:2.

VI. "Licensee" means any person or entity issued a license by the department to establish, conduct, or maintain a facility under RSA 151:2.

VII. "Owner" means any person or entity that has a direct and tangible ownership interest in the facility or the real property that the facility is located upon or any other proprietary interest recognized under law.

VIII. "Resident" means an individual who resides in a facility as defined in RSA 151-H:1, V.

151-H:2 Appointment of Receiver. The superior court, upon petition of the department, as hereinafter provided, may appoint a receiver for any facility; provided, that the court finds upon clear and convincing evidence that the health, safety, or welfare of the residents cannot be adequately assured without the appointment of a receiver and either that an emergency exists that the licensee is either unwilling or unable to remedy, or that the facility is operating without a valid license.

151-H:3 Action to Appoint Receiver; Hearing; Purpose of Receivership.

I. The department may petition the court for the appointment of a receiver, after notification to the governor and the attorney general, requesting the appointment of a receiver to operate a facility. Before the department files such a petition, the commissioner shall consult with a facility administrator. The administrator shall have appropriate experience as a nursing home or other residential care facility administrator and shall have no financial ties or affiliation with the facility that is the subject of the proposed receivership. When the petition concerns a nursing home, the administrator shall be chosen from a list provided by the New Hampshire Health Care Association. The administrator may submit his or her recommendations concerning the facility proposed for receivership within 2 business days after receiving all relevant information from the commissioner. The consulting administrator shall be immune from any damages action arising out of these recommendations. After the 2-day period, the department, in its sole discretion may file a petition with the court. Nothing in this chapter shall be construed as abrogating or superseding any common law or statutory right of any person to bring an action requesting appointment of a receiver to operate a facility.

II. The court shall immediately issue an order of notice and set the matter for hearing not less than 5 days and not more than 14 days after filing of the action. The petition and notice of the hearing shall be served on the licensee, the owner or owners, and the administrator not less than 3 days before the date of the hearing, unless a different period is specified by the court. A receiver may be appointed immediately, on an ex parte basis, if the court renders written findings of fact and conclusions of law that clear and convincing evidence exists, based upon a petition filed by the department with supporting affidavit, that there are legally sufficient grounds for the appointment of a receiver in that an immediate appointment is necessary to prevent immediate, irreparable harm to the residents, and that there are no adequate remedies available at law. The licensee, the owner or owners, and the administrator shall be given prior notice of the ex parte hearing unless such notice is impossible given exigent circumstances for the health, safety, or welfare of the residents or if, after exercising all reasonable means, the department is unable to locate the licensee, the owner or owners, and or the administrator. If a receiver is appointed on an ex parte basis, service shall be made on the responding parties and a hearing held within 5 days of the date the order was issued.

III. The court shall appoint as a receiver any person appearing on a list of names maintained by the commissioner. The list for purposes of receiverships involving nursing homes shall be established by the New Hampshire Health Care Association and provided to the commissioner. If those persons are unwilling or unable to serve, the commissioner may provide other appropriate candidates' names to the court. Persons appearing on any such list shall have experience in the delivery of health care services, and, if feasible, shall have experience with the operation of long-term care facilities. A receiver shall not have a financial interest in or any affiliation with the facility that is the subject of the receivership.

IV. The purpose of a receivership created under this section shall be to safeguard the health, safety, and continuity of care to residents and to protect them from the adverse health effects and increased risk of death caused by abrupt or unsuitable transfer of residents. A receiver appointed under this section shall not take any actions or assume any responsibilities inconsistent with this purpose.

V. No person shall impede the operation of a receivership created under this section. There shall be an automatic stay for a 60-day period subsequent to the appointment of a receiver, of any action that would interfere with the functioning of the facility, including but not limited to cancellation of insurance policies executed by the licensee, termination of utility services, attachments or set-offs of resident trust funds and working capital accounts, and repossession of equipment used in the facility.

151-H:4 Authority of Receiver; Duties.

I. When a receiver is appointed, the licensee shall be divested of possession and control of the facility in favor of the receiver. The receiver shall have the same rights to possession of the building in which the facility is located and to all goods and fixtures in the building at the time the petition for receivership is filed as the licensee would have had if the receiver had not been appointed. The receiver shall take such action as is reasonably necessary to preserve the property or assets of the residents, the owner or owners, and the licensee, and may use them only in the performance of the receiver's powers and duties set forth in this section and by order of the court.

