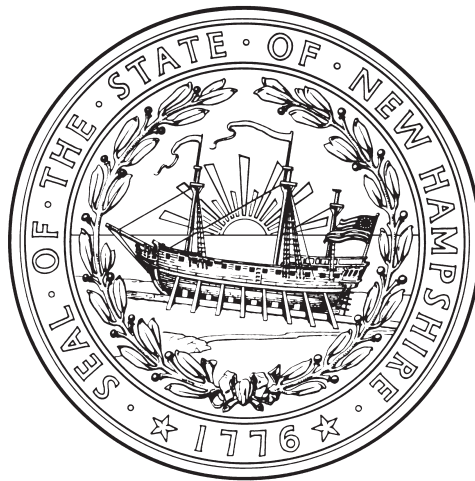


March 14, 2019  
Nos. 7-8

# **STATE OF NEW HAMPSHIRE**

Web Site Address: [www.gencourt.state.nh.us](http://www.gencourt.state.nh.us)



**First Year of the 166<sup>th</sup> Session of the  
New Hampshire General Court**

**Legislative Proceedings**

## **SENATE JOURNAL**

**ADJOURNMENT – MARCH 7, 2019 SESSION  
COMMENCEMENT – MARCH 14, 2019 SESSION**

# SENATE JOURNAL 7 *(continued)*

*March 7, 2019*

## 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 105-FN, relative to domicile residency, voter registration, and investigation of voter verification letters.  
HB 106, relative to the terms “resident,” “inhabitant,” “residence,” and “residency.”  
HB 153, relative to circumstances under which police officer disciplinary records shall be public documents.  
HB 154, (New Title) prohibiting non-disparagement clauses in settlement agreements involving a governmental unit.  
HB 167, allowing the town of Kingston to hold a bonfire event in 2019.  
HB 256-FN, establishing reciprocity for notaries in adjacent states.  
HB 283, relative to the age rabbits can be transferred.  
HB 315, (New Title) relative to the Interstate Voter Registration Crosscheck Program.  
HB 359, relative to warning labels on prescription drugs containing opiates.  
HB 364, (New Title) permitting qualifying patients and designated caregivers to cultivate cannabis for therapeutic use and permitting qualifying patients and designated caregivers to donate excess cannabis to other qualifying patients.  
HB 381, repealing requirements for transfer of appropriations in Carroll county.  
HB 382, relative to private practice by the Carroll county attorney.  
HB 383, (New Title) relative to the prohibition on unlawful discrimination in public and nonpublic schools.  
HB 402, relative to required notice of mortgage funding at a construction jobsite.  
HB 455-FN, relative to the penalty for capital murder.  
HB 486, relative to department of corrections procedures concerning the requirement for restoration of the voting rights of felons.  
HB 487-FN, establishing a registry for the deaf, hard of hearing, and deaf/blind in the department of health and human services.  
HB 504, relative to election-related amendments to the United States Constitution.  
HB 511-FN, relative to vaping.  
HB 531, relative to the delivery of absentee ballots cast by elderly or disabled citizens.  
HB 552-FN, relative to transparency and standards for acquisition transactions in health care.  
HB 556, allowing municipalities to process absentee ballots prior to election day.  
HB 577, relative to call blocking in an automated telephone dialing system.  
HB 593, relative to updating official voter checklists.  
HB 595-FN, relative to the administration of the tobacco tax.  
HB 604, establishing a commission to assess benefits and costs of a “health care for all” program for New Hampshire.  
HB 608, expanding the law against discrimination based on gender identity to other areas of the law prohibiting discrimination.  
HB 611-FN, allowing voters to vote by absentee ballot.  
HB 631, establishing a deaf child’s bill of rights and an advisory council on the education of deaf children.  
HB 642, (New Title) defining specialty cider.  
HB 649-FN, relative to consumer credit corrections, consumer credit protection from fraud, and consumer credit regulatory reform.  
HB 650, establishing a committee to study the economic challenges of employed persons serving in the New Hampshire legislature.  
HB 725-FN, (New Title) relative to certain standards for managed care organizations.

## INTRODUCTION OF LEGISLATION

Senator Feltes 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 title and referred to the therein designated committee. Adopted.

