

February 19, 2014  
Nos. 4-5

# **STATE OF NEW HAMPSHIRE**

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**Second Year of the 163<sup>rd</sup> Session of the  
New Hampshire General Court**

**Legislative Proceedings**

## **SENATE JOURNAL**

**ADJOURNMENT – FEBRUARY 13, 2014 SESSION  
COMMENCEMENT – FEBRUARY 19, 2014 SESSION**

# SENATE JOURNAL 4 *(continued)*

*February 13, 2014*

## INTRODUCTION OF SENATE BILLS

Sen. Bradley offered the following Resolution:

RESOLVED, That in accordance with the list in the possession of the Senate Clerk, the following 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

14-2857

*SB 413-FN-A*, relative to access to health insurance coverage. (Morse, Dist 22; Larsen, Dist 15; Bradley, Dist 3; Gilmour, Dist 12; Odell, Dist 8; D'Allesandro, Dist 20: Health, Education and Human Services)

14-2854

*SB 414-FN*, relative to Medicaid-funded services provided as a part of a child's individualized education program. (Stiles, Dist 24; Kelly, Dist 10: Health, Education and Human Services)

14-2858

*SB 415-FN*, transferring surplus revenues to the revenue stabilization reserve account. (Forrester, Dist 2; Morse, Dist 22; Bradley, Dist 3; Odell, Dist 8; Bragdon, Dist 11; Boutin, Dist 16; Carson, Dist 14; Cataldo, Dist 6; Prescott, Dist 23; Rausch, Dist 19; Reagan, Dist 17; Stiles, Dist 24; Chandler, Carr 1; Kurk, Hills 2; Renzullo, Hills 37; J. Hunt, Ches 11; Graham, Hills 7: Finance)

## 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 1144, establishing a committee to study information included in arrest records and access to information on the disposition of criminal cases.

HB 1182, relative to membership of the state transparency website oversight committee.

HB 1579-FN, relative to penalties for the injury or death of a domestic animal caused by trapping which is in violation of law or rules, and establishing a committee to study the administration of trapping laws and rules and the issuance of trapping licenses by the fish and game department including education requirements and penalties for violations.

Out of Recess. Call the Senate to Order.

## MOTION TO ADJOURN FROM LATE SESSION

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

Adopted. Adjournment from the Late Session.

# SENATE JOURNAL 5

*February 19, 2014*

The Senate reconvened at 1:30 p.m., a quorum being present.

Pastor David Butler, chaplain to the Senate, offered the following meditative thoughts and prayer:

As you might guess, in my line of work, I have various responses when I ask people if I can pray with and for them. And there are those who pray as a ritual, but deep down they really don't have much belief. There are others who seek prayer as a superstitious exercise with little more value than therapeutic. Then there are

those like myself, who pray as if my life depended upon it. And that became ever so real to us when, three years ago, my wife was diagnosed with a very aggressive form of lymphatic cancer. And only a month ago we got the all clear sign from Dartmouth Hitchcock, thanks to the great docs there. And so, during that period of time we learned, not just as a pastor, but as a person, the power of personal prayer. Had the results been different we still would have believed in the power of prayer because of the confidence and assurance that we had. I don't know where you may fall along those lines, but I think, somewhere, in your life, somewhere along the way, you'll get to the place where you'll pray as if your life depended upon it. I promise. And I would encourage you, whether or not you have doubts or not, to offer up those prayers, not just for yourself but, on a regular basis, for this great State of ours.

I invite you to pray with me and, just to let you know, your names and pictures are now on my i Phone and I'm praying for and with you on a daily basis, even though I haven't met too many of you. I thank you for the privilege of praying for you today.

*God of heaven, great and awesome God, who is faithful and worthy of our trust, you know all that there is to know about us, nothing is hidden from your eyes. Search our hearts today and remove anything that would be offensive to you or harmful to others. Give these your servants wise minds and hearts attuned to your will so they may have a thorough understanding of the ways in which you work as they do their work. May they continually ask what is the wise choice in light of God's preferred future for the people they serve. Give them the courage to do what they know in their heart they each need to do. May they keep their promises, big and small, for that is what builds relationships and enables us to serve together. Thank you for always being true to your promises. Thank you for providing the patience and enduring strength to deal with the difficult challenges and demands of leadership. May, at the end of this day, these your servants feel the deep sense of your pleasure. We ask this in the name of the one who said, "I am the vine, you are the branches, apart from me you can do nothing."* Amen.

Sen. Cataldo led the Pledge of Allegiance.

#### INTRODUCTION OF GUESTS

Sen. Larsen introduced Bernard O'Doherty and Timothy Hood, from St. Paul's School, serving as Senate Pages for the day.

#### SPECIAL ORDER

Without objection, SB 319 in Judiciary and SB 322 in Health, Education and Human Services are Special-Ordered and taken up after the Committee on Commerce. Adopted by the necessary 2/3 vote.

#### FN REPORT FOR FEBRUARY 19, 2014

Senator Forrester recommends the waiver, under Senate Rule 4-5, of Finance Committee referral for the following bills which have fiscal notes or otherwise appropriate money:

##### COMMERCE

SB 215-FN, authorizing benefit corporation.

SB 331-FN, relative to waivers for out-of-state businesses and employees in a state of emergency.

##### ENERGY AND NATURAL RESOURCES

SB 336-FN, prohibiting the taking of deer from baited areas on state-owned lands.

SB 400-FN, relative to the penalty for violations of the taking of American eels.

SB 411-FN, relative to the labeling of genetically engineered foods.

##### JUDICIARY

SB 319-FN, relative to access to reproductive health care facilities.

SB 373-FN, relative to procedure and jurisdiction of the superior courts.

##### TRANSPORTATION

SB 231-FN, relative to regulation of tractors and low-speed utility vehicles.

SB 401-FN-A, establishing road toll fees for electric and hybrid electric vehicles.

##### WAYS AND MEANS

SB 410-FN-L, relative to apportionment in cooperative school districts with a renewable generation facility.

Without objection, the FN Report is adopted.

### CONSENT CALENDAR REPORTS

The following bills were removed from the Consent Calendar: (None)

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

#### HEALTH, EDUCATION AND HUMAN SERVICES

SB 226, relative to reporting of health care associated infections. Ought to Pass, Vote 5-0. Senator Gilmour for the committee.

This bill was at the request of the Department of Health and Human Services and clarifies the limitations to collecting data for reporting of health care associated infections. This bill makes valuable technical changes to current statutes and the Committee believes that this will assist the Department in properly caring for New Hampshire citizens.

SB 270, establishing a commission to study mental health in New Hampshire. Ought to Pass with Amendment, Vote 5-0. Senator Kelly for the committee.

This bill establishes a commission to study mental health in New Hampshire. The Committee extensively amended the bill in conjunction with the sponsor to include all interested parties and to further indicate its purpose of studying mental health implementation in New Hampshire including children with serious emotional disorders.

Health, Education and Human Services  
February 11, 2014  
2014-0502s  
01/09

#### Amendment to SB 270

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

AN ACT establishing a commission to study mental health implementation in New Hampshire.

Amend the bill by replacing section 1 with the following:

1 New Section; Commission to Study Mental Health Implementation in New Hampshire. Amend RSA 135-C by inserting after section 63-a the following new section:

135-C:63-b Commission to Study Mental Health Implementation in New Hampshire.

I. There is established a commission to study mental health implementation in New Hampshire. The members of the commission shall be as follows:

- (a) One member of the senate, appointed by the president of the senate.
- (b) One member of the senate, appointed by the senate minority leader.
- (c) One member of the house of representatives, appointed by the speaker of the house of representatives.
- (d) One member of the house of representatives, appointed by the house minority leader.
- (e) The commissioner of the department of health and human services, or designee.
- (f) The commissioner of the department of education, or designee.
- (g) The commissioner of the department of safety, or designee.
- (h) The commissioner of the department of corrections, or designee.
- (i) The commissioner of the department of employment security, or designee.
- (j) The director of the division of children, youth and families, or designee.
- (k) The director of the state office of veterans affairs, or designee.
- (l) A public member, appointed by the governor.
- (m) A psychiatrist, appointed by the New Hampshire Psychiatric Society.

(n) A representative of the New Hampshire Community Behavioral Health Association, appointed by the association.

(o) A representative of the National Alliance on Mental Illness New Hampshire, appointed by such agency.

(p) A representative of New Futures, appointed by the organization.

(q) A representative of the New Hampshire Medical Society, appointed by the society.

(r) The executive director of the New Hampshire Hospital Association, appointed by the association.

(s) A professor of the University of New Hampshire cooperative extension, appointed by the director of the extension.

(t) The superintendent of the Strafford county jail or other superintendent, appointed by the superintendents of county jails.

(u) A representative of the New Hampshire Disability Rights Center, appointed by the center.

(v) The executive director of the Endowment for Health, or designee, appointed by the endowment.

(w) A representative of the New Hampshire Psychological Association, appointed by the association.

(x) A representative of the New Hampshire Association for Infant Mental Health, appointed by the association.

(y) A representative of the Peer Support Agencies, appointed by the Peer Support Agency executive directors.

(z) A representative of the New Hampshire Children's Behavioral Health Collaborative, appointed by the collaborative.

(aa) The director of the New Hampshire office of minority health and refugee affairs, or designee.

(bb) A member of the state committee on aging, appointed by the committee members.

(cc) A representative of the New Hampshire Alcohol and Other Drug Service Providers Association, appointed by the association.

(dd) A representative from the New Hampshire Juvenile Court Diversion Network, appointed by the network.

(ee) The director of New Hampshire Kids Count, or designee.

(ff) The executive director of the New Hampshire Nurses' Association, or designee.

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

III.(a) Recognizing the need for an integrated system of mental health care across all ages and all interested parties, the commission's study shall include, but not be limited to:

(1) Reviewing all current reports addressing mental health in New Hampshire.

(2) Reviewing other states reports on the status of mental health in such states.

(3) Assessing the degree to which lack of resources, facilities, and professional personnel are contributing to the growing emergence of mental health issues in New Hampshire's population.

(4) Assessing to what degree current efforts to address mental illness in New Hampshire serves youths, seniors, veterans, and minority populations.

(b) The commission shall hold 4 public hearings throughout different regions of the state to solicit citizen information and input on mental health issues.

(c) The commission shall take direct testimony and written input from individuals who are currently or have been formally served by or involved with the mental health service delivery system and families of people with mental illness.

(d) The commission may solicit information from any person or entity the commission deems relevant to the commission's objective.

(e) The commission shall make every effort to avoid issues specified in the mental health lawsuit settlement agreement in order to allow the mental health settlement to be implemented without hindrance.

IV. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Sixteen members of the commission shall constitute a quorum.

V. On or before November 1, 2014, the commission shall submit an interim report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library. The commission shall provide a final report of its findings and recommendations on or before November 1, 2015. In addition to proposals for legislation, the final report shall also include detailed findings and recommendations relative to the needs of adults who have a mental illness or are in recovery, children with serious emotional disorders, and their families.

2014-0502s

#### AMENDED ANALYSIS

This bill establishes a commission to study mental health implementation in New Hampshire.

SB 350, relative to the transfer of average daily membership information from the department of education to the department of revenue administration. Ought to Pass with Amendment, Vote 5-0. Senator Stiles for the committee.

This bill was established to assist in the timely setting of tax rates for the municipalities and requires the commissioner of the department of education to provide adequacy aid calculation data to the commissioner of the department of revenue administration no later than October 1 of each year. The Committee believes that this is an important transfer of information to facilitate the work of our departments.

Health, Education and Human Services

February 11, 2014

2014-0503s

04/09

#### Amendment to SB 350

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

AN ACT relative to the transfer of adequacy aid calculation data from the department of education to the department of revenue administration.

Amend RSA 198:45, II as inserted by section 1 of the bill by replacing it with the following:

***II. The commissioner of the department of education shall provide adequacy aid calculation data for the current fiscal year to the commissioner of the department of revenue administration no later than October 1 of each year.***

2014-0503s

#### AMENDED ANALYSIS

This bill requires the commissioner of the department of education to provide adequacy aid calculation data for the current fiscal year to the commissioner of the department of revenue administration no later than October 1 of each year.

SB 355, relative to access to social media by educational institutions. Ought to Pass, Vote 5-0. Senator Sanborn for the committee.

This bill addresses social media password policies established by educational institutions, in order to protect the privacy of New Hampshire students. Privacy is of the utmost importance here in New Hampshire and the Committee supports this bill to further clarify our commitment to student's privacy rights.

#### JUDICIARY

SB 201, relative to marriage registration forms. Ought to Pass with Amendment, Vote 5-0. Senator Lasky for the committee.

The bill provides that upon marriage either person may retain his or her surname prior to marriage, take the surname of the other party, or hyphenate the full surnames of both parties. The name the individuals wish to go by after marriage would be indicated on the marriage application worksheet.

Senate Judiciary  
February 13, 2014  
2014-0557s  
05/10

#### **Amendment to SB 201**

Amend RSA 5-C:41, II-a(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Upon entering into marriage, either party may retain his or her surname prior to the marriage or change his or her surname to the surname of the other party or change the surname to a hyphenated combination of the full surnames of both parties. If a party requests a surname change under this paragraph, that party may also change his or her middle name to his or her surname prior to the marriage. Each party shall indicate on the marriage application worksheet the party's name after marriage.

SB 214, relative to immunity from civil liability for sports officials. Inexpedient to Legislate, Vote 5-0. Senator Soucy for the committee.

This bill would have limited liability for sports officials who receive compensation for their services. Testimony received indicated that this is a problem in other states but not necessarily in New Hampshire and that passage of this could potentially undermine Article 14 of the NH Constitution relative to immunity.

The question is on the adoption of the Consent Calendar. Adopted.

#### **REGULAR CALENDAR REPORTS**

##### **COMMERCE**

SB 215-FN, authorizing benefit corporations. Ought to Pass with Amendment, Vote 3-2. Senator Pierce for the committee.

Commerce  
February 13, 2014  
2014-0563s  
03/05

#### **Amendment to SB 215-FN**

Amend RSA 293-C:11 as inserted by section 1 of the bill by inserting after paragraph IV the following new paragraph:

V. In an action commenced under this section, if it is determined that a corporation established pursuant to this chapter has failed to pursue a general public benefit or a specific public benefit set forth in its articles of incorporation, the secretary of state may revoke the corporation's status as a benefit corporation under this chapter.

Amend RSA 293-C:13 as inserted by section 1 of the bill by inserting after paragraph IV the following new paragraph:

V. If the secretary of state determines that a benefit corporation established pursuant to this chapter fails to make available its annual benefit report pursuant to RSA 293-C:12 and RSA 293-C:13, the secretary of state shall administratively dissolve the corporation in accordance with the procedures in RSA 293-A:14.21.

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 289, relative to validated wills and revising the uniform trust act. Ought to Pass with Amendment, Vote 4-0. Senator Bradley for the committee.

Commerce  
February 13, 2014  
2014-0560s  
08/03

#### **Amendment to SB 289**

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

1 Purpose. The general court finds:

I. Trust, fiduciary, and related services is a growing sector of this state's economy, and the national market for those services continues to grow.