II. With the approval of the court, the receiver shall have authority to remedy violations of federal and state law and regulations governing the operation of the facility; to hire, direct, manage, and discharge any consultant or employees, including the administrator of the facility; to receive and expend in a reasonable and prudent manner the revenues of the facility; to continue the business of the facility and the care of the residents; to perform those acts necessary or desirable to accomplish the purpose of the receivership; to perform regular accountings and make periodic reports to the court; and to exercise such additional powers and perform such additional duties, as the court may deem appropriate.

III. The receiver shall apply the current revenues of the facility to current operating expenses and, subject to the following provisions, to debts incurred by the licensee prior to the appointment of the receiver. The receiver shall motion the court for a ruling on the treatment of debts incurred prior to this appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility, or where payment of such debts will interfere with the purposes of the receivership. Priority shall be given by the receiver to expenditures for current, direct resident care, including nursing care, medications, social services, dietary services, and housekeeping.

IV. Revenues held by or owing to the receiver in connection with the operation of the facility shall be exempt from attachment and trustee process. Any retroactive payment that may be due or owing to the facility as the result of a retroactive rate adjustment shall be disposed of in accordance with the orders of the court as provided in paragraph III of this section, after consideration of competing claims to said payments.

V. The receiver may make repairs to the facility but only to the extent necessary to prevent or remove jeopardy to the health, safety, or welfare of the residents or to minimally qualify the facility for continuing participation in the Medicaid program, established under Title XIX of the Social Security Act, or in the Medicare program, under Title XVIII of the Social Security Act; provided that the total cost of repair does not exceed \$3,000. Expenditures for this purpose in excess of \$3,000 may be made by agreement of all parties or upon order of the court after motion by the receiver.

VI. In the event that the facility does not have sufficient capital for major repairs or improvements, the receiver may petition the court for permission to apply to the department for a loan through the department's civil monetary penalty fund. Notice shall be given to the licensee, the owner or owners, the administrator, the department, and to any mortgagee and other secured parties and lienholders of record. After a hearing on the merits, the court shall authorize the receiver to apply for such assistance if it determines by clear and convincing evidence, and after certification from the commissioner, that the repair or improvement is necessary to prevent or remove jeopardy to residents or to minimally qualify the facility for participation in the Medicaid or Medicare program; or it determines that the repair or improvement is necessary to prevent jeopardy to residents for the limited period of time that they are awaiting transfer of the residents. The purposes of this paragraph shall be to protect residents and to continue the viable operations of the facility. This paragraph shall not be used as a method of financing major repairs or capital improvements to facilities which have been abandoned because the licensee has been unable to secure financing by conventional means. Upon court

approval, application for financial assistance shall be made to the department, which shall administer such funds as the legislature may appropriate for this purpose. The court may set a reasonable rate of interest to be paid by the receiver to the department. In no case shall funds advanced by the department under this paragraph exceed funds available in the department's civil monetary penalty fund.

VII. The licensee, the owner or owners, or the administrator may motion the court to determine the reasonableness of any expenditure by the receiver.

VIII. The receivership shall be reviewed after 30, 60, and 90 days by the court. The court shall schedule a status hearing at each of the aforementioned intervals unless waived in writing by all of the parties to the action. In any event, at each interval, the receiver shall make a written report to the court with a copy of the report to be provided to the licensee, owner or owners, administrator and the department. The report shall provide detailed information regarding the operational and financial status of the facility and a status report on the projection for termination of the receivership on or before 90 days from the initial appointment of the receiver as set forth in RSA 151-H:8.

151-H:5 Leases, Mortgages or Secured Transactions.

I. During the period of receivership, a receiver shall honor any lease, mortgage, or agreement granting security interests entered into by the licensee, owner or owners, or administrator, unless the court:

(a) makes a determination in writing, upon the filing of a motion by the receiver to avoid any such lease, mortgage or security agreement and a hearing at which interested persons are allowed to participate, that based on clear and convincing evidence presented by the receiver that the lessor, lender, or secured party entered into such agreement with the licensee, the owner or owners, or the administrator for a fraudulent purpose or to hinder or delay creditors or the agreement is unrelated to the operation of the facility; and

(b) orders the receiver to avoid such agreement. The court shall hold a hearing on any such motion within 15 days of the date of filing. At least 10 days prior to the hearing, the receiver shall provide a copy of the motion to the licensee, owner or owners, administrator, lessees, mortgagees, secured parties, and lienholder of record of the property.