## First and Second Reading and Referral

HB 111, establishing a committee to study the effect of the opioid crisis, substance misuse, adverse childhood experiences (ACEs), and domestic violence as a cause of posttraumatic stress disorder syndrome (PTSD) and other mental health and behavioral problems in New Hampshire children and students. (Health and Human Services)

HB 112, relative to the mechanical licensing board. (Executive Departments and Administration)

HB 115, relative to the regulation of private investigators, security guards, and bail recovery agents. (Executive Departments and Administration)

HB 122, allowing for gifts, grants, and donations on behalf of state and national legislative association events. (Executive Departments and Administration)

HB 127, relative to the board of medicine and the medical review subcommittee. (Executive Departments and Administration)

HB 131, establishing a commission on mental health education and behavioral health and wellness programs. (Education and Workforce Development)

HB 136, increasing the maximum period for the zoning board of adjustment to hold a public hearing. (Election Law and Municipal Affairs)

HB 138, relative to rules pertaining to marine species managed under the Magnusson-Stevens Fishery Conservation and Management Act. (Executive Departments and Administration)

HB 145, relative to the counting of secret ballots. (Election Law and Municipal Affairs)

HB 146, relative to the counting of defective ballots. (Election Law and Municipal Affairs)

HB 149, relative to the apportionment of costs in cooperative school districts. (Education and Workforce Development)

HB 162, repealing the requirement for the inspection of timber. (Energy and Natural Resources)

HB 171, establishing a commission to study equal access and opportunity for students with disabilities to participate in cocurricular activities. (Education and Workforce Development)

HB 175, relative to the requirements for school building aid grants. (Education and Workforce Development)

HB 181, relative to the house and senate members of the university system board of trustees. (Education and Workforce Development)

HB 188, amending the definition of headway speed. (Transportation)

HB 189-FN, establishing an exemption from criminal penalties for child sex trafficking victims. (Judiciary)

HB 211, relative to inquiries by prospective employers concerning salary history. (Commerce)

HB 214, repealing an obsolete provision for legislative mileage for attaches from Concord. (Executive Departments and Administration)

HB 228, extending the commission to study the current statutes related to management of non-tidal public waterways and the construction or placement of structures within them. (Energy and Natural Resources)

HB 243, adding members to the Pease development authority board of directors to represent Greenland. (Executive Departments and Administration)

HB 245, relative to the planning board's procedures on plats. (Election Law and Municipal Affairs)

HB 253, relative to criminal records checks in the employee application process. (Commerce)

HB 259, relative to building code violations. (Executive Departments and Administration)

HB 260, relative to the purging of motor vehicle violations. (Judiciary)

HB 267, relative to the international registration plan. (Transportation)

HB 268, relative to real estate commissions paid to unlicensed entities. (Commerce)

HB 270, relative to commencement of foreclosure by civil action. (Commerce)

HB 272, relative to temporary workers. (Commerce)

HB 281, relative to flow devices designed to control beaver damming and minimize the risk of flooding behind an existing beaver dam. (Energy and Natural Resources)

HB 284, relative to biennial controlled substance inventories conducted under the Controlled Drug Act. (Health and Human Services)

HB 285, relative to filing and approval of rates and rating plans applicable to workers' compensation. (Commerce)

HB 287, relative to nepotism in state employment. (Executive Departments and Administration)

HB 297, relative to political advertisements on behalf of political committees or advocacy organizations. (Election Law and Municipal Affairs)

HB 303, relative to certification of building code compliance inspectors. (Election Law and Municipal Affairs)

HB 307, relative to driver's license photographs. (Transportation)

HB 320-FN, authorizing Future In Sight to issue decals for multi-use decal number plates. (Transportation)

HB 328, repealing the New Hampshire film and television commission. (Executive Departments and Administration)