II. Through the development of thoughtful, innovative laws, New Hampshire has established one of the best legal environments for trusts, trust companies, and fiduciary services. This legal environment attracts families and individuals to this state for purposes of creating new trusts or administering existing trusts, thereby supporting and encouraging the growth of this sector of the state's economy.

III. This act continues New Hampshire's firm commitment to being one of the best legal environments for trusts, trust companies, and fiduciary services. To that end, this act further reinforces this state's tradition of protecting settlor intent, it further enhances modern trust design, and it further facilitates the efficient administration of trusts.

IV. This act also continues to foster this state's fiduciary services sector and the well-paying jobs within that sector of trust, investment, legal, accounting, and other professionals.

2 New Section; Validated Wills. Amend RSA 551 by inserting after section 2-a the following new section:

551:2-b Validated Wills.

I. A validated will is valid, except to the extent that a person proves by clear and convincing evidence that the validated will is invalid because of incapacity, mistake, fraud, duress, undue influence, or any other reason.

II.(a) A will that, on its face, meets the requirements of paragraph VI shall be a validated will, unless a person proves by the preponderance of the evidence that the will failed to meet one or more of the requirements of paragraph VI.

(b) A qualified neurologist's certification is valid, unless a person proves by the preponderance of the evidence that the individual is not a qualified neurologist or the certification fails to meet the requirements of paragraph XI.

(c) A qualified psychiatrist's certification is valid, unless a person proves by the preponderance of the evidence that the individual is not a qualified psychiatrist or the certification fails to meet the requirements of paragraph XII.

(d) A qualified attorney's certification is valid, unless a person proves by the preponderance of the evidence that the individual is not a qualified attorney or the certification fails to meet the requirements of paragraph XIII.

III. Unless the limitation period for contesting the validity of a will has expired or the will has been proven under RSA 552:18, an interested person may commence a judicial proceeding to determine whether a will is a validated will. During the pendency of that proceeding, the limitation period for contesting the validity of the will shall toll.

IV. A person who commences a judicial proceeding contesting the validity of a validated will shall file with the court a cash or surety bond for purposes of ensuring the payment of anticipated costs and fees described in paragraph V. The court may waive or reduce the bond as the court determines is just and equitable. This paragraph shall not apply to the director of charitable trusts or the department of health and human services.

V. In any judicial proceeding contesting the validity of a validated will, the nonprevailing party shall pay to the prevailing party the amount of the prevailing party's costs and reasonable attorney's fees. This paragraph shall not apply to the director of charitable trusts or the department of health and human services; accordingly, neither the director of charitable trusts nor the department of health and human services shall have any obligation to pay a prevailing party's costs and fees, and neither the director of charitable trusts nor the department of health and human services shall be entitled to the payment of his or her costs and fees by a nonprevailing party.

VI. For purposes of this section, a "validated will" means a will that meets the following 4 requirements:

(a) The will is self-proved in accordance with RSA 551:2-a.

(b) After personally observing and evaluating the testator, a qualified neurologist makes a certification in accordance with paragraph XI. The qualified neurologist shall personally observe and evaluate the testator



at the time that the testator signs the will or within 10 days after the testator signs the will and shall make his or her certification on the date on which he or she personally observes and evaluates the testator. The qualified neurologist's certification shall be made before a notary public or a justice of the peace and must be affixed to the will.

(c) After personally observing and evaluating the testator, a qualified psychiatrist makes a certification in accordance with paragraph XII. The qualified psychiatrist shall personally observe and evaluate the testator at the time that the testator signs the will or within 10 days after the testator signs the will and shall make his or her certification on the date on which he or she personally observes and evaluates the testator. The qualified psychiatrist's certification shall be made before a notary public or a justice of the peace and must be affixed to the will.

(d) After personally observing and evaluating the testator, a qualified attorney makes a certification in accordance with paragraph XIII. The qualified attorney shall personally observe and evaluate the testator at the time that the testator signs the will or within 10 days after the testator signs the will and shall make his or her certification on the date on which he or she personally observes and evaluates the testator. The qualified attorney's certification shall be made before a notary public or a justice of the peace and must be affixed to the will.

VII. For purposes of this section, a "qualified neurologist" is a medical doctor who is licensed to practice in this state and is board-certified in neurology by the American Board of Psychiatry and Neurology, Inc., or its successor organization.

VIII. For purposes of this section, a "qualified psychiatrist" means a medical doctor who is licensed to practice in this state and is board-certified in psychiatry by the American Board of Psychiatry and Neurology, Inc., or its successor organization.

IX. For purposes of this section, a "qualified attorney" means an individual who is admitted to practice law in this state and has practiced law for 10 or more years. An attorney is eligible to be a qualified attorney even if he or she drafted the will or otherwise has an attorney-client relationship with the testator.

X. The following individuals are ineligible to serve as a qualified neurologist, a qualified psychiatrist, or a qualified attorney:

(a) Any individual who acts as a witness for purposes of RSA 551:2 or RSA 551:2-a;

(b) Any individual who, with respect to the testator, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986;

(c) A spouse of any individual who, with respect to the testator, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986; or

(d) Any individual who, directly or indirectly, has a beneficial interest under the terms of the will.

XI. The qualified neurologist's certification shall be substantially in the following form:

I, \_\_\_\_\_, swear under oath that: (1) I am a qualified neurologist as defined in RSA 551:2-b, VII, (2) on this day, I personally observed and evaluated \_\_\_\_\_, who is the testator, and determined that (a) the testator recalled the act of signing his or her will on \_\_\_\_\_, (b) the testator appeared to understand the nature of his or her making the will, (c) the testator recalled the property of which he or she wished to dispose, (d) the testator appeared to understand the property's general nature, and (e) the testator appeared to bear in mind those who are his or her near relatives, and (3) based upon my evaluation, I certify that, in my opinion, the testator had capacity to sign this instrument as his or her will at the time of my evaluation.

XII. The qualified psychiatrist's certification shall be substantially in the following form:

I, \_\_\_\_\_, swear under oath that: (1) I am a qualified psychiatrist as defined in RSA 551:2-b, VIII, (2) on this day, I personally observed and evaluated \_\_\_\_\_, who is the testator, and determined that (a) the testator recalled the act of signing his or her will on \_\_\_\_\_, (b) the testator appeared to understand the nature of his or her making the will, (c) the testator recalled the property of which he or she wished to dispose, (d) the testator appeared to understand the property's general nature, (e) the testator appeared to bear in mind those who are his or her near relatives, and (f) the testator did not appear to be under duress or undue influence from any person, and (3) based upon my evaluation, I certify that, in my opinion, the testator had capacity to sign this instrument as his or her will at the time of my evaluation and was not under duress or undue influence.

XIII. The qualified attorney's certification shall be substantially in the following form:

I, \_\_\_\_\_, swear under oath that: (1) I am a qualified attorney as defined in RSA 551:2-b, IX, (2) on this day, I personally observed and evaluated \_\_\_\_\_, who is the testator and determined that (a) the testator recalled the act of signing his or her will on \_\_\_\_\_, (b) the testator appeared to understand the nature of his or her making the will, (c) the testator recalled the property of which he or she wished to dispose, (d) the testator appeared to understand the property's general nature, (e) the testator appeared to bear in mind those who are his or her near relatives, and (f) the testator did not appear to be under duress or undue influence from any person, and (3) based upon my evaluation, I certify that, in my opinion, the testator had capacity to sign this instrument as his or her will at the time of my evaluation and was not under duress or undue influence.

XIV. A validated will may be modified or revoked in the same manner as a will that is not a validated will; however, a codicil to a validated will is not a validated will, unless the codicil meets the requirements of paragraph VI. An individual's failure to create a validated will is not evidence or an admission that the individual's will is invalid for any reason.

XV. For purposes of this section, a "state" means a state of the United States or the District of Columbia, but excludes any territory or insular possession subject to the jurisdiction of the United States.

3 Enforcement of No-Contest Provisions; Wills. Amend RSA 551:22, III to read as follows:

III. Paragraph II of this section shall not apply to ***the extent that a person initiates, maintains, or cooperates any of the following actions or proceedings:***

(a) Any action brought by the executor or other fiduciary of a will that incorporates a no-contest provision, unless the executor or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

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

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

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

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

***(f) A proceeding described in paragraph VIII.***

4 New Paragraphs; Enforcement of No-Contest Provisions. Amend RSA 551:22 by inserting after paragraph V the following new paragraphs:

VI. In the executor's discretion, an executor may suspend distributions to a beneficiary to the extent that, under a no-contest provision, the beneficiary's action potentially would have caused the reduction or elimination of the beneficiary's interest in the will. In the executor's discretion, the executor may resume those distributions at any time or may continue to suspend those distributions until a court determines whether the beneficiary's interest in the will has been reduced or eliminated.

VII. In the executor's discretion, an executor may decline to distribute property in accordance with a person's purported exercise of a power of appointment or a power of withdrawal to the extent that, under a no-contest provision, the person's action potentially would have caused the reduction or elimination of the power of appointment or the power of withdrawal. In the executor's discretion, the executor may make those distributions at any time or may continue to decline to make those distributions until a court determines whether the person's power of appointment or power of withdrawal has been reduced or eliminated.

VIII. To the extent that the executor acts in good faith, the executor is not liable to any person for exercising the discretion under paragraph VI or VII or not exercising that discretion. An executor shall be presumed to have exercised the discretion in good faith if, in any judicial proceeding, an interested person other than the executor has requested a determination of whether, under the no-contest provision, a beneficiary's interest

in the will, a person's power of appointment, or a person's power of withdrawal was reduced or eliminated. An executor or any other interested person may commence a judicial proceeding for purposes of determining whether the executor's exercise of discretion under paragraph VI or VII was made in good faith.

5 New Section; Probate of Wills; Proof of Wills During Life. Amend RSA 552 by inserting after section 17 the following new section:

552:18 Proof of Will During Life.

I. During his or her life, an individual may commence a judicial proceeding to determine the validity of his or her will, subject only to the will's subsequent modification or revocation. For purposes of commencing the proceeding under this section, the individual must be domiciled in this state or own real property located in this state. A person acting as an individual's guardian, conservator, or attorney-in-fact shall not commence the proceeding on behalf of the individual.

II. If the petitioner is domiciled in this state, then the venue for the judicial proceeding shall be in the county where the petitioner has his or her domicile. If the petitioner is not domiciled in this state but owns real property located in this state, then the venue for the judicial proceeding shall be in the county where any of that real property is located.

III. In addition to the petitioner, each of the following persons is an interested person in the judicial proceeding:

- (a) The petitioner's spouse;
- (b) The persons who, if the petitioner had died on the date of filing the petition, would be the petitioner's heirs;
- (c) The legatees and devisees under the terms of the will;
- (d) The executors nominated in the will;
- (e) If a charitable organization is a legatee or devisee or the will contains any charitable interest, the director of charitable trusts; and
- (f) Any other persons who, if the petitioner had died on the date of filing the petition, would be interested parties in a judicial proceeding to prove the petitioner's will.

IV. For the purposes of this section, each of the interested parties shall be deemed possessed of inchoate property rights.

V. Notice shall be given to each of the interested parties. The court may order notice be given to other persons. In connection with the judicial proceeding, a person may represent and bind another person in accordance with Article 3 of RSA 564-B.

VI. In the judicial proceeding, the petitioner is the proponent of the will, the will shall be proved in solemn form, and the burden of proof and presumptions shall be the same as in a proceeding to prove the will in solemn form. After a hearing, the court shall declare whether the will is valid or invalid, and it may make other findings of fact and conclusions of law that are appropriate under the circumstances.

VII. After the individual's death, the will for which there is a declaration of validity under this section shall have full legal effect as the individual's will and, upon request, shall be admitted to probate and conclusively deemed proved, except to the extent that the will is modified or revoked after the court's declaration.

VIII. A will for which there is a declaration of validity under this section may be modified or revoked in the same manner as a will for which there is no declaration of validity under this section.

IX. An individual's failure to commence a judicial proceeding under this section shall not be construed as evidence or an admission that the individual's will is invalid for any reason.

6 New Section; Suits by and Against Administrators; Confidential Communications. Amend RSA 556 by inserting after section 30 the following new section:

556:31 Confidential Communications.

I. A communication between an attorney and a client acting as an administrator is privileged and protected from disclosure to the same extent as if the client was acting in his, her, or its individual capacity and was not acting as an administrator.

II. The privilege under paragraph I is not waived by a fiduciary relationship between the administrator and a beneficiary of the decedent's estate or the use of any property comprising the estate to compensate the attorney for legal services rendered to the administrator.

III. If an attorney's client is an administrator, then the attorney's client is only the person acting as administrator. A successor administrator is not the attorney's client solely by reason of succeeding the person with whom the attorney had an attorney-client relationship.

IV. An administrator and a successor administrator may agree to share privileged communications relating to some or all matters involving the estate. The disclosure of privileged communications under the agreement does not waive the disclosing party's privilege. Unless the agreement provides otherwise, privileged communications disclosed under the agreement shall not be disclosed to a third party without the disclosing party's consent or a court order.

7 Uniform Trust Code; Scope. Amend RSA 564-B:1-102 to read as follows:

564-B:1-102 Scope.

(a) This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

**(b) Without precluding other means for establishing that this chapter applies to a specific trust, this chapter applies to a trust to the extent that the terms of the trust provide that this state's laws govern the trust's validity, interpretation, or administration.**

**(c) Unless otherwise provided under the terms of the trust, New Hampshire law shall apply to the administrative matters of a trust that has its principal place of administration within this state.**

**(d) This chapter shall not limit the authority of the director of charitable trusts or the department of health and human services as otherwise provided by statute or common law.**

8 Uniform Trust Code; Definitions. Amend RSA 564-B:1-103(19) to read as follows:

(19) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding. **The terms of the trust may be interpreted, amended, modified, and reformed as provided in this chapter, including by means of a court order or a nonjudicial settlement agreement made in accordance with RSA 564-B:1-111.**

9 Uniform Trust Code; Definitions. RSA 564-B:1-103(23)-(24) is repealed and reenacted to read as follows:

(23) "Directed trust" means a directed trust as defined in RSA 564-B:7-711(a).

(24) "Excluded fiduciary" means (1) a trustee who is an excluded fiduciary under RSA 564-B:7-711(b) or (2) a trust advisor or trust protector who is an excluded fiduciary under RSA 564-B:7-711(c).