II. If the receiver is in possession of real or personal property subject to a lease which the receiver is permitted to avoid, as provided in paragraph I of this section, and if the possession of such property is necessary for the continued operation of the facility, the receiver shall motion the court to set a reasonable rent to be paid by the receiver to the person entitled thereto during the duration of the receivership. The court shall hold a hearing on the motion within 15 days of the date of filing. The receiver shall send notice of the application to any owners of record and to mortgagees and other secured parties and lienholders of record of the property involved at least 10 days prior to the hearing. In no event shall the amount set by the court exceed what is reasonable for the facility. Payment by the receiver of the amount determined by the court to be reasonable shall be a defense to any action against the receiver for payment or for the possession of said property subject to the lease involved by any person who received such notice, but the payment shall not relieve the owner or operator of the facility of any liability following the termination of the receivership for the difference between the amount paid by the receiver and the amount due under the original lease.

III. Notwithstanding paragraphs I and II of this section, or any other federal or state law to the contrary, there shall be no foreclosure or eviction of the facility by the property owner during the receivership period.

IV. Nothing in this section shall be deemed to relieve any licensee, owner or owners, administrator or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the licensee, owner or owners, administrator, or employee prior to the appointment of a receiver; nor shall anything contained in this section be construed to suspend during the receivership any obligation of the licensee, owner or owners, administrator, or employee for payment of taxes or other operating and maintenance expenses of the facility nor of the licensee, owner or owners, administrator, employee or any other person for the payment of mortgages or liens. The owner or owners shall retain the right to sell or mortgage any facility under receivership, subject to approval of the court.

151-H:6 Compensation of Receiver. The court shall set a reasonable compensation for the receiver, and may require the receiver to furnish a bond. Such expenses shall be paid from the revenues of the facility.

151-H:7 Recoupment of State Expenditures. Upon court approval, the state may, pursuant to a petition filed by the department, have a lien for any loan under RSA 151-H:4, VI upon the following property: the building in which the facility is located; the land on which the facility is located; and any fixtures, equipment, or goods

used in the operation of the facility. However, the department shall have the burden of proving by clear and convincing evidence that the owner or owners of the property directly benefited from the loan and that the court determines that approval of such lien is fair and equitable considering all of the factual circumstances in a light most favorable to the owner or owners. Such lien shall be prior to any mortgage or lien which the court orders to be avoided by the receiver because it has been obtained for a fraudulent purpose, hinders or delays creditors, or is unrelated to the operation of the facility, as provided in RSA 151-H:5, I. Such lien shall also be prior to a mortgage or lien held by any person with an ownership interest in the facility; or any person which controls or has the ability to directly or indirectly control to any significant degree the management of policies of the licensee or the facility; or any person related to the licensee or to the facility by any significant degree of common ownership or common control. The receiver shall cause notice of any lien created hereunder to be duly filed in accordance with New Hampshire law.

151-H:8 Termination of Receivership.

I. After a hearing on the merits, the court may terminate a receivership under the following conditions:

- (a) The department grants a license to operate the facility to the licensee divested of possession and control by the receiver;
- (b) There is a transfer of ownership or management of the facility to a transferee approved for licensure by the department; or
- (c) All residents of the facility have been provided appropriate alternative placements.

II. Notwithstanding the provisions of paragraph I of this section, a receivership shall not be terminated in favor of the former licensee, unless such person assumes all obligations incurred by the receiver and provides collateral or other assurance of payment.

III. If the receivership has not been terminated within 90 days of the appointment of the receiver, the court shall, after a hearing on the merits, order either the orderly transfer of the residents to appropriate alternative placements; or the facility shall be transferred, under reasonable terms approved by the court, to a new owner or operator approved for licensure by the department. The receivership period may be extended by the court following the 90-day review only with the agreement of all of the parties involved or, upon a showing by clear and convincing evidence, that such action is necessary to protect the health and safety of the residents.