HB 329, relative to review and adoption of school data security plans. (Education and Workforce Development)  
HB 334-LOCAL, relative to disposition of certain municipal records. (Judiciary)  
HB 337, relative to property and casualty insurance. (Commerce)  
HB 339, relative to commercial modernization. (Commerce)  
HB 342, relative to insurance examinations. (Commerce)  
HB 343, relative to application of the state fire code to foster homes. (Executive Departments and Administration)  
HB 347, adding insurer's policy administration expenses to commercial rate standards. (Commerce)  
HB 349, relative to a second opinion on health care matters for state and county prisoners. (Judiciary)  
HB 351, relative to exemptions from property attachments. (Judiciary)  
HB 353, establishing a committee to study whether non-attorney legal professionals could be licensed to engage in the limited practice of law in the family division of the circuit court while under the supervision of a licensed attorney. (Judiciary)  
HB 354, establishing a committee to investigate whether modification should be made to the time frame for determining permanency pursuant to RSA 169-C:24-b. (Judiciary)  
HB 356, relative to the retention of certain reports by institutions of higher learning. (Education and Workforce Development)  
HB 361, relative to property settlement including animals. (Judiciary)  
HB 372-FN, relative to motorist duties when approaching highway emergencies. (Transportation)  
HB 399-FN, relative to annulment of arrests or convictions for possession of a certain quantity of marijuana. (Judiciary)  
HB 410, allowing the department of environmental services to have access to enhanced 911 information. (Executive Departments and Administration)  
HB 419, relative to the position of house clerk. (Executive Departments and Administration)  
HB 428, relative to pedestrian control signals. (Transportation)  
HB 429, establishing a committee to study ways to improve civic engagement in New Hampshire. (Election Law and Municipal Affairs)  
HB 433, relative to foreign insurance companies. (Commerce)  
HB 435, relative to certain terminology in the rulemaking authority of the department of education. (Education and Workforce Development)  
HB 500, naming the Warner roundabout in memory of Barbara Annis. (Transportation)  
HB 524, establishing a committee to study issues and impediments to starting, running, and growing home and commercial day care facilities in New Hampshire. (Executive Departments and Administration)  
HB 529, prohibiting a school district employee from assisting a person convicted of sexual misconduct with a minor child. (Election Law and Municipal Affairs)  
HB 534-FN, relative to certain major state projects. (Transportation)  
HB 550-FN, extending foster care beyond age 18. (Health and Human Services)  
HB 587, relative to organ donation on a driver's license. (Health and Human Services)  
HB 617, establishing a committee to study recycling streams in New Hampshire. (Energy and Natural Resources)

Out of Recess. Call the Senate to Order.

#### MOTION TO ADJOURN FROM LATE SESSION

Senator Feltes moved that the Senate adjourn from the Late Session.

Adopted. Adjournment from the Late Session.

# SENATE JOURNAL 8

*March 14, 2019*

The Senate reconvened at 10:00 a.m., a quorum being present.

The Reverend Mark Warren, chaplain to the Senate, offered the following prayer:

Let us pray.

Father, we thank you so much for this time we can be together. As I've looked around the room I see the tissues, the snuffles, the cough drops. Lord, I just know that this is a season that we can be under weather; so Lord, a lot of work that needs to be done today, so I pray for strength on our Senators and their staff. I pray for just clear minds as there's a lot of work to be done today, and just give them the strength to get through the bills that need to be talked about, processed. Lord, I just pray a special blessing on our Senators and their staff. Continue to prosper them, continue to uphold them, continue to give them— just guide their minds; guide their hands we pray. Amen.

Senator French led the Pledge of Allegiance.

#### ANNOUNCEMENTS

PRESIDENT SOUCY: I would make note of two important things today. One, I would like to wish Senator Fuller Clark a very happy birthday. And two, I would also note, although they're not both available yet, there are dueling Irish cakes. Senator Birdsell, on time this morning, Senator Feltes coming soon, but enjoy the Irish cakes. We need to make sure we're fortified, because it's going to be a long day.

#### INTRODUCTION OF PAGES

Senator Hennessey introduced John N. Hill and Alex Rockmore from Hanover High School, serving as Senate Pages for the day.

#### FN REPORT FOR MARCH 14, 2019

Senator D'Allesandro recommends the waiver of referral to the Finance Committee, Senate Rule 4-5, for the following bills with a fiscal note or an appropriation of funds:

#### CONSENT CALENDAR:

##### EDUCATION AND WORKFORCE DEVELOPMENT

SB 143, relative to administrative costs of state aid for special education.

##### EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 173-FN, relative to criminal history background checks by employers and public agencies.

SB 222-FN, relative to licensure of pharmacy benefits managers.

SB 226-FN, relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

SB 235-FN, relative to sexual harassment complaints in the general court and authorizing an independent human resources professional.

SB 255-FN, relative to dementia training for direct care staff in residential facilities and community-based settings.

SB 256-FN, relative to emergency generators in certain senior housing.

SB 273-FN, relative to the regulation of nursing assistants by the board of nursing.

##### HEALTH AND HUMAN SERVICES

SB 181-FN, requiring monitoring of certain radioactive air pollutants.

SB 319-FN, requiring automated external defibrillators in health clubs.

##### JUDICIARY

SB 295-FN, relative to the office of the child advocate.

SB 315-FN, relative to claims against the state.

SB 316-FN, relative to the protection of personal information.

#### REGULAR CALENDAR:

##### COMMERCE

SB 194-FN, relative to the insurance data security law.

SB 227-FN, relative to multiple-employer welfare arrangements.

SB 228-FN, relative to multiple-employer welfare arrangements.

SB 271-FN-L, relative to requiring prevailing wages on state-funded public works projects.

SB 279-FN, relative to access to fertility care.

##### EDUCATION AND WORKFORCE DEVELOPMENT

SB 282-FN, relative to suicide prevention education in schools.