10 Uniform Trust Code; Default and Mandatory Rules. Amend RSA 564-B:1-105(b) to read as follows:

(b) The terms of a trust prevail over any provision of this chapter except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms **of the trust**, [and] **the** purposes of the trust, and the interests of the beneficiaries;

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

(4) the power of the court to modify or terminate a trust under RSA 564-B:4-410 through RSA 564-B:4-416;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article 5;

(6) the power of the court under RSA 564-B:7-702 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under RSA 564-B:7-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under RSA 564-B:10-1008;

(9) the rights under RSA 564-B:10-1010 through RSA 564-B:10-1013 of a person other than a trustee or beneficiary;

(10) statutory periods of limitation for commencing a judicial proceeding;

(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; [and]

(12) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in RSA 564-B:2-203 and RSA 564-B:2-204;

**(13) *an interested person's rights under RSA 564-B:1-111(b);***

**(14) *the extent to which a no-contest provision is unenforceable or inapplicable under RSA 564-B:10-1014;***

**(15) *if, under the terms of the trust, a trust advisor or trust protector is a fiduciary, the duty of the trust advisor or trust protector to act in good faith and in accordance with the terms of the trust, the purposes of the trust, and the interests of the beneficiaries; and***

**(16) *to the extent that the trust is a charitable trust, the requirement that a trust advisor or trust protector is a fiduciary, regardless of whether the charitable trust was created before, on, or after the effective date of this paragraph or the trust advisor or trust protector accepted his, her, or its appointment before, on, or after the effective date of this paragraph; and***

**(17) *to the extent that a trust is a charitable trust, the limitations on the trustee's power to decant under RSA 564-B:4-418 and the limitations on the trustee's power of modification under RSA 564-B:4-419.***

11 New Paragraph; Uniform Trust Code; Principal Place of Administration. Amend RSA 564-B:1-108 by inserting after paragraph (e) the following new paragraph:

(f) Unless otherwise provided under the terms of the trust or an agreement among the trustees, a trust has a principal place of administration in this state if (1) a trustee's principal place of business is located in this state or, if a trustee is an individual, that trustee is a resident of this state and (2) all or part of the administration occurs in this state.

12 New Section; Uniform Trust Code; Nonjudicial Dispute Resolution. Amend RSA 564-B by inserting after section 1-111 the following new section:

564-B:1-111-a Nonjudicial Dispute Resolution.

(a) If the terms of the trust require the interested persons to resolve a trust dispute exclusively by reasonable nonjudicial procedures, then those interested persons shall resolve that trust dispute in accordance with the terms of the trust.

(b) An interested person may commence a judicial proceeding to determine whether the nonjudicial procedures are reasonable. To the extent that the terms of the trust purport to prohibit an interested person from commencing a judicial proceeding under this subsection (b) or penalize an interested person for commencing a judicial proceeding under this subsection (b), those terms of the trust are void.

(c) For purposes of this section, "interested persons" means the persons who would be interested persons in a judicial proceeding to resolve the trust dispute.

(d) For purposes of this section, "trust dispute" means any matter in which a court has subject-matter jurisdiction under RSA 564-B:2-203, excluding (1) a determination of the validity of the trust or (2) a determination of any material purpose of the trust, including a determination of whether any modification, termination, or other action is consistent with a material purpose of the trust.

(e) Unless the director of charitable trust expressly consents to the nonjudicial procedures, those procedures shall not apply to any matter involving a charitable trust. Unless the department of health and human services expressly consents to the nonjudicial procedures, those procedures shall not apply any matter in which that department would be an interested person.

13 Uniform Trust Code; Subject-Matter Jurisdiction. Amend RSA 564-B:2-203 to read as follows:

564-B:2-203 Subject-Matter Jurisdiction.

(a) Except as provided in subsection (b) of this section, the probate *division of the circuit* court shall have exclusive jurisdiction of the creation by judgment or decree, interpretation, construction, modification, termination, and administration of those trusts described in RSA 564-A:1, I, and over the appointment, removal, and surcharge of trustees, *trust advisors, and trust protectors* of such trusts.

(b) The probate *division of the circuit* court has concurrent jurisdiction with the superior court of proceedings involving charitable uses and trusts other than those trusts described in RSA 564-A:1, I.

14 New Section; Uniform Trust Code; Confidential Communications. Amend RSA 564-B by inserting after section 2-204 the following new section:

564-B:2-205 Confidential Communications.

(a) A communication between an attorney and a client acting as a trustee, trust advisor, or trust protector is privileged and protected from disclosure to the same extent as if the client was acting in his, her, or its individual capacity and was not acting as a trustee, trust advisor, or trust protector.

(b) The privilege is not waived by (1) a fiduciary relationship between the trustee, trust advisor, or trust protector and a beneficiary of the trust or (2) the use of trust property to compensate the attorney for legal services rendered to the trustee, trust advisor, or trust protector.

(c) If an attorney's client is a trustee, trust advisor, or trust protector, then the attorney's client is only the person acting as trustee, trust advisor, or trust protector. A successor trustee, successor trust advisor, or successor trust protector is not the attorney's client solely by reason of succeeding the person with whom the attorney had an attorney-client relationship.

(d) A trustee, trust advisor, or trust protector and his, her, or its successor may agree to share privileged communications relating to some or all matters involving the trust. The disclosure of privileged communications under the agreement does not waive the disclosing party's privilege. Unless the agreement provides otherwise, privileged communications disclosed under the agreement shall not be disclosed to a third party without the disclosing party's consent or a court order.

15 New Section; Uniform Trust Code; Duration of Trusts. Amend RSA 564-B by inserting after section 4-402 the following new section:

564-B:4-402-a Duration of Trusts.

(a) Unless a trust is subject to the rule against perpetuities or is a trust for the care of an animal under RSA 564-B:4-408, a trust may be perpetual or may exist for any shorter period of time.

(b) The rule against perpetuities shall not apply to a trust or any disposition of trust property if:

(1) the terms of the trust expressly exempt the trust from the application of the rule against perpetuities; and

(2) under the terms of the trust, an applicable statute, or common law, the trustee or other person to whom the power is properly granted or delegated has the power to sell, mortgage, or lease trust property for any period of time beyond the period that, if this section did not apply to the trust, would be required for an interest in the trust to vest in order to be valid under the rule against perpetuities.

(c) The rule against accumulations shall not apply to any trust to which the rule against perpetuities does not apply.

(d) Subsections (b) and (c) apply to any trust created on or after January 1, 2004. This section otherwise applies to any trust created before, on, or after the effective date of this chapter.

16 Uniform Trust Code; Validity of Trusts. RSA 564-B:4-406 is repealed and reenacted to read as follows:

564-B:4-406 Validity of Trusts.

(a) A trust is void to the extent that it was not validly created in accordance with this chapter or its creation was induced by fraud, duress, or undue influence.

(b) A person may commence a judicial proceeding to contest the validity of a trust within the earlier of:

(1) in the case of a trust that was revocable at the settlor's death, 3 years after the settlor's death;

(2) in the case of an irrevocable trust, including a formerly revocable trust that has become irrevocable, 3 years after the trustee sent to the beneficiary a notice described in RSA 564-B:8-813(c)(3); or

(3) in the case of an irrevocable trust, including a trust that was revocable at the settlor's death or a formerly revocable trust that has become irrevocable, 180 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, the trustee's name, address, and telephone number, and the time allowed for commencing a proceeding to contest the validity of a trust.

(c) A trustee may send the notice described in subsection (b)(3) for purposes of commencing the 180 day limitation period, but the trustee does not have a duty to do so. A trustee shall not be liable to any person for not sending the notice described in subsection (b)(3).

(d) During his or her life, a settlor may commence a judicial proceeding to determine the validity of a trust that he or she created, subject only to the trust's subsequent amendment or revocation if the trust is revocable.

(1) The trust instrument must expressly provide that this state's laws govern the trust's validity, interpretation, and administration, and the trust must have its principal place of administration within this state.

(2) The venue for the judicial proceeding is in the county where the trust has its principal place of administration.

(3) In addition to the settlor, each of the following persons is an interested person in the judicial proceeding:

(A) the settlor's spouse;

(B) the persons who, if the settlor had died on the date of filing the petition, would be the settlor's heirs;

(C) the qualified beneficiaries;

(D) the trustees, trust advisors, and trust protectors;

(E) if the trust is a wholly or partially a charitable trust, the director of charitable trusts;

(F) if the trust is a trust for the care of an animal under RSA 564-B:4-408, the persons who, under the terms of the trust, have the power to enforce the trust;

(G) if the trust is a trust authorized under RSA 564-B:4-409, the persons who, under the terms of the trust, have the power to enforce the trust; and

(H) any other persons who would be an interested person in a judicial proceeding to determine the validity of the trust.

(4) In the case of a revocable trust, the qualified beneficiaries and other interested persons shall be determined as if the trust was irrevocable on the date of filing the petition, and each of the qualified beneficiaries and other interested persons shall be deemed possessed of inchoate property rights.

(5) Notice shall be given to each of the interested persons. The court may order notice may be given to other persons.

(6) After a hearing, the court shall declare whether the trust is valid or invalid, and it may make other findings of fact and conclusions of law that are appropriate under the circumstances.

(7) A trust for which there is a declaration of validity under this subsection may be modified or revoked in the same manner as a trust for which there is no declaration of validity under this subsection.

(8) A settlor's failure to commence a judicial proceeding under this subsection shall not be construed as evidence or as an admission that the trust is invalid for any reason.

(e) A trustee may proceed to distribute the trust property in accordance with the terms of the trust even though the period for contesting the validity of the trust has not expired. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(f) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

17 Uniform Trust Code; Trustee's Power to Decant Trust. RSA 564-B:4-418 is repealed and reenacted to read as follows:

564-B:4-418 Trustee's Power to Decant Trust.

(a) Subject to the limitations provided in this section, a trustee has the power to decant a trust. The power to decant is the power to appoint some or all of the trust property of a trust ("first trust") to another trust ("second trust"). A trustee's power to decant is a power with respect to an administrative matter of the trust.

(b) The beneficiaries of the second trust may include only one or more of the beneficiaries of the first trust. The second trust may exclude one or more of the beneficiaries of the first trust. A person is not a beneficiary of the second trust solely by reason of being a permissible appointee of a power of appointment under the terms of the second trust.

(c) Under the terms of the second trust, a person may have a power of appointment if (1) that person was a beneficiary of the first trust or (2) under the terms of the first trust, that person held a power of appointment either in a fiduciary or nonfiduciary capacity.

(d) Except as otherwise provided in this subsection, the terms of the second trust may provide that a trustee has discretion to distribute income or principal, and the terms of the second trust may impose a standard or no standard on the trustee's discretion regardless of whether the terms of the first trust imposed a standard on the trustee's discretion to distribute income or principal. If the first trust is a charitable trust and the terms of the first trust impose a standard on the trustee's discretion to distribute income or principal, then the terms of the second trust shall impose the same standard on the trustee's discretion to distribute income or principal, unless the director of charitable trusts expressly consents to the modification or elimination of that standard.

(e) The second trust may have a term that is longer than the first trust.

(f) A trustee may not decant to the extent that the terms of the second trust are inconsistent with a material purpose of the first trust.

(g)(1) A trustee may not decant to the extent that the terms of the second trust reduce or eliminate a vested interest of a beneficiary of the first trust.

(2) A vested interest is:

(A) a current right to a mandatory distribution of income or principal, a mandatory annuity interest, or a mandatory unitrust interest;

(B) a currently-exercisable power of withdrawal; or

(C) a noncontingent, unconditional right to receive an ascertainable portion of the trust property upon the trust's termination.

(3) In addition to other possible contingencies, a beneficiary's right to receive a portion of the trust property upon the trust's termination is contingent if, under the terms of the trust, any person other than the beneficiary or the beneficiary's estate would receive that portion unless the beneficiary survives a specified date or a specified event.

(h) If a transfer to the first trust qualified for a deduction, credit, exclusion, or exemption for purposes of any income, gift, estate, or generation-skipping transfer tax, then a trustee may decant only to the extent that the decanting would not jeopardize that deduction, credit, exclusion, or exemption.

(i) If a settlor of the first trust or a beneficiary of the first trust is an applicant for public benefits or receives public benefits and the settlor's or beneficiary's eligibility or qualification for those public benefits are dependent on the nature and scope of his or her rights, powers, and interests in the first trust, then a trustee may decant only to the extent that the decanting would not jeopardize the settlor's or beneficiary's eligibility or qualification for those public benefits.



(j) A trustee may not decant to the extent that, under the terms of the second trust:

- (1) one or more beneficiaries can remove the trustee;
- (2) those beneficiaries can appoint a successor trustee who, with respect to any of them, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986;
- (3) the trustee may distribute trust property to any one or more of those beneficiaries; and
- (4) the trustee's discretion to make those distributions is not limited by an ascertainable standard.

(k) A trustee who is a beneficiary of the first trust does not have the power to decant to the extent that, under the terms of the first trust:

- (1) the trustee does not have the discretion to make or participate in making distributions to himself or herself;
- (2) the trustee's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard;
- (3) the trustee's discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or a person holding an adverse interest, unless the terms of second trust impose the same limitation on that trustee's discretion; or
- (4) the trustee does not have the discretion to make or participate in making distributions in a manner that will discharge his or her legal support obligations, unless the terms of second trust impose the same limitation on that trustee's discretion.

(l) A trustee is not prohibited from decanting solely because:

- (1) the first trust is irrevocable;
- (2) the terms of the first trust provide that the trust may not be amended or modified;
- (3) the first trust contains a spendthrift provision;
- (4) under the terms of the first trust, the trustee does not have any discretion in making distributions of income or principal; or
- (5) except as provided in subsection (d), the terms of the first trust impose a standard on the trustee's discretion to distribute income or principal.

(m) A trustee of a charitable trust or a trust in which a charitable organization has a vested interest shall notify the director of charitable trusts of a proposed decanting, and the trustee shall provide that notice in writing at least 30 days before the effective date of the decanting. A trustee of a noncharitable trust may notify a beneficiary of a proposed decanting, but does not have any duty to do so. The right of any beneficiary to object to a proposed decanting terminates if the beneficiary does not notify the trustee of an objection within 60 days after the proposal was sent to the beneficiary but only if the proposal informed the beneficiary of the right to object and the time allowed for objection.

(n) A trustee's power to decant may be expanded, restricted, eliminated, or otherwise altered by the terms of the trust. A nonjudicial settlement agreement made in accordance with RSA 564-B:1-111, however, may only restrict or eliminate a trustee's power to decant. Except as otherwise provided under the terms of the trust, a trustee's power to decant is in addition to any other powers conferred by the terms of the trust, this chapter, or the laws of this state. This section does not expand, restrict, eliminate, or otherwise alter any power that, with respect to a trust, a person holds in a nonfiduciary capacity.

(o) A trustee does not have a duty to decant or an ongoing duty to consider whether to decant. In exercising the power to decant, a trustee has a duty to exercise the power in a manner that is consistent with the settlor's intent as expressed in the terms of the trust, and the trustee shall act in accordance with the trustee's duties under this chapter and the terms of the first trust.

(p) A trustee may exercise the power to decant without court approval the consent of the settlor, or the consent of any of the beneficiaries of the first trust. A trustee or any other interested person may ask a court to approve a trustee's exercise of the power to decant.

18 New Sections; Uniform Trust Code; Trustee's Power of Modification. Amend RSA 564-B by inserting after section 4-418 the following new sections:

## 564-B:4-419 Trustee's Power of Modification.

(a) Subject to the limitations provided in this section, a trustee may modify a trust. A trustee may exercise that power of modification for any reason, including:

- (1) furthering the settlor's intent or a material purpose of the trust;
- (2) preserving any favorable tax treatment for the trust, the settlor, or the beneficiaries;
- (3) enhancing the efficient administration of the trust; or
- (4) minimizing the costs of administration.

(b) A trustee's power under this section is a power with respect to an administrative matter of the trust.