IV. Within 30 days after termination of the receivership, or such time as the court may allow, the receiver shall submit to the court a final accounting of all property of which the receiver has taken possession, of all funds collected under this section and all expenses of the receivership. The court shall fix the fees and expenses of the receiver and issue orders for the disposition of funds held by the receiver following a hearing, at which time the following parties may appear and be heard: the licensee at the time the receivership was established, the current licensee, the owner or owners, the administrator, the department, and any mortgagee or lienholder whose interests could be impacted by the court's order. Following the court's determination of the receiver's fees and expenses, and the disposition of funds held by the receiver, control of the facility shall be relinquished by the receiver to the current licensee or owner subject to the rights of any third parties.

151-H:9 Actions Against Receiver; Liability. No person shall bring an action against a receiver appointed under RSA 151-H:3 without prior approval of the court. The receiver shall not be personally liable unless he or she commits acts or omissions amounting to gross negligence, intentional tortious conduct, or breach of fiduciary duties. In all other cases, the receiver shall be liable in his or her official capacity only, and any judgment rendered shall be satisfied out of the receivership assets.

151-H:10 Effect of Appointment; Violation of Regulations. An order appointing a receiver under RSA 151-H:3 shall have the effect of a license for the duration of the receivership. The receiver shall comply with all state and federal laws and regulations governing the rights of residents and provision of health care services. The receiver shall be responsible to the court for the conduct of the facility during the receivership, and any violation of regulations governing the conduct of the facility, if not promptly corrected, shall be reported by the receiver to the court and the department.

2 Residential Care and Health Facility; Annual Inspection. Amend RSA 151:6-a to read as follows:

151:6-a Annual Inspection.

I. The department of health and human services shall make at least one annual unannounced clinical inspection of every facility licensed under this chapter, except home health care agencies and home care service

provider agencies, which shall be inspected no less frequently than once every 24 months. The purpose of the inspection shall be to determine that the facility is in compliance with all provisions of this chapter[;] **and** applicable **clinical** rules adopted under this chapter[; ~~and all applicable codes~~]. For residential care facilities, the inspection shall include a review of the programs and services offered in the facility to assure that the facility is in compliance with its current level of licensure, and a survey of the most recent individual resident needs determinations where such surveys are not done under the survey and certification process for Titles XVIII and XIX of the Social Security Act, as amended, to assure that the facility and its programs and services are appropriate to the needs of the residents. The department shall also conduct compliance monitoring visits as necessary to ensure that corrective action required to correct cited violations of this chapter or rules adopted under this chapter have been appropriately implemented. Inspection results shall be provided as a written report that identifies any noncompliance with this chapter[;] **and** applicable **clinical** rules adopted under this chapter[; ~~and any applicable codes~~]. The results of this inspection and any later inspection shall be posted in a conspicuous place in the facility in the manner determined by the commissioner of the department of health and human services. The results so posted shall indicate the facilities and services inspected and the results for each such facility or service. This section shall not apply to facilities or entities that have deemed status under RSA 151:5-b. If a residential care facility, as referenced under RSA 151:9, VII(a)(1) or (2) or an adult day care program as referenced under RSA 151:2, I(f) has been inspected and is found to be deficiency-free for 2 consecutive years it shall be granted a one-year waiver from the provisions of this section and thereafter shall be inspected every other year; provided, that the facility remains deficiency-free when it is inspected, that the facility is not the subject of a founded complaint investigation under RSA 151:6, and the facility remains under the same administrator who is responsible for the day-to-day operation of the facility.

II.(a) In addition to paragraph I of this section, if the state fire marshal authorizes the department to conduct life safety code inspections, the department shall make at least one annual, unannounced inspection of all facilities licensed under this chapter pursuant to that authorization. If in the course of such inspection the inspector finds that there are violations of the life safety code which the inspector believes must be corrected, the inspector shall provide the facility with a notice to correct. This notice shall identify the specific provisions of the life safety code that the inspector believes have been violated, and contain instructions with respect to corrective action to be taken.

(b) If the facility disagrees with the notice to correct, the facility may request a review and determination by the state fire marshal, or may request a variance or exception from the state fire marshal. The notice to correct shall be stayed pending the fire marshal's decision. If the state fire marshal determines, following review, that the notice to correct or portions thereof should not have been issued, the department shall withdraw or amend the notice to correct in accordance with the fire marshal's determination.

(c) Facilities shall not be required to post notices to correct issued under subparagraph (a) of this paragraph.