(c) A trustee shall not modify a trust to that extent that:

- (1) the terms of the trust expressly prohibit the trustee's modification of the trust;
- (2) the modification is inconsistent with the settlor's intent or a material purpose of the trust;
- (3) the modification expands, restricts, eliminates, or otherwise alters any right or power that the settlor has under this chapter or the terms of the trust;
- (4) the modification adds a beneficiary, unless the modification is expressly permitted under the terms of the trust;
- (5) the modification reduces or eliminates a beneficiary's vested interest in the trust;
- (6) the modification reduces or eliminates a beneficiary's interest in the trust (other than a vested interest), unless the modification is consistent with the settlor's intent as clearly expressed under the terms of the trust;
- (7) the modification adds a power of withdrawal or a power of appointment, unless the modification is consistent with the settlor's intent as clearly expressed under the terms of the trust;
- (8) the modification reduces or eliminates a currently-exercisable power of appointment held by any person other than a beneficiary, unless the modification is consistent with the settlor's intent as clearly expressed under the terms of the trust; or
- (9) the modification modifies any of the dispositive terms of a charitable trust, unless the director of charitable trusts consents to the modification.

(d) If the trust or a transfer to the trust qualified for a deduction, credit, exclusion, or exemption for purposes of any income, gift, estate, or other tax, then a trustee may modify a trust only to that extent that the modification would not jeopardize that deduction, credit, exclusion, or exemption.

(e) If a settlor of the first trust or a beneficiary of the first trust is an applicant for public benefits or receives public benefits and the settlor's or beneficiary's eligibility or qualification for those public benefits are dependent on the nature and scope of his or her rights, powers, and interests in the first trust, then a trustee may modify a trust only to the extent that the modification would not jeopardize the settlor's or beneficiary's eligibility or qualification for those public benefits.

(f) A trustee does not have the power of modification under this section if the trustee is any of the following persons, either before or after the modification: (1) the settlor; (2) a beneficiary of the trust; (3) a person who, with respect to the settlor or a beneficiary of the trust, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986; or (4) a trustee whom any one or more of the settlor and the beneficiaries can remove if the persons exercising the removal power can appoint as a successor trustee (i) the settlor, (ii) a beneficiary of the trust, or (iii) a person who, with respect to the settlor or a beneficiary of the trust, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986.

(g) A trustee is not prohibited from exercising the power of modification, and the exercise of that power is not inconsistent with the settlor's intent, solely because:

- (1) the trust is irrevocable;
- (2) the terms of the trust provide that the trust may not be amended by the settlor; or

(3) the trust contains a spendthrift provision.

(h) A trustee of a charitable trust or a trust in which a charitable organization has a vested interest shall notify the director of charitable trusts of a proposed modification under this section, and the trustee shall provide that notice in writing at least 30 days before the effective date of that modification. A trustee of a noncharitable trust may notify a beneficiary of a proposed modification under this section, but does not have any duty to do so. The right of any beneficiary to object to a proposed modification terminates if the beneficiary does not notify the trustee of an objection within 60 days after the proposal was sent to the beneficiary but only if the proposal informed the beneficiary of the right to object and the time allowed for objection.

(i) A trustee's power of modification under this section may be expanded, restricted, eliminated, or otherwise altered by the terms of the trust. A nonjudicial settlement agreement made in accordance with RSA 564-B:1-111, however, may only restrict or eliminate a trustee's power of modification under this section. Except as otherwise provided under the terms of the trust, a trustee's power of modification under this section is in addition to any other powers conferred by the terms of the trust, this chapter, or the laws of this state. This section does not expand, restrict, eliminate, or otherwise alter any power that, with respect to a trust, a person holds in a nonfiduciary capacity.

(j) A trustee does not have a duty to modify a trust or an ongoing duty to consider whether to modify a trust. In exercising the power of modification under this section, a trustee has a duty to exercise the power in a manner that is consistent with the settlor's intent as expressed in the terms of the trust, and the trustee shall act in accordance with the trustee's duties under this chapter and the terms of the trust.

(k) A trustee may exercise the power of modification under this section without court approval, the consent of the settlor, or the consent of any of the beneficiaries of the trust. A trustee or any other interested person may ask a court to approve a trustee's exercise of the power of modification.

(l) For purposes of this section, "vested interest" means a vested interest as defined in RSA 564-B:4-418(g).

#### 564-B:4-420 Validated Trusts.

(a) A validated trust is valid, except to the extent that a person proves by clear and convincing evidence that the validated trust is invalid because of incapacity, mistake, fraud, duress, undue influence, or any other reason.

(b)(1) A trust that, on its face, meets the requirements of subsection (f) is a validated trust, unless a person proves by the preponderance of the evidence that the trust failed to meet one or more of the requirements of subsection (f).

(2) A qualified neurologist's certification is valid, unless a person proves by the preponderance of the evidence that the individual is not a qualified neurologist or the certification fails to meet the requirements of subsection (k).

(3) A qualified psychiatrist's certification is valid, unless a person proves by the preponderance of the evidence that the individual is not a qualified psychiatrist or the certification fails to meet the requirements of subsection (l).

(4) A qualified attorney's certification is valid, unless a person proves by the preponderance of the evidence that the individual is not a qualified attorney or the certification fails to meet the requirements of subsection (m).

(c) Unless the limitation period for contesting the validity of the trust has expired or the trust was declared valid under RSA 564-B:4-406(d), an interested person may commence a judicial proceeding to determine whether a trust is a validated trust. During the pendency of that proceeding, the limitation period for contesting the validity of the trust shall toll.

(d) A person who commences a judicial proceeding contesting the validity of a validated trust shall file with the court a cash or surety bond for purposes of ensuring the payment of anticipated costs and fees described in subsection (e). The court may waive or reduce the bond as the court determines is just and equitable. This subsection shall not apply to the director of charitable trusts or the department of health and human services.

(e) In any action contesting the validity of a validated trust, the nonprevailing party shall pay to the prevailing party the amount of the prevailing party's costs and reasonable attorney's fees. This subsection

does not apply to the director of charitable trusts or the department of health and human services; accordingly, neither the director of charitable trusts nor the department of health and human services shall have any obligation to pay a prevailing party's costs and fees, and neither the director of charitable trusts nor the department of health and human services is entitled to the payment of his, her, or its costs and fees by a nonprevailing party.

(f) For purposes of this section, a "validated trust" is a trust that meets the following 4 requirements:

(1) The settlor signed the trust instrument in the presence of 2 credible witnesses. The witnesses signed the trust instrument in the presence of the settlor and each other, and they attest to the settlor's signature. The settlor and the witnesses shall make an oath substantially in the following form:

We, \_\_\_\_\_ and \_\_\_\_\_, swear under oath that (1) the settlor signed this instrument as a trust instrument, (2) the settlor signed this instrument voluntarily for the purposes expressed in this instrument, (3) each of us signed at the settlor's request, in the settlor's presence, and in the presence of each other, and (4) to the best of our knowledge, at the time of the signing, the settlor was at least 18 years of age, had capacity to sign this trust instrument, and was not under duress or undue influence.

(2) After personally observing and evaluating the settlor, a qualified neurologist certifies makes a certification in accordance with subsection (k). The qualified neurologist shall personally observe and evaluate the settlor at the time that the settlor signs the trust instrument or within 10 days after the settlor signs the trust instrument and must make his or her certification on the date on which he or she personally observes and evaluates the settlor. The qualified neurologist's certification shall be made before a notary public or a justice of the peace and shall be affixed to the trust instrument.

(3) After personally observing and evaluating the settlor, a qualified psychiatrist makes a certification in accordance with subsection (l). The qualified psychiatrist shall personally observe and evaluate the settlor at the time that the settlor signs the trust instrument or within 10 days after the settlor signs the trust instrument and shall make his or her certification on the date on which he or she personally observes and evaluates the settlor. The qualified psychiatrist's certification shall be made before a notary public or a justice of the peace and shall be affixed to the trust instrument.

(4) After personally observing and evaluating the settlor, a qualified attorney makes a certification in accordance with subsection (m). The qualified attorney shall personally observe and evaluate the settlor at the time that the settlor signs the trust instrument or within 10 days after the settlor signs the trust instrument and shall make his or her certification on the date on which he or she personally observes and evaluates the settlor. The qualified attorney's certification shall be made before a notary public or a justice of the peace and shall be affixed to the trust instrument.

(g) For purposes of this section, a "qualified neurologist" means a medical doctor who is licensed to practice in this state and is board-certified in neurology by the American Board of Psychiatry and Neurology, Inc., or its successor organization.

(h) For purposes of this section, a "qualified psychiatrist" means a medical doctor who is licensed to practice in this state and is board-certified in psychiatry by the American Board of Psychiatry and Neurology, Inc., or its successor organization.

(i) For purposes of this section, a "qualified attorney" means an individual who is admitted to practice law in this state and has practiced law for 10 or more years. An attorney is eligible to be a qualified attorney even if he or she drafted the trust instrument or otherwise has an attorney-client relationship with the settlor.

(j) The following individuals are ineligible to serve as a qualified neurologist, a qualified psychiatrist, or a qualified attorney:

(1) any individual who acts as a witness for purposes of subsection (f)(1);

(2) any individual who, with respect to the settlor, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986;

(3) a spouse of an individual who, with respect to the settlor, is a related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986; or

(4) any beneficiary of the trust.

(k) The qualified neurologist's certification must be substantially in the following form:

I, \_\_\_\_\_, swear under oath that: (1) I am a qualified neurologist as defined in RSA 564-B:4-420(g), (2) on this day, I personally observed and evaluated \_\_\_\_\_, who is the settlor, and determined that (a) the settlor recalled the act of signing this instrument on \_\_\_\_\_, (b) the settlor appeared to understand the nature of his or her creating or amending the trust, (c) the settlor recalled the property of which he or she wished to dispose, (d) the settlor appeared to understand the property's general nature, and (e) the settlor appeared to bear in mind those who are his or her near relatives, and (3) based upon my evaluation, I certify that, in my opinion, the settlor had capacity to sign this instrument as a trust instrument at the time of my evaluation.

(l) The qualified psychiatrist's certification must be substantially in the following form:

I, \_\_\_\_\_, swear under oath that: (1) I am a qualified psychiatrist as defined in RSA 564-B:4-420(h), (2) on this day, I personally observed and evaluated \_\_\_\_\_, who is the settlor, and determined that (a) the settlor recalled the act of signing this instrument on \_\_\_\_\_, (b) the settlor appeared to understand the nature of his or her creating or amending the trust, (c) the settlor recalled the property of which he or she wished to dispose, (d) the settlor appeared to understand the property's general nature, (e) the settlor appeared to bear in mind those who are his or her near relatives, and (f) the settlor did not appear to have been induced to sign this instrument by fraud, duress, or undue influence, and (3) based upon my evaluation, I certify that, in my opinion, the settlor the settlor had capacity to sign this instrument as a trust instrument at the time of my evaluation and the settlor was not induced to sign this instrument by fraud, duress, or undue influence.

(m) The qualified attorney's certification must be substantially in the following form:

I, \_\_\_\_\_, swear under oath that: (1) I am a qualified attorney as defined in RSA 564-B:4-420(i), (2) on this day, I personally observed and evaluated \_\_\_\_\_ who is the settlor and determined that (a) the settlor recalled the act of signing this instrument on \_\_\_\_\_, (b) the settlor appeared to understand the nature of his or her creating or amending the trust, (c) the settlor recalled the property of which he or she wished to dispose, (d) the settlor appeared to understand the property's general nature, (e) the settlor appeared to bear in mind those who are his or her near relatives, and (f) the settlor did not appear to have been induced to sign this instrument by fraud, duress, or undue influence, and (3) based upon my evaluation, I certify that, in my opinion, the settlor had capacity to sign this instrument as a trust instrument at the time of my evaluation and the settlor was not induced to sign this instrument by fraud, duress, or undue influence.

(n) A validated trust may be modified or revoked in the same manner as a trust that is not a validated trust; however, an amendment to a validated trust is not a validated trust, unless the amendment meets the requirements of subsection (f). A settlor's failure to create a validated trust is not evidence or an admission that the trust is invalid for any reason.

(o) For purposes of this section, a "state" means a state of the United States or the District of Columbia, but excludes any territory or insular possession subject to the jurisdiction of the United States.

19 New Subparagraph; Uniform Trust Code; Creditor's Claim Against Settlor. Amend RSA 564-B:5-505(a) by inserting after subparagraph (3) the following new subparagraph:

(4) To the extent a claim against a settlor is barred under RSA 564-B:5-508, this section shall not apply to that claim.

20 Uniform Trust Code; Creditor's Claim Against Settlor. Amend RSA 564-B:5-505(a)(2) to read as follows:

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subparagraph shall not apply to:

**(A) a charitable remainder annuity trust within the meaning of section 664(d)(1) of the Internal Revenue Code of 1986;**

**(B) a charitable remainder unitrust within the meaning of section 664(d)(2) of the Internal Revenue Code of 1986;**

**(C) a trust described in section 2523(e) of the Internal Revenue Code of 1986;**

***(D) a trust described in section 2523(f) of the Internal Revenue Code of 1986;***

***[A](E) an irrevocable “special needs trust” established for a disabled person as described in 42 U.S.C. 1396p(d)(4) or similar federal law governing the transfer to such a trust; or***

***(B)(F)*** an irrevocable trust solely because of the existence or exercise of a discretionary power granted to the trustee by the terms of the trust, court order, ***nonjudicial settlement*** agreement ~~[of the qualified beneficiaries]~~, or any other provision of law (or the existence or exercise of a discretionary power granted to a trust advisor or trust protector by the terms of the trust, court order, ***nonjudicial settlement*** agreement ~~[of the qualified beneficiaries]~~, or any other provision of law, to direct the trustee) to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal which is payable by the settlor under the law imposing such tax.

21 Uniform Trust Code; Creditor’s Claim Against Settlor. RSA 564-B:5-505(b) is repealed and reenacted to read as follows:

(b) During only the period that the power may be exercised, the holder of a power of withdrawal is treated in the same manner under this section as the settlor of a revocable trust to the extent of the property subject to the power.

22 New Sections; Uniform Trust Code; Creditor’s Claims Against the Settlor. Amend RSA 564-B by inserting after sections 5-507 the following new sections:

564-B:5-508 Disposition of Claims Against the Settlor.

(a) Upon the death of a settlor of a trust, a trustee may dispose of a known claim against the settlor if the trustee sends to the claimant a notice described in subsection (c). For purposes of this section, a “known claim” is an actual or potential claim of which the trustee has knowledge, but excludes a contingent liability or a claim based on an event occurring after the date of the settlor’s death.

(b) Upon the death of a settlor of a trust, a trustee may dispose of any unknown claims against the settlor if the trustee publishes a notice described in subsection (c). The notice shall be published once in a newspaper of general circulation in the county in which, at the time of his or her death, the settlor was domiciled. For purposes of this section, an unknown claim is a claim that is not a known claim, but excludes a contingent liability or a claim based on an event occurring after the date of the settlor’s death.

(c) For purposes of subsections (a) and (b), the notice shall contain the following information and statements:

(1) The notice shall state that the settlor has died. The notice shall provide the trustee’s name and mailing address, and the notice shall provide the settlor’s name, the settlor’s place of domicile at the time of his or her death, and the settlor’s date of death.