(d) Notwithstanding this section, if the state fire marshal has approved a compliance agreement relative to construction, renovation, alteration or other addition or structural change, the department, when conducting a life safety code inspection, shall not include in its notice to correct or its written report any matter falling within the scope of the compliance agreement, and shall take no action inconsistent with a determination made by the fire marshal.

(e) This section shall not apply to facilities or entities that have deemed licensed status under RSA 151:5-b.

3 New Paragraph; Residential Care and Health Facility. Amend RSA 151:6 by inserting after paragraph III the following new paragraph:

IV. Notwithstanding the provisions of this section, when the state fire marshal has approved a plan for construction, renovation, alteration, or other addition or structural change submitted by a licensee or prospective applicant, the department shall take no action inconsistent with a determination made by the state fire marshal.

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

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

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

HB 632, relative to labeling requirements for dispensing of drugs by automated pharmacy systems. Inexpedient to Legislate, Vote 5-0. Senator Lambert for the committee.

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

Recess. Out of recess.

JUDICIARY

SB 17, relative to evidence of admissions in medical injury actions. Inexpedient to Legislate, Vote 2-2. Senator Houde for the committee.

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

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

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

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

Yeas: 6 - Nays: 18

Failed.

MOTION OF RECONSIDERATION

Sen. Bradley, having voted on the prevailing side, moved to reconsider SB 17, the bill having previously failed. Adopted.

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

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

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

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

Yeas: 5 - Nays: 19

Failed.

Sen. Bradley moved Ought to Pass. The question is on the adoption of the motion of Ought to Pass. Adopted, bill ordered to Third Reading.

SB 44, relative to payment of rent pending a landlord-tenant action. Inexpedient to Legislate, Vote 4-0. Senator Groen for the committee.

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

HB 110, requiring professional safety and security services personnel to report certain criminal offenses. Ought to Pass with Amendment, Vote 4-0. Senator Houde for the committee.

Senate Judiciary

January 9, 2012

2012-0134s

04/09

Amendment to HB 110

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

AN ACT establishing a committee to study the reporting of crimes by professional safety and security services personnel.

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

1 Committee Established. There is established a committee to study the reporting of crimes by professional safety and security services personnel.

2 Membership and Compensation.

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

(a) One member of the senate, appointed by the president of the senate.

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

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

3 Duties. The committee shall study:

I. Issues regarding security guards and security guard services furnished by a college or university operating in the state of New Hampshire to report felonies to law enforcement officials.

II. Whether the security officials operating in a college or university setting should be treated differently from security officials operating within other settings, such as on the campus of a hospital or shopping center.

III. Whether a distinction should be made between reporting of felonies and misdemeanors and the penalty that would be invoked for not reporting.

IV. Whether there should be a mens rea requirement for the offense of failure to report.

V. Whether the recent events unfolding currently at Pennsylvania State University and Syracuse University affect current reporting standards in place in New Hampshire.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2012.

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

2012-0134s

AMENDED ANALYSIS

This bill establishes a committee to study the reporting of crimes by professional safety and security services personnel.

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

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

HB 146, relative to the right of a jury to judge the application of the law in relationship to the facts in controversy. Ought to Pass with Amendment, Vote 3-1. Senator Groen for the committee.

Senate Judiciary
December 21, 2011
2012-0062s
09/10

Amendment to HB 146

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

1 Findings and Intent of the General Court. Under the decisions of both the New Hampshire supreme court and the United States Supreme Court, the jury has the right to judge the facts and the application of the law in relationship to the facts in controversy. The jury system functions at its best when it is fully informed of the jury's prerogatives. The general court wishes to perpetuate and reiterate the rights of the jury, as ordained under common law and recognized in the American jurisprudence, while preserving the rights of a criminal defendant, as enumerated in part 1, articles 15 and 20, New Hampshire Bill of Rights.

2 New Section; Right of Accused; Jury Instruction. Amend RSA 519 by inserting after section 23 the following new section:

519:23-a Right of Accused. In all criminal proceedings the court shall permit the defense to inform the jury of its right to judge the facts and the application of the law in relation to the facts in controversy.

3 Effective Date. This act shall take effect January 1, 2013.

2012-0062s

AMENDED ANALYSIS

This bill states that in all criminal proceedings the court shall permit the defense to inform the jury of its right to judge the facts and the application of the law in relationship to the facts in controversy.