(2) In the case of a notice under subsection (a), the notice shall state that any claim against the settlor will be barred unless a proceeding to enforce the claim is commenced within one year after the date on which the trustee sent the notice.

(3) In the case of a notice under subsection (b), the notice shall state that any claim against the settlor will be barred unless a proceeding to enforce the claim is commenced within one year after the publication date of the notice.

(d) If a trustee sends a notice in accordance with subsection (a), then a known claim against the settlor shall be barred unless the claimant commences a proceeding to enforce the claim within one year after the date on which the trustee sent the notice. If a trustee publishes a notice in accordance with subsection (b), then an unknown claim against the settlor shall be barred unless the claimant commences a proceeding to enforce the claim within one year after the publication date of the notice. The trustee and a claimant may agree to toll the limitation period under this subsection (d).

(e) To the extent that the trustee acts in good fact, the trustee is not liable to any person for exercising the discretion to dispose of claims under this section or not exercising that discretion.

(f) This section shall not bar any claim that the director of charitable trusts or the department of health and human services has the authority to enforce.

564-B:5-509 Disposition of Claims Against a Trust.

(a) Upon the termination of an irrevocable trust, a trustee may dispose of a known claim against the trust if the trustee sends to the claimant a notice described in subsection (c). For purposes of this section, a known claim is an actual or potential claim of which the trustee has knowledge, but excludes a contingent liability or a claim based on an event occurring after the date of the trust's termination.

(b) Upon the termination of an irrevocable trust, a trustee may dispose of any unknown claims against the trust if the trustee publishes a notice described in subsection (c). The notice shall be published once in a newspaper of general circulation in the county in which the trust's principal place of administration is located. For purposes of this section, an unknown claim is a claim that is not a known claim, but excludes a contingent liability or a claim based on an event occurring after the date of the trust's termination.

(c) For purposes of subsections (a) and (b), the notice shall contain the following information and statements:

(1) The notice shall state that the trust has terminated. The notice shall provide the trustee's name and mailing address, and the notice shall reasonably identify the trust.

(2) In the case of a notice under subsection (a), the notice shall state that any claim against the trust will be barred unless a proceeding to enforce the claim is commenced within one year after the date on which the trustee sent the notice.

(3) In the case of a notice under subsection (b), the notice shall state that any claim against the trust will be barred unless a proceeding to enforce the claim is commenced within one year after the publication date of the notice.

(d) If a trustee sends a notice in accordance with subsection (a), then a known claim against the trust shall be barred unless the claimant commences a proceeding to enforce the claim within one year after the date on which the trustee sent the notice. If a trustee publishes a notice in accordance with subsection (b), then an unknown claim against the trust shall be barred unless the claimant commences a proceeding to enforce the claim within one year after the publication date of the notice. The trustee and a claimant may agree to toll the limitation period under this subsection (d).

(e) A claim against the trust does not include:

(1) any claim against a trustee, trust advisor, or trust protector by a beneficiary, trustee, trust advisor, or trust protector for a breach of trust; or

(2) any claim against a trustee, trust advisor, or trust protector under RSA 564-B:10-1003(a).

(f) To the extent that the trustee acts in good fact, the trustee is not liable to any person for exercising the discretion to dispose of claims under this section or not exercising that discretion.

(g) This section shall not bar any claim that the director of charitable trusts or the department of health and human services has the authority to enforce.

#### 564-B:5-510 Limitation on Personal Liability of Beneficiaries.

(a) A beneficiary is not personally liable on a contract into which a trustee, trust advisor, or trust protector properly enters in the course of administering the trust, unless the beneficiary expressly agrees to be personally liable on that contract.

(b) A beneficiary is not personally liable for torts committed by a trustee, trust advisor, or trust protector in the course of administering the trust, unless the beneficiary is personally at fault.

(c) A beneficiary is not personally liable for claims or obligations arising from the ownership or control of trust property by a trustee, trust advisor, or trust protector, unless the beneficiary is personally at fault. Claims arising from the ownership or control of trust property include liability for any violation of environmental law.

(d) This section does not apply to a revocable trust to the extent that the beneficiary is the settlor of that trust.

(e) This section does not limit or otherwise affect a beneficiary's liability to return a distribution under the terms of the trust, the beneficiary's agreement with a trustee, or RSA 564-B:4-406(f), RSA 564-B:8-812, RSA 564-B:8-817(d), or any other provision of this chapter.

23 Limitation on Action Contesting Validity of Revocable Trusts; Distribution of Trust Property. RSA 564-B:6-604 is repealed and reenacted to read as follows:

564-B:6-604 Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust Property. If a trust that was revocable at the settlor's death, then a person may commence a judicial proceeding to contest the validity of that trust in accordance with RSA 564-B:4-406, and the trustee may proceed to distribute the trust property in accordance with RSA 564-B:4-406.

24 Uniform Trust Code; Directed Trusts. RSA 564-B:7-711 is repealed and reenacted to read as follows:

RSA 564-B:7-711 Directed Trusts.

(a) A directed trust is trust in which, under the terms of the trust, one or more persons have the power to direct an action by a trustee, trust advisor, or trust protector or the power to veto or consent to any actual or proposed action by a trustee, trust advisor, or trust protector. The action may relate to the investment of trust assets, distributions, or any other aspects of the trust's administration.

(b) A trustee is an excluded fiduciary to the extent that:

(1) under the terms of the trust, the trustee must follow the direction of a trust advisor, trust protector, cotrustee, or other person; and

(2) the trustee acts in accordance with that direction.

(c) A trust advisor or trust protector is an excluded fiduciary to the extent that:

(1) under the terms of the trust, the trust advisor or trust protector must follow the direction of a trustee, trust advisor, trust protector, or other person; and

(2) the trust advisor or trust protector acts in accordance with that direction.

25 Uniform Trust Code; Collecting Trust Property. Amend RSA 564-B:8-812 to read as follows:

564-B:8-812 Collecting Trust Property.

(a) A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee. [and]

(b) *Except as otherwise provided under the terms of the trust, the trustee shall take reasonable steps to redress a breach of trust known to the trustee to have been committed by a cotrustee, a former trustee, a trust advisor, or a trust protector.*

(c) *A person who receives a distribution from a trust is liable to return the distribution to the extent that a court subsequently determines that the person was not entitled to the distribution.*

26 Uniform Trust Code; Specific Powers of Trustees. Amend RSA 564-B:8-816(b) to read as follows:

(b)(1) *Without limiting the authority conveyed by RSA 564-B:8-815, a trustee of a charitable remainder annuity trust may pay an amount distributable to a beneficiary who is financially disabled by paying that amount to a separate trust if under the terms of that separate trust, the trustee must administer those amounts on behalf of that beneficiary and, upon the beneficiary's death, must distribute the remaining trust property either to:*

(A) *the beneficiary's estate; or*

(B) *after reimbursing the state for any Medicaid benefits provided to the individual, in accordance with the exercise of the beneficiary's general power of appointment.*

(2) *For purposes of this paragraph, "charitable remainder trust" means a charitable remainder annuity trust within the meaning of section 664(d)(1) of the Internal Revenue Code of 1986 or a charitable remainder unitrust within the meaning of section 664(d)(12) of the Internal Revenue Code of 1986.*

(3) *For the purposes of this paragraph "financially disabled" means financially disabled within the meaning of section 6511(h)(2)(A) of the Internal Revenue Code of 1986.*

(c) An executor or other fiduciary administering a will has all powers conferred by this section unless limited in the will, subject to the fiduciary duties prescribed by the will or by other laws of this state.

27 New subparagraph; Uniform Trust Code; Distribution upon Termination. Amend RSA 564-B:8-817 by inserting after subparagraph (c) the following new subparagraph:



(d) A person who receives a distribution from a trust that has terminated is liable to return the distribution to the extent that a court subsequently determines that the person was not entitled to the distribution.

28 Uniform Trust Code; Standard of Care; Portfolio Strategy. Amend RSA 564-B:9-902(c) to read as follows:

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

- (1) general economic conditions;
- (2) the possible effect of inflation or deflation;
- (3) the expected tax consequences of investment decisions or strategies;

(4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) the expected total return from income and the appreciation of capital;

(6) other resources of the beneficiaries;

**(7) any other trust if one or more of the beneficiaries also are beneficiaries of that trust;**

~~[(7)]~~ **(8)** needs for liquidity, regularity of income, and preservation or appreciation of capital; and

~~[(8)]~~ **(9)** an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

29 Uniform Trust Code; Reviewing Compliance. Amend RSA 564-B:9-905 to read as follows:

564-B:9-905 Reviewing Compliance.

**(a)** Compliance with the prudent investor rule is determined:

**(1)** in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight; **and**

**(2) by the trustee's conduct and not by the return realized from the investment and management of the trust assets.**

**(b) A trustee's failure to realize a return that equals or exceeds any financial index is not evidence of a trustee's failure to comply with the prudent investor rule.**

30 Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B:10-1014(c) to read as follows:

(c) Subsection (b) shall not apply to ***the extent that a person initiates, maintains, or cooperates in any of the following actions or proceedings:***

(1) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

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

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

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

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

**(6) A proceeding described in subsection (h).**

31 New Paragraphs; Uniform Trust Code; Enforcement of No-Contest Provision. Amend RSA 564-B:10-1014 by inserting after paragraph (e) the following new paragraphs:

(f) In the trustee's discretion, a trustee may suspend distributions to a beneficiary to the extent that, under a no-contest provision, the beneficiary's action potentially would have caused the reduction or elimination of the beneficiary's interest in the trust. In the trustee's discretion, the trustee may resume those distributions at any time or may continue to suspend those distributions until a court determines whether the beneficiary's interest in the trust has been reduced or eliminated.

(g) In the trustee's discretion, a trustee may decline to distribute trust property in accordance with a person's purported exercise of a power of appointment or a power of withdrawal to the extent that, under a no-contest provision, the person's action potentially would have caused the reduction or elimination of the power of appointment or the power of withdrawal. In the trustee's discretion, the trustee may make those distributions at any time or may continue to decline to make those distributions until a court determines whether the person's power of appointment or power of withdrawal has been reduced or eliminated.

(h) To the extent that the trustee acts in good faith, the trustee is not liable to any person for exercising the discretion under subsection (f) or (g) or not exercising that discretion. A trustee shall be presumed to have exercised the discretion in good faith if, in any judicial proceeding, an interested person other than the trustee has requested a determination of whether, under the no-contest provision, a beneficiary's interest in the trust, a person's power of appointment, or a person's power of withdrawal was reduced or eliminated. A trustee or any other interested person may commence a judicial proceeding for purposes of determining whether a trustee's exercise of discretion under subsection (f) or (g) was made in good faith.

32 Uniform Trust Code; Uniformity of Application and Construction. Amend RSA 564-B:11-1101 to read as follows:

564-B:11-1101 Uniformity of Application and Construction. ***In applying and construing this chapter, primary consideration shall be given to the preservation of the settlor's intent as expressed in the terms of the trust. Secondary consideration shall be given to the following objectives, in no order of priority among them: (1) the protection of the interests of the beneficiaries consistent with the settlor's intent as expressed in the terms of the trust; (2) the promotion of certainty concerning the duties and liabilities of trustees, trust advisors, and trust protectors, including the division of those duties and liabilities among trustees, trust advisors, and trust protectors; and (3) the promotion of the efficient administration of a trust. Tertiary consideration may*** ~~[In applying and construing this uniform act, consideration must]~~ ***be given to the [need to promote] promotion of uniformity of the law with respect to its subject matter among states that enact [it] the uniform act upon which this chapter is based.***

33 Uniform Trust Code; Powers of Trust Advisors and Trust Protectors. RSA 564-B:12-1201(b) is repealed and reenacted to read as follows:

(b) To the extent that a trust advisor or trust protector exercise a power in accordance with the terms of the trust, the trust advisor's or trust protector's action is binding upon all other persons.

34 Uniform Trust Code; Powers of Trust Advisors and Trust Protectors. Amend RSA 564-B:12-1202(a) to read as follows:

(a) ***Except as otherwise provided under the terms of the trust, a trust advisor of a noncharitable trust or trust protector of a noncharitable trust*** ~~[, other than a beneficiary,]~~ ***is a fiduciary with respect to each power granted to such trust advisor or trust protector. A trust advisor of a charitable trust or a trust protector of a charitable trust is a fiduciary with respect to each power granted to that trust advisor or trust protector. [In exercising any power or refraining from exercising any power,]*** ***Notwithstanding the breadth of discretion granted to a trust advisor or trust protector under the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," a trust advisor or trust protector must exercise a discretionary power and otherwise*** ~~[shall]~~ ***act in good faith and in accordance with the terms of the trust, [and] the purposes of the trust, and the interests of the beneficiaries.***

35 New Section; Uniform Principal and Income Act; Charitable Remainder Unitrusts. Amend RSA 564-C by inserting after section 4-407 the following new section:

564-C:4-407-a Charitable Remainder Unitrusts.

(a) In the case of a charitable remainder unitrust within the meaning of section 664(d)(2) of the Internal Revenue Code of 1986, in which the trust instrument contains an income exception described in section 664(d)(3) of the Internal Revenue Code of 1986, the trustee shall allocate receipts from each of the following assets in accordance with subsection (b), notwithstanding any other provision of this chapter:

- (1) an entity within the meaning of RSA 564-C:4-401(a);
- (2) an obligation to pay money to the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity;
- (3) a life insurance policy, unless the insured has died;
- (4) a private or commercial annuity, unless the payments within the meaning of RSA 564-C:4-409(a), have commenced;
- (5) a derivative within the meaning of RSA 564-C:4-414(a), except to the extent that the trustee accounts under RSA 564-C:4-403 for a transaction in that derivative; or
- (6) an asset-backed security within the meaning of RSA 564-C:4-415(a).

(b) A trustee shall allocate to income the amount in excess of the asset's purchase price or the asset's value when it was acquired. A trustee shall allocate to principal the balance of the money or other property received.

(c) This section shall apply to any charitable remainder unitrust created before, on, or after the effective date of this section.

36 Qualified Dispositions in Trust Act; Trust Instrument Defined. RSA 564-D:2 is repealed and reenacted to read as follows:

564-D:2 Trust Instrument.

I. For the purposes of this chapter, a trust instrument is a trust instrument, within the meaning of RSA 564-B:1-103(20), that meets the following requirements:

- (a) The trust instrument appoints a qualified trustee for the property that is the subject of a disposition;
- (b) The trust instrument expressly provides that this state's laws govern the validity, construction, and administration of the trust;
- (c) The trust instrument is irrevocable; and
- (d) The trust instrument contains a spendthrift provision within the meaning of RSA 564-B:1-103(14).

II. For purposes of subparagraph I(c), a trust instrument is revocable only to the extent that (1) the transferor can revoke the trust without the consent of the qualified trustee or any person holding an adverse interest and, upon the trust's revocation, the transferor would be a distributee of trust property or (2) the transferor can appoint the trust property, without the consent of the qualified trustee or any person holding an adverse interest, to any one or more of the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate.

III. Except as provided in paragraph II, a trust instrument is irrevocable regardless of whether the transferor retained any right, power, or interest, including, without limitation, the following rights, powers, and interests:

- (a) A transferor's power to veto a distribution from the trust;
- (b) A power of appointment;
- (c) The transferor's potential or actual receipt or use of income or principal, including, without limitation, by reason of (i) a right to income or principal, (ii) a right to receive an annual amount equal to a percentage, as set forth in the trust instrument, of the initial value of the trust property or the value of the trust property as determined from time to time, (iii) a qualified trustee's exercise of its discretion to distribute income or principal, whether or not subject to a standard, or (iv) a qualified trustee acting in accordance with the direction of a trust advisor described in RSA 564-D:4;
- (d) The transferor's potential or actual receipt of income or principal from a charitable remainder annuity trust within the meaning of section 664(d)(1) of the Internal Revenue Code of 1986 or a charitable remainder unitrust within the meaning of section 664(d)(2) of the Internal Revenue Code of 1986;
- (e) The transferor's right to release all or any part of the transferor's retained interest in a charitable remainder unitrust or charitable remainder annuity trust in favor of one or more charitable organizations that have an interest in that trust;

(f) The transferor's potential or actual use of real property held under a personal residence trust as described in section 2702(a)(3)(A)(ii) of the Internal Revenue Code of 1986;

(g) The transferor's potential or actual receipt or use of a qualified interest within the meaning of section 2702(b) of the Internal Revenue Code of 1986;

(h) The transferor's potential or actual receipt of income or principal to pay income taxes on the trust's income, as determined for purposes of those taxes, to the extent that the trust instrument expressly provides that (i) the trustee must pay those amounts to the transferor or the taxing authority, (ii) the qualified trustee has the discretion to pay those amounts to the transferor or the taxing authority, or (iii) a trust advisor or trust protector has the power to direct the qualified trustee to pay those amounts to the transferor or the taxing authority;

(i) The transferor's right to remove a trustee, trust advisor, or trust protector;

(j) The transferor's right to appoint an additional or successor trustee, trust advisor, or trust protector if, with respect to the transferor, the trustee, trust advisor, or trust protector is not related or subordinate party within the meaning of section 672(c) of the Internal Revenue Code of 1986; and

(k) After the transferor's death, a qualified trustee may or must pay all or any part of the transferor's debts outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate.

IV. A disposition by a trustee who is not a qualified trustee to a qualified trustee will not fail to qualify a qualified disposition solely because the trust instrument fails to meet the requirements of subparagraph I(b).

V. A spendthrift provision within the meaning of RSA 564-B:1-103(17) is a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law, within the meaning of 11 U.S.C. section 541(c)(2).

37 Qualified Dispositions in Trust Act; Transferor May Serve as Trust Advisor. RSA 564-D:5 is repealed and reenacted to read as follows:

564-D:5 Qualified Dispositions in Trust Act; Transferor May Serve as Trust Advisor. With respect to a trust that includes property that is subject to a disposition, a transferor or any other person may serve as a trust advisor or trust protector, including a trust advisor described in RSA 564-D:4. If a transferor serves as a trust advisor or trust protector, then the transferor may have any right or power, except any right or power that, under RSA 564-D:2, would cause the trust to be revocable.

38 Qualified Dispositions in Trust Act; Transferor May Serve as Trust Advisor. Amend RSA 564-D:8 to read as follows:

564-D:8 Transferor's Powers and Rights. A qualified disposition is subject to RSA 564-D:9 to RSA 564-D:14, inclusive, notwithstanding a transferor's retention of any or all of the powers and rights ~~described in RSA 564-D:2, H~~ **that, under RSA 564-D:2, the transferor may retain without causing the trust to be revocable** or the transferor's service as trust advisor pursuant to RSA 564-D:5. The transferor has only such powers and rights as are conferred by the trust instrument. Except as permitted by RSA 564-D:2 and RSA 564-D:5, a transferor has no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.

39 Qualified Dispositions in Trust Act; Qualified Disposition Made by Transferor Who Is Trustee. Amend RSA 564-D:11 to read as follows:

564-D:11 Qualified Disposition Made by Transferor Who is Trustee. A qualified disposition that is made by means of a disposition by a transferor who is a trustee is deemed to have been made as of the time, whether before, on, or after the effective date of this chapter, the property that is the subject of the qualified disposition was originally transferred to the transferor (or any predecessor trustee), in a form that meets the requirements of ~~[RSA 564-D:2, I(b), I(c), and H]~~ **RSA 564-D:2, I(a), I(c), and I(d).**

40 Repeal. The following are repealed:

I. RSA 564:24, II relative to the rule against perpetuities.

II. RSA 564-B:10-1005(e), relative to trusts.

III. RSA 564-B:12-1206(e), relative to trusts.

41 Effective Date. This act shall take effect July 1, 2014.

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 331-FN, relative to waivers for out-of-state businesses and employees in a state of emergency. Ought to Pass with Amendment, Vote 5-0. Senator Bradley for the committee.

Commerce  
February 13, 2014  
2014-0567s  
05/04

#### **Amendment to SB 331-FN**

Amend RSA 319-D:3, I as inserted by section 1 of the bill by replacing it with the following:

I. An out-of-state business shall provide notification to the secretary of state as soon as practicable after entry to the state during a disaster period that the out-of-state business meets all applicable licensing and certification requirements in its state of origin and that the business is in the state for purposes of responding to the declared state disaster or emergency. The out-of-state business shall provide to the secretary of state information related to the out-of-state business including but not limited to the following:

- (a) Name;
- (b) State of domicile;
- (c) Principal business address;
- (d) Taxpayer identification number;
- (e) Relevant license and registration information for each state in which the business operates;
- (f) The date when the out-of-state business entered the state; and
- (g) Contact information while the out-of-state business is in this state.

Amend RSA 319-D as inserted by section 1 of the bill by inserting after RSA 319-D:3 the following new section:

319-D:4 Exemption. This chapter shall not apply to the insurance department or businesses licensed or registered with the department.

Sen. Bradley moved to Lay on the Table SB 331. Adopted.

SB 351, repealing the requirement for notice of non-compete and non-piracy agreements prior to the start of employment. Ought to Pass with Amendment, Vote 5-0. Senator Sanborn for the committee.

Commerce  
February 13, 2014  
2014-0566s  
06/01

#### **Amendment to SB 351**

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

AN ACT relative to the requirement for notice of non-compete agreements prior to the start of employment.

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

1 Non-Compete Agreements. Amend the subdivision heading preceding RSA 275:70 to read as follows:

Non-Compete Agreements

2 Notice of Non-Compete Agreements. RSA 275:70 is repealed and reenacted to read as follows:

275:70 Non-Compete Agreements. Any employer who requires an employee who has not previously been employed by the employer to execute a non-compete agreement as a condition of employment shall provide a

copy of such agreement to the potential employee prior to the employee's acceptance of an offer of employment. A non-compete agreement that has not been disclosed to an employee as required by this section shall not be enforceable against the employee, but all other provisions of any employment, confidentiality, non-disclosure, trade secret, intellectual property assignment, or any other type of employment agreement or provision shall remain in full force and effect.

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

2014-0566s

#### AMENDED ANALYSIS

This bill modifies a requirement that an employer provide a copy of a non-compete agreement to a potential employee when making an offer of employment.

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 379, relative to procedures for accepting settlement offers. Interim Study, Vote 4-1. Senator Hosmer for the committee.

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

SB 383, relative to certain claims available under the medical payments portion of a motor vehicle liability policy. Inexpedient to Legislate, Vote 5-0. Senator Cataldo for the committee.

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

#### HEALTH, EDUCATION AND HUMAN SERVICES

SB 322, relative to the renomination of teachers. Inexpedient to Legislate, Vote 3-2. Senator Sanborn for the committee.

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

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

The following Senators voted Yes: Forrester, Bradley, Cataldo, Odell, Sanborn, Bragdon, Carson, Boutin, Reagan, Rausch, Prescott, Stiles, Morse.

The following Senators voted No: Woodburn, Watters, Pierce, Hosmer, Kelly, Gilmour, Lasky, Larsen, Soucy, D'Allesandro, Fuller Clark.

Yeas: 13 - Nays: 11

Adopted.

#### JUDICIARY

SB 319-FN, relative to access to reproductive health care facilities. Inexpedient to Legislate, Vote 3-2. Senator Cataldo for the committee.

Sen. Cataldo moved to Lay on the Table SB 319-FN.

The question is on the motion to Lay on the Table SB 319-FN.

A roll call was requested by Sen. Soucy, seconded by Sen. Lasky.

The following Senators voted Yes: Forrester, Cataldo, Sanborn, Bragdon, Carson, Boutin, Reagan, Rausch, Prescott, Morse.

The following Senators voted No: Woodburn, Bradley, Watters, Pierce, Hosmer, Odell, Kelly, Gilmour, Lasky, Larsen, Soucy, D'Allesandro, Fuller Clark, Stiles.

Yeas: 10 - Nays: 14

Failed.

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. Soucy.

The following Senators voted Yes: Forrester, Cataldo, Sanborn, Bragdon, Carson, Boutin, Reagan, Rausch, Prescott, Morse.

The following Senators voted No: Woodburn, Bradley, Watters, Pierce, Hosmer, Odell, Kelly, Gilmour, Lasky, Larsen, Soucy, D'Allesandro, Fuller Clark, Stiles.

Yeas: 10 - Nays: 14

Failed.

Sen. Soucy moved Ought to Pass.

The question is on the motion of Ought to Pass.

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

The following Senators voted Yes: Woodburn, Bradley, Watters, Pierce, Hosmer, Odell, Kelly, Gilmour, Lasky, Larsen, Reagan, Soucy, D'Allesandro, Fuller Clark, Stiles.

The following Senators voted No: Forrester, Cataldo, Sanborn, Bragdon, Carson, Boutin, Rausch, Prescott, Morse.

Yeas: 15 - Nays: 9

Adopted, bill ordered to Third Reading.

#### ENERGY AND NATURAL RESOURCES

SB 252, relative to the management of hazardous waste. Interim Study, Vote 5-0. Senator Bradley for the committee.

Sen. Bradley moved to Lay on the Table SB 252. Adopted.

SB 336-FN, prohibiting the taking of deer from baited areas on state-owned lands. Ought to Pass, Vote 4-1. Senator Odell for the committee.

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

SB 363, relative to insurance coverage for facilities for the Winnepesaukee River basin control. Ought to Pass, Vote 5-0. Senator Fuller Clark for the committee.

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

SB 392, establishing a commission to study rural affairs. Ought to Pass with Amendment, Vote 5-0. Senator Woodburn for the committee.

Energy and Natural Resources

February 13, 2014

2014-0556s

05/10

#### **Amendment to SB 392**

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

AN ACT establishing a commission on rural affairs.

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

1 New Section; Commission on Rural Affairs. Amend RSA 9-A by inserting after section 4 the following new section:

9-A:5 Commission on Rural Affairs Established. There is established a commission to study and make recommendations relating to public policy that specifically affects rural areas and rural people.

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

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

(b) One member of the house of representatives, appointed by the speaker of the house of representatives.

(c) Three public members, appointed by the governor.

(d) Two members appointed by the chancellor of the university system of New Hampshire.

II. Members of the commission shall serve without compensation, except that legislative members shall receive mileage at the legislative rate when attending to the duties of the commission.

III. The commission shall study and recommend actions:

(a) To expand economic and social opportunities for rural communities and their residents.

(b) To promote equal treatment of and effective delivery to rural areas by government agencies and the private sector.

(c) To assess the effectiveness of programs designed to promote rural viability.

(d) To provide a collective voice for rural areas.

IV. The commission shall have the authority to accept and expend funds from any public or private source, including private gifts, grants, and donations, provided that the funds shall be used exclusively to further the purposes of the commission.

V. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Four members of the commission shall constitute a quorum.

VI. Beginning November 1, 2014 and every 2 years thereafter, the commission shall submit a biennial report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

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

2014-0556s

#### AMENDED ANALYSIS

This bill establishes a commission on rural affairs.

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 400-FN, relative to the penalty for violations of the taking of American eels. Ought to Pass, Vote 5-0. Senator Fuller Clark for the committee.

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

SB 411-FN, relative to the labeling of genetically engineered foods. Interim Study, Vote 5-0. Senator Fuller Clark for the committee.

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

#### FINANCE

SB 261, allowing the commissioner of administrative services to administer the health benefits of the retirees of the State Employees' Association of New Hampshire. Ought to Pass with Amendment, Vote 6-0. Senator Bragdon for the committee.

Senate Finance

February 12, 2014

2014-0524s

10/04

#### Amendment to SB 261

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

AN ACT allowing the commissioner of administrative services to administer the health benefits of certain retirees of the State Employees' Association of New Hampshire.



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

1 State Employees Group Insurance; Administration. Amend RSA 21-I:27 to read as follows:

21-I:27 Administration.

**I.** Administration of the state employees permanent group life and state employees and retirees group hospitalization, hospital medical care, surgical care and other medical and surgical insurance benefits shall be the responsibility of the commissioner of administrative services. If the commissioner of administrative services concludes that inclusion of the university system of New Hampshire in the health plan would best serve the interests of the state employees and the state of New Hampshire, then the commissioner shall, with the consent of the university system board of trustees, administer the health benefits of the university system of New Hampshire employees as set forth in this subdivision.

**II.** The commissioner may administer the health benefits of the employees of the State Employees' Association of New Hampshire, Inc., SEIU, Local 1984, ~~[AFL-CIO, CLC,]~~, **and certain retirees of the Association who were in the plan as of July 1, 2013**, as set forth in this subdivision until such time as the commissioner concludes that the inclusion of the State Employees' Association **employees and certain retirees** does not serve the interests of the state employees and the state of New Hampshire. **The State Employees' Association shall timely pay to the department of administrative services the cost of the premium for its participating employees and retirees in the plan.**

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

2014-0524s

#### AMENDED ANALYSIS

This bill authorizes the commissioner of the department of administrative services to administer the health benefits of certain retirees of the State Employees' Association of New Hampshire who were in the plan as of 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 283-FN, relative to disposition of funds obtained by the attorney general. Ought to Pass with Amendment, Vote 6-0. Senator Larsen for the committee.

Senate Finance  
February 12, 2014  
2014-0528s  
05/10

#### Amendment to SB 283-FN

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

1 New Section; Disposition of Funds Obtained by the Attorney General. Amend RSA 7 by inserting after section 6-d the following new section:

7:6-e Disposition of Funds Obtained by the Attorney General.

**I.** No money received by the attorney general, on behalf of the state or its citizens as a result of any civil judgment, settlement of a claim, settlement of threatened litigation, suit, petition, or other action or threatened action, shall be expended or otherwise distributed until authorized by the fiscal committee of the general court, except in those instances where the disposition of money received by the attorney general is already provided for in statute. Additionally, whenever the department of justice receives judgment or settlement money in excess of \$1,000,000, the first 10 percent of those funds shall be transferred to the revenue stabilization reserve account established in RSA 9:13-e.

**II.** Upon resolving a matter described in paragraph I, the attorney general shall promptly report to the fiscal committee of the general court any money received under this section. All reports under this paragraph shall include, but shall not be limited to:

(a) The date of the judgment or settlement.