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

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

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

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

The following Senators voted No: Houde, Odell, Kelly, Lambert, Larsen, D'Allesandro, Merrill, Prescott, Bragdon.

Yeas: 15 - Nays: 9

Adopted, bill ordered to Third Reading.

HB 158, relative to the misuse of social security numbers. Ought to Pass with Amendment, Vote 4-0. Senator Carson for the committee.

**Senate Judiciary
December 13, 2011
2012-0022s
05/04**

Amendment to HB 158

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

1 New Section; Misuse of Social Security Number. Amend RSA 275-A by inserting after section 4-a the following new section:

275-A:4-b Misuse of Social Security Numbers.

I. Any person whose social security number has been used by another for identification purposes shall have a civil cause of action against:

(a) The person who misused the number with fraudulent intent; or

(b) Any individual who knowingly supplied or aided in obtaining false social security documentation.

II. Damages awarded by the court shall be treble damages or \$10,000, whichever is greater, plus reasonable attorney's fees and any costs incurred to correct the records of the aggrieved party.

2 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 Third Reading.

HB 597, revising the child support guidelines based on an income shares model of calculating child support. Ought to Pass with Amendment, Vote 4-0. Senator Houde for the committee.

**Senate Judiciary
January 9, 2012
2012-0133s
05/04**

Amendment to HB 597

Amend the bill by replacing section 3 with the following:

3 Child Support Guidelines; Calculation of Child Support. RSA 458-C:3, I is repealed and reenacted to read as follows:

I.(a) The child support guidelines shall be based on the following:

Percent of Combined Net Income Devoted to Child Support

Net income	1 Child	2 Children	3 Children	4 or more Children
\$15,000 or less	25.6 percent	35.5 percent	42.5 percent	45 percent
\$25,000	25	35	42	44.5
\$35,000	24	33.5	40.5	43
\$50,000	23	31.5	38	40.5
\$60,000	22	30.5	36.5	39
\$70,000	21.5	30	36	38.5
\$80,000	21	29	35	37.5
\$90,000	21	28.5	34.5	37
\$100,000	20	27.5	33	35.5
\$125,000 or more	19	26	31	33.5

(b) The department of health and human services shall calculate and publish a schedule of child support amounts using the table in subparagraph (a). The schedule shall provide child support amounts in \$1,000 increments of combined net income, with a directly proportional change in the percentage of combined net income devoted to child support based on income level and number of children. The department shall determine the fractional percentage between each income level by interpolating between the percentages within each column of the table under subparagraph (a). Nothing in this paragraph shall preclude the department from publishing child support guidelines in increments of less than \$1,000, based on the schedule and formula provided in this section.

Amend the bill by replacing all after section 4 with the following:

5 Applicability. RSA 458-C:3, I as amended by this act shall apply to any child support order issued on or after January 1, 2013. RSA 458-C:3, I as amended by this act shall not apply to a valid child support order in effect on the effective date of this act until the next scheduled review hearing under RSA 458-C:7 or as otherwise agreed by the parties. This act shall not constitute a substantial change in circumstances for purposes of RSA 458-C:7.

6 Effective Date. This act shall take effect January 1, 2013.

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.

PUBLIC AND MUNICIPAL AFFAIRS

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

Public and Municipal Affairs

September 20, 2011

2011-2612s

05/04

Amendment to SB 83-FN

Amend RSA 31:19-c, IV as inserted by section 1 of the bill by replacing it with the following:

IV. Trusts created by a municipality pursuant to this section shall have a board of trustees composed of at least 3 members who shall include the chief financial officer of the municipality, the treasurer of the municipality, and at least one other person who shall be a citizen of the [state] *municipality* with proven integrity, business ability, and demonstrated experience in cash management and in investments. If the municipality does not have a chief financial officer, then that position may be filled by the chief administrative officer of the municipality, or by a citizen who meets the qualifications set forth in this paragraph. If the municipality does not have a treasurer that position may be filled by the chairman of the municipality's governing body or by a citizen who meets the qualifications set forth in this paragraph. The citizen member

shall be appointed initially by the governing body of the municipality for a term of 2 years and if more than one citizen is appointed to serve on any such board, then the governing body may appoint those citizens for staggered terms of one and 2 years. Subsequent appointments shall be for 2-year terms or to fill the balance of any unexpired term. The board of trustees shall annually elect one of its members as chairman and another as vice-chairman. The board shall meet at least 4 times a year, and a majority of the members shall constitute a quorum.