- (b) The reason for the judgment or settlement.
- (c) The purpose for which the judgment or settlement is to be used.
- (d) The amount of the judgment or settlement.
- (e) An accounting of the allocation of each judgment or settlement.

III. This section shall not apply to fines received by the attorney general in criminal cases, penalty assessment funds, drug forfeiture funds as provided in RSA 318-B:17-b through RSA 318-B:17-d, fines or civil penalties authorized by state law as a result of enforcement actions taken by state agencies or the attorney general, and money received on behalf of a victim or the state as restitution.

2014-0528s

#### AMENDED ANALYSIS

This bill:

I. Requires the fiscal committee of the general court to approve the expenditure or distribution of monetary settlements received by the state.

II. Requires the deposit of a portion of judgments over a specified amount in the revenue stabilization reserve account.

III. Requires the attorney general to submit a report to the fiscal committee of the general court relative to all legal settlements received by the state.

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

Sen. Forrester offered a floor amendment.

Sen. Forrester, Dist.2

February 14, 2014

2014-0589s

09/04

#### Floor Amendment to SB 283-FN

Amend the bill by inserting after section 1 the following:

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

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

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

SB 339-FN, authorizing the department of administrative services to contract for a credit card affinity program in which fees received are directed to offset the retirement system's unfunded liability. Ought to Pass with Amendment, Vote 5-1. Senator D'Allesandro for the committee.

Senate Finance

February 12, 2014

2014-0522s

10/04

#### Amendment to SB 339-FN

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

AN ACT relative to instituting a credit card affinity program in which fees received are directed to offset the retirement system's unfunded liability.

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

1 Commissioner of Administrative Services; Feasibility; State Credit Card Affinity Program.

I. The commissioner of administrative services shall, not later than July 1, 2014, issue a letter of inquiry to appropriate banks, credit unions, and financial service companies seeking interest in entering into a contractual relationship with the state to provide and operate a credit card affinity program as described in this act. Based on the responses received from the letters of inquiry, the commissioner shall assess the initial

requirements, time frames, and continuing state responsibilities that are necessary in order to institute the establishment of a state credit card affinity program which shall require no additional state appropriation other than costs that are recoverable from fees and other revenues provided for in an agreement.

II. If the commissioner determines that a state credit card affinity program may be established meeting the criteria of paragraph I, the commissioner shall further determine the feasibility for participation from New Hampshire civic organizations and associations, and state and local governmental agencies, including but not limited to the administration and membership of the New Hampshire retirement system, the New Hampshire Municipal Association, and the New Hampshire School Boards Association.

III. If the commissioner positively determines the likelihood that instituting a credit card affinity program for the purpose of dedicating the proceeds to a reduction in the retirement system's unfunded liability would have sufficient interest and benefit to the state, the commissioner may issue a request for proposals as provided in RSA 21-I:95. The commissioner shall provide a report detailing any findings and relevant data to the senate president, the speaker of the house of representatives, and the chairpersons of the senate and house finance committees.

2 New Subdivision; State Credit Card Affinity Program. Amend RSA 21-I by inserting after section 94 the following new subdivision:

#### State Credit Card Affinity Program

##### 21-I:95 State Credit Card Affinity Program; Administration.

I. Upon a determination by the commissioner of administrative services of the feasibility of a state credit card affinity program which meets the requirements of this subdivision and the minimum enrollment required of financial services companies administering a credit card affinity program, the commissioner shall have the authority to enter into an agreement with a credit card issuer for the issuance of a co-branded or affinity credit card. The credit card issuer and terms of the co-branded card most favorable to the purpose described in paragraph II shall be selected following a request for proposals and awarded through competitive bidding.

II. All fees and other revenue attributable to payments made to the state by the credit card issuer through a co-branding or affinity agreement shall not be general funds of the state but, after deducting the necessary costs of administration by the department of administrative services, shall be paid to the board of trustees of the New Hampshire retirement system and dedicated to an annual reduction in the retirement system's unfunded liability determined under RSA 100-A:16, II.

3 Retirement System; Financing; Annual Offset Against Unfunded Accrued Liability. Amend RSA 100-A:16, II(e) to read as follows:

(e) Immediately following the actuarial valuation prepared as of June 30 of each fiscal year, the board shall have an actuary determine the amount of the unfunded accrued liability for each member classification, ***proportionally reduced using sums dedicated as provided in RSA 21-I:95, II***, as the amount of the total liabilities of the state annuity accumulation fund on account of such classification which is not dischargeable by the total of the funds in hand to the credit of the state annuity accumulation fund on account of such classification, and the aforesaid normal contributions to be made on account of the members in such classification during the remainder of their active service. The amount so determined with respect to each member classification shall be known as the "unfunded accrued liability" with respect to such classification. On the basis of each such unfunded accrued liability, the board shall have an actuary determine the level annual contribution required to discharge such amount over a period of 30 years or the maximum period allowed by standards adopted by the Government Accounting Standards Board, whichever is less.

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

2014-0522s

#### AMENDED ANALYSIS

This bill requires the commissioner of administrative services to determine the feasibility of contracting with a credit card issuer to establish a credit card affinity program in which the fees received by the state are dedicated to reducing the retirement system's unfunded liability, prior to instituting such a program.

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

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

Sen. Soucy is in opposition to the motion of Ought to Pass with Amendment on SB 339-FN.

#### JUDICIARY

SB 323-FN, relative to imprisonment in a county correctional facility. Ought to Pass with Amendment, Vote 4-0. Senator Carson for the committee.

Senate Judiciary  
February 13, 2014  
2014-0561s  
04/10

#### Amendment to SB 323-FN

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

1 County Department of Corrections; Place of Commitment. Amend RSA 30-B:15, I to read as follows:

I. For any person sentenced to a term of imprisonment of up to 12 months, the expense of lodging such person in a county correctional facility shall be a charge upon the county in which the offense was committed. For persons sentenced to terms of imprisonment in a county correctional facility *for a felony conviction* that exceed 12 months, *including any consecutive felony sentences imposed which in the aggregate exceed 12 months*, the first 12-month sentence shall be a charge upon the county. Any sentence exceeding 12 months of imprisonment, *including any consecutive felony sentences imposed which in the aggregate exceed 12 months*, shall be a charge upon the state.

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

2014-0561s

#### AMENDED ANALYSIS

This bill specifies the financial responsibilities for counties and the state involving persons convicted of felony offenses who are sentenced to a county correctional facility for a term exceeding 12 months.

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 the Committee on Finance (Rule 4-5).

SB 352, relative to equity jurisdiction of the judicial branch family division. Inexpedient to Legislate, Vote 4-0. Senator Cataldo for the committee.

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

SB 373-FN, relative to procedure and jurisdiction of the superior courts. Ought to Pass with Amendment, Vote 4-0. Senator Carson for the committee.

Senate Judiciary  
February 13, 2014  
2014-0562s  
03/09

#### Amendment to SB 373-FN

Amend the bill by replacing section 31 with the following:

31 Superior Court; Jurisdiction. Amend RSA 491:7 to read as follows:

491:7 Jurisdiction. The superior court shall take cognizance of civil actions and pleas, real, personal, and mixed, according to the course of the common law, except such actions as are required to be brought in *the family division under RSA 490-D*, district courts under RSA 502-A, or the probate courts under RSA 547; of writs of mandamus and quo warranto and of proceedings in relation thereto; ~~of actions for support for children of unwed parents;~~ of petition and appeals relating to highways and property taken therefor and for other public use; of actions commenced in the probate or district courts where a right to jury trial is guaranteed by the constitution; of actions commenced in a district court which are transferable by statute to the superior court; of suits in equity under RSA 498:1; ~~of petitions of divorce, nullity of marriage, alimony, custody of children and allowance to wife from husband's property for support of herself and children;~~ of petitions for new trials; of petitions for the redemption and foreclosure of mortgages; of all other proceedings and matters to be entered in, or heard at, said court by special provisions of law; and of all other proceedings and matters cognizable therein for which other special provision is not made.

Amend the bill by replacing all after section 45 with the following:

46 Oath. Amend RSA 311:6 to read as follows:

311:6 Oath. Every attorney admitted to practice shall take and subscribe~~[, in open court,]~~ the oaths to support the constitution of this state and of the United States, and the oath of office in the following form: You solemnly swear or affirm that you will do no falsehood, nor consent that any be done in the court, and if you know of any, that you will give knowledge thereof to the justices of the court, or some of them, that it may be reformed; that you will not wittingly or willingly promote, sue or procure to be sued any false or unlawful suit, nor consent to the same; that you will delay no person for lucre or malice, and will act in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity as well to the court as to your client. *So help you God or under the pains and penalty of perjury. **The supreme court shall have authority to determine by court rule the manner in which the oaths shall be administered.***

47 Effective Date.

I. Section 43 of this act shall take effect January 1, 2015.

II. The remainder of 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.

#### PUBLIC AND MUNICIPAL AFFAIRS

SB 212, relative to the Honor and Remember Flag as an official symbol to recognize and honor fallen members of the armed forces. Ought to Pass, Vote 4-0. Senator Pierce for the committee.

Sen. Pierce offered a floor amendment.

Sen. Pierce, Dist. 5  
Sen. Boutin, Dist. 16  
Sen. Forrester, Dist. 2  
Sen. Stiles, Dist. 24  
Sen. Lasky, Dist. 13  
February 19, 2014  
2014-0648s  
09/03

#### Floor Amendment to SB 212

Amend the introductory paragraph of RSA 3:3-d as inserted by section 2 of the bill by replacing it with the following:

3:3-d Display of Honor and Remember Flag. The Honor and Remember Flag shall be displayed by the state daily at the New Hampshire state veterans cemetery in Boscawen, above the state house in Concord immediately below the state flag on a day designated by the governor when there is a New Hampshire member of the Armed Forces who died in the line of duty, and on the following days:

Amend the bill by replacing section 3 with the following:

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

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

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

A roll call was requested by Sen. Cataldo.

Recess. Out of recess.

Sen. Cataldo withdrew his request for a roll call.

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

#### TRANSPORTATION

SB 231-FN, relative to regulation of tractors and low-speed utility vehicles. Ought to Pass with Amendment, Vote 4-0. Senator Gilmour for the committee.

Senate Transportation  
 February 12, 2014  
 2014-0529s  
 03/10

### Amendment to SB 231-FN

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

AN ACT relative to regulation of tractors and utility vehicles.

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

1 New Section; Agricultural/Industrial Utility Vehicle; Definition. Amend RSA 259 by inserting after section 2 the following new section:

259:2-a Agricultural/Industrial Utility Vehicle. "Agricultural/industrial utility vehicle" shall mean any vehicle, including an OHRV, with 4 or 6 wheels, an internal combustion engine or electric motor, or both, and high-pressure tires, equipped in accordance with the provisions of RSA 266:116, that is capable of carrying not more than 4 occupants, has a load capacity of 1,500 pounds or less, and is used exclusively for farming, agricultural, or light industrial uses, but not used for recreational purposes or access to trails, and limited to ways open to such vehicles and having posted speed limits of 35 miles per hour or less, within a 10 mile radius from the main entrance to the farm or a 2 mile radius from the entrance to the light industrial complex or construction site, and under any other special conditions established by the authority controlling the way. Any person operating such vehicle on a way shall hold a valid driver's license.

2 New Section; Light Industrial Use; Definition. Amend RSA 259 by inserting after section 49 the following new section:

259:49-a Light Industrial Use. "Light industrial use" shall mean manufacturing and distribution of products for wholesale or retail use where the operation includes the need for access to contiguous or nearby warehouses, showrooms, construction sites, or manufacturing facilities including crossing a way or driving on a way where the route or crossing is approved by the government authority having control of the way.

3 New Section; Recreation Utility Vehicle; Definition. Amend RSA 259 by inserting after section 84-a the following new section:

259:84-b Recreation Utility Vehicle. "Recreation utility vehicle" shall mean a vehicle, including an OHRV, with 4 or 6 wheels, an internal combustion engine or electric motor, or both, a load capacity of 1,500 pounds or less, and high-pressure tires, that is capable of carrying not more than 6 occupants plus the load, and is used for recreational purposes on and off trails but not for agricultural, farming, or light industrial purposes, and that complies with the provisions of RSA 266:116, and is limited to ways open to such vehicles and under such conditions as established by the authority controlling the way. Any person operating such vehicle on a way shall hold a valid driver's license.

4 Tractor; Definition. Amend RSA 259:108 to read as follows:

259:108 Tractor. "Tractor" shall mean[:

I.] any self-propelled **agricultural** vehicle designed or used as a traveling power plant or for drawing other vehicles, but having no provision for carrying **passengers or** a load **other than attached implements such as snowplows, tool boxes, or bucket loaders**, but shall not include [off-highway recreational vehicles not designed and equipped for highway use.

~~H. Any low-speed utility vehicle. "Low-speed utility vehicle" shall mean any vehicle with 4 wheels, an internal combustion or electric motor, or both, a load capacity of 1,500 pounds or less, and high-pressure tires, that is capable of carrying not more than 2 occupants plus the load, is capable of speeds 30 miles per hour or less on level ground, and is used for agricultural or light industrial use]~~ **vehicles used for on or off-road recreational purposes.**

5 Utility Vehicles. Amend the subdivision heading preceding RSA 265:160 and RSA 265:160 to read as follows:

Special Rules for [Low-Speed] Utility Vehicles

265:160 [Low-Speed] Utility Vehicles; **Operation on Ways Restricted**. No person shall operate a [low-speed] utility vehicle, [as defined in RSA 259:108, H] **including an agricultural/industrial utility vehicle**

*as defined in RSA 259:2-a, or a recreation utility vehicle as defined in RSA 259:84-b, except on a way where the posted speed limit is 35 miles per hour or less, and the route or crossing being used is open to such vehicles and at such times and under any other special conditions established by the government authority having control of the way. Any person operating such a vehicle upon a way shall hold a valid driver's license. [No person shall operate such vehicle more than 25 miles from the registrant's residence or place of business.]*

6 Equipment Required for Utility Vehicles. Amend the subdivision heading preceding RSA 266:116 and RSA 266:116 to read as follows:

[Low-Speed] Utility Vehicles

266:116 Equipment Required for [Low-Speed] Utility Vehicles. ~~[A low-speed utility vehicle as defined in RSA 259:108, II shall be equipped in accordance with 49 C.F.R. section 571.500. This equipment shall include headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, a parking brake, a rearview exterior mirror, a windshield, windshield wiper, brakes, seat belts, a vehicle identification number, and such other equipment as is required by federal regulations. Such vehicle may also use a flashing amber warning light when operating on a way.]~~ ***All vehicle safety equipment required under federal regulations shall be present and in working condition on an agricultural/industrial utility vehicle as defined in RSA 259:2-a, except any such equipment with which the vehicle as originally manufactured was not equipped. All federal vehicle safety equipment required on a recreation utility vehicle as defined in RSA 259:84-b shall be present and in working condition. All equipment required by applicable state laws and rules adopted by the department under RSA 541-A shall be present and in working condition on an agricultural/utility vehicle or recreation utility vehicle. Such vehicles shall display an authorized low speed vehicle warning sign on the rear of the vehicle and may also use a flashing amber warning light when operating on a way.***

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

2014-0529s

#### AMENDED ANALYSIS

This bill modifies the definition of tractor and the equipment and operation requirements for utility vehicles.

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

Sen. Gilmour offered a floor amendment.

Sen. Gilmour, Dist. 12

February 12, 2014

2014-0530s

03/10

#### Floor Amendment to SB 231-FN

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

AN ACT relative to regulation of tractors and utility vehicles.

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

1 New Section; Agricultural/Industrial Utility Vehicle; Definition. Amend RSA 259 by inserting after section 2 the following new section:

259:2-a Agricultural/Industrial Utility Vehicle. "Agricultural/industrial utility vehicle" shall mean any vehicle, including an OHRV, with 4 or 6 wheels, an internal combustion engine or electric motor, or both, and high-pressure tires, equipped in accordance with the provisions of RSA 266:116, that is capable of carrying not more than 4 occupants, has a load capacity of 1,500 pounds or less, and is used exclusively for farming, agricultural, or light industrial uses, but not used for recreational purposes or access to trails, and limited to ways open to such vehicles and having posted speed limits of 35 miles per hour or less, within a 10 mile radius from the main entrance to the farm or a 2 mile radius from the entrance to the light industrial complex or construction site, and under any other special conditions established by the authority controlling the way.

2 New Section; Light Industrial Use; Definition. Amend RSA 259 by inserting after section 49 the following new section:

259:49-a Light Industrial Use. "Light industrial use" shall mean manufacturing and distribution of products for wholesale or retail use where the operation includes the need for access to contiguous or nearby warehouses, showrooms, construction sites, or manufacturing facilities including crossing a way or driving on a way where the route or crossing is approved by the government authority having control of the way.

3 New Section; Recreation Utility Vehicle; Definition. Amend RSA 259 by inserting after section 84-a the following new section:

259:84-b Recreation Utility Vehicle. "Recreation utility vehicle" shall mean a vehicle, including an OHRV, with 4 or 6 wheels, an internal combustion engine or electric motor, or both, a load capacity of 1,500 pounds or less, and high-pressure tires, that is capable of carrying not more than 6 occupants plus the load, and is used for recreational purposes on and off trails but not for agricultural, farming, or light industrial purposes, and that complies with the provisions of RSA 266:116, and is limited to ways open to such vehicles and under such conditions as established by the authority controlling the way.

4 Tractor; Definition. Amend RSA 259:108 to read as follows:

259:108 Tractor. "Tractor" shall mean:

[E] any self-propelled **agricultural** vehicle designed or used as a traveling power plant or for drawing other vehicles, but having no provision for carrying **passengers or** a load **other than attached implements such as snowplows, tool boxes, or bucket loaders**, but shall not include ~~off-highway recreational vehicles not designed and equipped for highway use.~~

H. ~~Any low-speed utility vehicle. "Low-speed utility vehicle" shall mean any vehicle with 4 wheels, an internal combustion or electric motor, or both, a load capacity of 1,500 pounds or less, and high-pressure tires, that is capable of carrying not more than 2 occupants plus the load, is capable of speeds 30 miles per hour or less on level ground, and is used for agricultural or light industrial use]~~ **vehicles used for on or off-road recreational purposes.**

5 New Section; Registration of Vehicles; Exemption for Utility Vehicles. Amend RSA 261 by inserting after section 41 the following new section:

261:41-a Exemption for Utility Vehicles. The provisions of this chapter relative to the registration of vehicles and the display of number plates shall not apply to an agricultural/industrial utility vehicle, as defined in RSA 259:2-a, or to a recreation utility vehicle, as defined in RSA 259:84-b. Any such vehicle shall also be exempt from inspection under RSA 266:1, but shall be subject to inspection by a law enforcement officer at any time when being operated on a way. Any person operating such vehicle on a way shall hold a valid driver's license.

6 Utility Vehicles. Amend the subdivision heading preceding RSA 265:160 and RSA 265:160 to read as follows:

Special Rules for ~~[Low-Speed]~~ Utility Vehicles

265:160 ~~[Low-Speed]~~ Utility Vehicles; **Operation on Ways Restricted.** No person shall operate a ~~[low-speed]~~ utility vehicle, ~~[as defined in RSA 259:108, H]~~ **including an agricultural/industrial utility vehicle as defined in RSA 259:2-a, or a recreation utility vehicle as defined in RSA 259:84-b**, except on a way where the posted speed limit is 35 miles per hour or less, **and the route or crossing being used is open to such vehicles and at such times and under any other special conditions established by the government authority having control of the way. Any person operating such a vehicle upon a way shall hold a valid driver's license.** ~~[No person shall operate such vehicle more than 25 miles from the registrant's residence or place of business.]~~

7 Equipment Required for Utility Vehicles. Amend the subdivision heading preceding RSA 266:116 and RSA 266:116 to read as follows:

~~[Low-Speed]~~ Utility Vehicles

266:116 Equipment Required for ~~[Low-Speed]~~ Utility Vehicles. ~~[A low-speed utility vehicle as defined in RSA 259:108, H shall be equipped in accordance with 49 C.F.R. section 571.500. This equipment shall include headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, a parking brake, a rearview exterior mirror, a windshield, windshield wiper, brakes, seat belts, a vehicle identification number, and such other equipment as is required by federal regulations. Such vehicle may also use a flashing amber warning light when operating on a way.]~~ **All vehicle safety equipment required under federal regulations shall be present and in working condition on an agricultural/industrial utility vehicle as defined in RSA 259:2-a, except**



*any such equipment with which the vehicle as originally manufactured was not equipped. All federal vehicle safety equipment required on a recreation utility vehicle as defined in RSA 259:84-b shall be present and in working condition. All equipment required by applicable state laws and rules adopted by the department under RSA 541-A shall be present and in working condition on an agricultural/utility vehicle or recreation utility vehicle. Such vehicles shall display an authorized low speed vehicle warning sign on the rear of the vehicle and may also use a flashing amber warning light when operating on a way.*

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

2014-0530s

#### AMENDED ANALYSIS

This bill modifies the definition of tractor and the equipment and operation requirements for utility vehicles.

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

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

SB 401-FN-A, establishing road toll fees for electric and hybrid electric vehicles. Interim Study, Vote 4-0. Senator Watters for the committee.

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

#### WAYS AND MEANS

SB 242, relative to coverall bingo games. Ought to Pass with Amendment, Vote 4-1. Senator D'Allesandro for the committee.

Senate Ways and Means

February 11, 2014

2014-0504s

08/09

#### Amendment to SB 242

Amend the bill by replacing section 5 with the following:

5 Written Agreements. Amend RSA 287-E:7, II to read as follows:

(a) No compensation shall be paid to bona fide members of a charitable organization or others, ***except as provided in subparagraph (b)***, who operate or assist in the operation of a bingo game. Compensation shall include, but is not necessarily limited to, money or any other thing of value. Bona fide members of a charitable organization who operate or assist in the operation of bingo games may be reimbursed for their out-of-pocket expenses in an amount not to exceed \$25 per game date, provided that such expenses are itemized and submitted in writing to the charitable organization.

(b) No compensation shall be paid to any person or entity for consulting, managing, assisting in the operation of the bingo games or the sale of lucky 7 tickets, record keeping, filing forms with the racing and charitable gaming commission, advertising, free offer of coffee and donuts to customers, or security protection for the charitable organization itself not including security for the hall or parking area, unless agreed to in advance in writing by the charitable organization ***and submitted to the commission***. Participation in and charges for such activities shall be solely at the discretion of the charitable organization. Failure to participate in any of these activities shall not constitute grounds for expulsion from any hall where bingo games are held or lucky 7 tickets are sold.

Amend the bill by replacing section 10 with the following:

10 Progressive Coverall Games. RSA 287-E:7, XV is repealed and reenacted to read as follows:

XV. A progressive coverall game or a shared carry-over coverall game::

- (a) May be played once during any given game date;
- (b) Shall be played on the second or last coverall;
- (c) Shall not have a total of prize and bonus combined exceeding \$3,000; and

(d) May offer a predetermined consolation prize to the game winner who first achieves coverall.

Amend the bill by replacing section 13 with the following:

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

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

Sen. Odell offered a floor amendment.

Sen. Odell, Dist. 8

February 14, 2014

2014-0588s

08/09

#### **Floor Amendment to SB 242**

Amend the bill by replacing all after section 12 with the following:

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

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

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

SB 265, making a technical correction to the disposition of meals and rooms tax revenues. Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

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

SB 386, relative to the authority and duties of the department of revenue administration. Ought to Pass with Amendment, Vote 5-0. Senator Hosmer for the committee.

Senate Ways and Means

February 11, 2014

2014-0500s

10/06

#### **Amendment to SB 386**

Amend the bill by replacing section 5 with the following:

5 Transfer of Appropriation for Grants for Low and Moderate Income Homeowners Property Tax Relief. For the biennium ending June 30, 2015, the appropriation for the expenditure of low and moderate income homeowners property tax relief grants (hardship grants) under RSA 198:57 shall be transferred from accounting unit 06-56-56-560010-7550 within the department of education to the department of revenue administration. The commissioner of the department of revenue administration is authorized to create a new accounting unit and expenditure class as required and as the commissioner deems necessary and appropriate for the expenditure of low and moderate income homeowners property tax relief grants under RSA 198:57.

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 410-FN-L, relative to apportionment in cooperative school districts with a renewable generation facility. Ought to Pass with Amendment, Vote 5-0. Senator Odell for the committee.

Senate Ways and Means

February 11, 2014

2014-0498s

04/10

#### **Amendment to SB 410-FN-LOCAL**

Amend RSA 195:18, III(e)(2) as inserted by section 1 of the bill by replacing it with the following:

***(2) For articles of agreement adopted after the effective date of this subparagraph, or whenever a cooperative school district meets to consider an amendment to any of the cooperative school district's articles of agreement, the method of apportioning the operating expenses of a cooperative school district shall include a provision requiring that the appraised value of a host district's renewable generation facility, which is subject to a payment in lieu of taxes under RSA 72:74, shall be included in the apportionment under subparagraph (e)(1) in like proportion to the ratio that the equalized valuation of property in the host district, excluding the valuation of the renewable generation facility, bears to that of the equalized valuation of property in the cooperative school district. In this subparagraph, "renewable generation facility" shall have the same meaning as in RSA 72:73, and "host district" shall mean a preexisting district in which a renewable generation facility begins operating after the effective date of the cooperative school district's articles of agreement.***

Amend RSA 195:18, III(g)(2) as inserted by section 2 of the bill by replacing it with the following:

***(2) For articles of agreement adopted after the effective date of this subparagraph, or whenever a cooperative school district meets to consider an amendment to any of the cooperative school district's articles of agreement, the method of apportioning the capital expenses of a cooperative school district shall include a provision requiring that the appraised value of a host district's renewable generation facility, which is subject to a payment in lieu of taxes under RSA 72:74, shall be included in the apportionment under subparagraph (g)(1) in like proportion to the ratio that the equalized valuation of property in the host district, excluding the valuation of the renewable generation facility, bears to that of the equalized valuation of property in the cooperative school district. In this subparagraph, "renewable generation facility" shall have the same meaning as in RSA 72:73, and "host district" shall mean a preexisting district in which a renewable generation facility begins operating after the effective date of the cooperative school district's articles of agreement.***

Sen. Odell moved to Lay on the Table SB 410-FN-L. Adopted.

#### 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 201, relative to marriage registration forms.

SB 212, relative to the Honor and Remember Flag as an official symbol to recognize and honor fallen members of the armed forces.

SB 215-FN, authorizing benefit corporations.

SB 226, relative to reporting of health care associated infections.

SB 231-FN, relative to regulation of tractors and utility vehicles.

SB 242, relative to coverall bingo games.

SB 261, allowing the commissioner of administrative services to administer the health benefits of certain retirees of the State Employees' Association of New Hampshire.

SB 265, making a technical correction to the disposition of meals and rooms tax revenues.

SB 270, establishing a commission to study mental health implementation in New Hampshire.

SB 283-FN, relative to disposition of funds obtained by the attorney general.

SB 289, relative to validated wills and revising the uniform trust act.

SB 319-FN, relative to access to reproductive health care facilities.

SB 336-FN, prohibiting the taking of deer from baited areas on state-owned lands.

SB 339-FN, relative to instituting a credit card affinity program in which fees received are directed to offset the retirement system's unfunded liability.

SB 350, relative to the transfer of adequacy aid calculation data from the department of education to the department of revenue administration.

SB 351, relative to the requirement for notice of non-compete agreements prior to the start of employment.

SB 355, relative to access to social media by educational institutions.

SB 363, relative to insurance coverage for facilities for the Winnepesaukee River basin control.

SB 373-FN, relative to procedure and jurisdiction of the superior courts.

SB 386, relative to the authority and duties of the department of revenue administration.

SB 392, establishing a commission on rural affairs.

SB 400-FN, relative to the penalty for violations of the taking of American eels.

#### LIST OF RULE 6-25'S FOR THE DAY

(None).

#### ANNOUNCEMENTS

(The Chair recognized Sen. Woodburn.)

SENATOR WOODBURN: Thank you, Mister President. I rise to make comments and personal privilege? On Monday night, two days ago, I had the opportunity to spend three hours grooming the snowmobile trails at Berlin's Jericho Mountain State Park with members of the White Mountain Ridge Runners, one of the North Country's leading snowmobile clubs. Larry Gomes and Robert Moran were great tour guides. For this trip was a vivid reminder of the remarkable work that the 110 volunteer snowmobile clubs do as they build and maintain nearly 7,200 snowmobile trails from Salem to Pittsburg, Conway to Lebanon. In fact, there are more snowmobile trails in this state than state highways. They are a sophisticated organization that rely on almost entirely on the generosity of individual property owners, who allow people to cross their properties. Not only do these trails encourage wholesome, outdoor recreation, but they're also a major economic drive for generating \$580 million of economic activity. All of this done, is done without any general fund dollars and it's all self-funded through registration fees and some federal RTP grant funds, from the federal gas tax on highway vehicles.

I want to recognize the state's Trail Bureau chief, Chris Gamache, and his small and capable staff and, of course, Gail Hanson, the executive director of the state Snowmobile Association. Two weeks ago they hosted their 42nd annual Ride-In event in Gorham where clubs competed in each and raised more than \$83,000 for the Easter Seals Camp Sno-Mo, which is used to help 100 special needs kids go to summer camps.

The combination of willing landowners and local clubs and dedicated volunteers' self-funding, along with some of the state's coordination, is a model that should strive to emulate since it shows how great things can be accomplished with little or no impact on the taxpayers.

Thank you, Mister President.

(The Chair recognized Sen. Bradley.)

SENATOR BRADLEY: Thank you, Mister President. I just want to take this opportunity, I'm sure on the behalf of all of us, to congratulate a native son, who just got a bronze in the Olympics, Bode Miller - awesome job. I hope, Mister President, we're able to thank him in person after the World Cup is over this spring. Thank you.

PRESIDENT MORSE: Thank you Sen. Bradley. Obviously we'd like to print that in the permanent *Journal*.

Without objection all personal privileges and unanimous consent shall be entered into the permanent *Journal of the Senate*. (Rule 2-16 and Rule 2-17)

#### 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.