Amend RSA 31:19-c as inserted by section 1 of the bill by inserting after paragraph V the following new paragraph:

VI.(a) The accounts of the trustees shall be audited annually by the auditor of the municipality, and the securities shall be exhibited to the auditor, who shall certify the facts found by the audit and the list of all securities held. The trustees shall submit to the auditor a detailed statement of the securities held by them and the particular trust to which they belong and shall exhibit to the auditor a statement of all receipts and expenditures with proper vouchers.

(b) The legislative body of the municipality may authorize the printing of the reports of the trustees and of the auditor in summary form rather than in full detail in the annual report of the municipality.

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

2 Surety Bond Required; Reference Added. Amend RSA 41:6, I to read as follows:

I. Town treasurers, trustees as provided in RSA 31:22 and 23, *trustees of other post-employment benefit trusts as provided in RSA 31:19-c*, trustees as provided in RSA 53-B:8-a, I, library trustees including alternate library trustees, if any, town clerks, tax collectors and their deputies, agents authorized to collect the boat fee, and persons delegated treasury functions under RSA 41:29, VI shall be bonded by position under a blanket bond from a surety company authorized to do business in this state. The bond shall indemnify against losses through:

3 Effective Date. This act shall take effect July 1, 2012.

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

Sen. Merrill offered a floor amendment.

Sen. Merrill, Dist. 21

January 13, 2012

2012-0219s

05/09

Floor Amendment to SB 83-FN

Amend RSA 31:19-c, IV and V as inserted by section 1 of the bill by replacing them with the following:

IV. Trusts created by a municipality pursuant to this section shall be administered by the board of trustees established by the municipality pursuant to RSA 31:22. The accounts of the trustees shall be subject to the auditing and reporting requirements of RSA 31:33.

V. The municipality may withdraw money from the funds of a trust created pursuant to this section only:

(a) As needed to pay other post-employment benefits owed to former officers and employees; or

(b) When all other post-employment benefits liability owed to former officers or employees of the employing entity has been satisfied or otherwise defeased.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2012.

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

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

SB 94, relative to state certification of community residences in municipalities with zoning ordinances which accommodate certified community residences. Inexpedient to Legislate, Vote 5-0. Senator Barnes for the committee.

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

HB 186-FN, relative to the definition of political communication. Ought to Pass with Amendment, Vote 4-1. Senator Barnes for the committee.

Public and Municipal Affairs

September 20, 2011

2011-2609s

05/03

Amendment to HB 186-FN

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

AN ACT establishing a committee to study methods for identifying sources of political communication.

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

1 Committee Established. There is established a committee to study methods for identifying sources of political communication.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study methods for identifying sources of political communication, balancing the interest of citizens in knowing the source of explicit and implicit advocacy against the right of all persons to free speech.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before October 1, 2012.

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

2011-2609s

AMENDED ANALYSIS

This bill establishes a committee to study methods for identifying sources of political communication.

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

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

HB 382, relative to the maintenance of municipal public cemeteries. Ought to Pass, Vote 4-1. Senator Stiles for the committee.

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

HB 466-FN, eliminating the ballot law commission. Inexpedient to Legislate, Vote 5-0. Senator Forrester for the committee.

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

HB 588, relative to polling hours and location of polling places. Inexpedient to Legislate, Vote 5-0. Senator Boutin for the committee.

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

Recess. Out of recess.

WAYS AND MEANS

SB 13-FN, increasing the limit on single wagers for games of chance conducted by charitable organizations. Interim Study, Vote 5-0. Senator Boutin for the committee.

The question is on the adoption of the Committee recommendation of Refer to Interim Study. Adopted.

SB 132-FN-A-L, establishing exemptions from the real estate transfer tax. Inexpedient to Legislate, Vote 5-0. Senator D'Allesandro for the committee.

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

Sens. Groen and Sanborn are in opposition to the motion of Inexpedient to Legislate on SB 132-FN-A-L.

SB 155-FN-A, relative to section 179 expense deductions under the business profits tax. Ought to Pass with Amendment, Vote 5-0. Senator Rausch for the committee.

Senate Ways and Means

November 8, 2011

2011-2818s

10/01

Amendment to SB 155-FN-A

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

1 New Section; Business Profits Tax; Gross Business Profits; Expense Deductions. Amend RSA 77-A by inserting after section 3 the following new section:

77-A:3-a Expense Deductions. Notwithstanding the definition of Internal Revenue Code in RSA 77-A:1, XX(1), in determining gross business profits before net operating loss and special deductions, a business organization shall calculate expense deductions as permitted under Internal Revenue Code section 179 using the version of the United States Internal Revenue Code in effect as of the date section 179 property is placed into service.

2 Application. Section 1 of this act shall apply to any qualifying section 179 property as that term is defined in the United State Internal Revenue Code with respect to property placed into service on or after January 1, 2014.

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

2011-2818s

AMENDED ANALYSIS

This bill allows a business organization to apply the federal section 179 expense deduction amount in the calculation of gross business profits, before net operating loss and special deductions under the business profits tax, as of the date the section 179 property is placed into service.

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 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. Interim Study, Vote 4-1. Senator Luther for the committee.

The question is on the adoption of the Committee recommendation of Refer to Interim Study. 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. Interim Study, Vote 5-0. Senator Odell for the committee.

The question is on the adoption of the Committee recommendation of Refer to Interim Study.

Sen. D'Allesandro moved to Lay on the Table SB 182-FN-A-L. Failed.

Recess. Out of recess.

Sen. D'Allesandro moved to Lay on the Table SB 182-FN-A-L.

A division vote was requested.

Yeas: 9 - Nays: 15

Failed.

Recess. Out of recess.

The question is on the adoption of the Committee recommendation of Refer to Interim Study.

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

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

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

Yeas: 17 - Nays: 7

Adopted.

FINANCE

SB 376, extending the committee to develop a plan for privatizing the department of corrections.

Ought to Pass, Vote 7-0.

Senator Forrester for the committee.

This bill extends the deadline for the committee studying privatization options for the Department of Corrections to May 1, 2012 in order to allow the committee to review responses to recent RFPs issued by the department. The Finance Committee feels this is a reasonable request to allow the study committee to complete its assigned tasks.

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

MOTION TO ADJOURN FROM EARLY SESSION

Sen. Bradley moved that the Senate adjourn from the Early Session, that the business of the Late Session be in order at the present time, that all bills and resolutions ordered to Third Reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted. Adjournment from the Early Session.

LATE SESSION

Third Reading and Final Passage

SB 17, relative to evidence of admissions in medical injury actions.

SB 48, relative to state regulation of telephone service providers and clarifying the authority of the public utilities commission to regulate pole attachments.

SB 83-FN, enabling municipalities to create other post-employment benefits (OPEB) trusts.

SB 155-FN-A, relative to section 179 expense deductions under the business profits tax.

SB 177, relative to training of directors and officers of nonprofit corporations.

SB 188-FN, establishing a committee to study establishing an office of the inspector general.

SB 220, relative to external review under the managed care law.

SB 223, to make technical revisions relative to the health information organization corporation.

SB 226, transferring the administration of the electricians' board to the joint board for licensure and certification.

SB 274, removing the phrase "mentally defective" from the aggravated felonious sexual assault statute.

SB 297, relative to the apprentice hunting license.

SB 323, authorizing accounting transfers by the department of corrections.

SB 376, extending the committee to develop a plan for privatizing the department of corrections.

HB 102, relative to interagency information sharing by financial services regulators.

HB 110, establishing a committee to study the reporting of crimes by professional safety and security services personnel.

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

HB 158, relative to the misuse of social security numbers.

HB 186-FN, establishing a committee to study methods for identifying sources of political communication.

HB 382, relative to the maintenance of municipal public cemeteries.

HB 418-FN, relative to the use of open source software and open data formats by state agencies and relative to the adoption of a statewide information policy regarding open government data standards.

HB 479-FN, relative to receivership of nursing homes and other residential health care facilities and relative to annual inspections of health care facilities.

HB 508-FN, relative to funds administered by the division of higher education and the higher education commission.

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

HB 627-FN, relative to "essential benefits" under federal health care reform.

LIST OF RULE 2-15'S FOR THE DAY

Sen. Merrill: SB 309-FN-A.

Sen. Morse: HB 439-FN-L.

Sen. White: SB 163-FN, SB 185-FN, SB 186-FN, SB 188-FN, SB 220, HB 102.

ANNOUNCEMENTS

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 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.