**ELECTION LAW AND MUNICIPAL AFFAIRS**

SB 229-FN, relative to audit recounts.

SB 231-FN, promoting truth in political advertising.

**ENERGY AND NATURAL RESOURCES**

SB 122-FN, relative to expenditures from the energy efficiency fund.

SB 284-FN, establishing a statewide, multi-use online energy data platform.

SB 286-FN-L, relative to aggregation of electric customers by municipalities and counties.

SB 287-FN, requiring the commissioner of the department of environmental services to revise rules relative to perfluorinated chemical contamination in drinking water.

SB 307-FN, relative to outdoor lighting.

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

SB 257-FN, prohibiting foams containing perfluoroalkyl chemicals for use in fighting fires.

**HEALTH AND HUMAN SERVICES**

SB 292-FN, relative to implementation of the new mental health 10-year plan.

**JUDICIARY**

SB 262-FN, relative to the violation of a property interest in abandoned personal materials.

SB 311-FN, relative to annulment of criminal records.

SB 312-FN, relative to medical monitoring for exposure to toxic substances.

SB 317-FN, prohibiting sanctuary jurisdictions in New Hampshire.

**TRANSPORTATION**

SB 52-FN, relative to certain department of transportation projects.

SB 275-FN, requiring that all of the state's motor vehicles will be zero emissions vehicles by the year 2039.

**WAYS AND MEANS**

SB 93-FN-A, including prepaid communications services as taxable under the communications service tax.

SB 95-FN, establishing a working families property tax refund program.

SB 96, establishing a film production incentive fund in the state film office.

SB 134-FN, relative to the administration of the meals and rooms tax.

SB 135-FN-A, relative to the rates of the business profits tax and the business enterprise tax.

SB 243-FN, relative to the low and moderate income homeowners property tax relief program.

SB 245-FN, relative to fees for simulcast racing.

SB 270-FN, establishing a tax credit against the business profits tax for donations to career and technical education centers.

SB 301-FN-A-L, relative to the rates of the business profits tax and business enterprise tax, and relative to revenue sharing with cities and towns.

Senator D'Allesandro recommends the following bills be ordered to the Finance Committee upon being found Ought to Pass/Ought to Pass with Amendment:

**REGULAR CALENDAR:****EDUCATION AND WORKFORCE DEVELOPMENT**

SB 253-FN, relative to statewide deployment of a real-time threat notification system for schools—if Re-refer to Committee recommendation is overturned.

SB 266-FN, relative to funding for kindergarten pupils, keno revenues, and school building aid.

SB 277-FN-L, relative to grants to chartered public schools.

SB 281-FN-A-L, relative to mental health services for schools and making an appropriation therefor.

**ELECTION LAW AND MUNICIPAL AFFAIRS**

SB 7-FN-L, establishing the secure modern accurate registration act (SMART ACT).

SB 283-FN, relative to post-election audits of electronic ballot counting devices.

SB 304-FN-A, relative to campaign contributions and expenditures, and making an appropriation therefor—if Re-refer to Committee recommendation is overturned.

SB 305-FN, relative to voter registrations accepted by other state agencies—if Re-refer to Committee recommendation is overturned.

SB 306-FN, establishing the housing appeals board.

**ENERGY AND NATURAL RESOURCES**

SB 74-FN-A, relative to register of deeds fees used to support the land and community heritage investment program (LCHIP).

## EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 234-FN, establishing the position of director of the office of outdoor recreation industry development in the department of business and economic affairs.

SB 308-FN-A, relative to the health care workforce and making appropriations therefor.

## HEALTH AND HUMAN SERVICES

SB 236-FN-A, making an appropriation to the department of health and human services for the purposes of upgrades to substance use disorder treatment facilities.

SB 260-FN, relative to a program for prescription drug costs for certain seniors and making an appropriation therefor.

SB 290-FN, relative to the New Hampshire granite advantage health care program.

SB 291-FN, removing juvenile patients from the New Hampshire hospital to the Sununu Youth Services Center.

SB 293-FN, relative to federally qualified health care centers and rural health centers reimbursement.

## JUDICIARY

SB 294-FN-A-L, relative to placement costs for juvenile diversion programs.

SB 314-FN, relative to release of a defendant pending trial.

## TRANSPORTATION

SB 216-FN, establishing an automated vehicle testing and deployment commission and an automated vehicle testing pilot program, and providing requirements for automated vehicle deployment.

Without objection, the FN Report is adopted.

## CONSENT CALENDAR REPORTS REMOVED

## EDUCATION AND WORKFORCE DEVELOPMENT

SB 143, by Senator Kahn

## CONSENT CALENDAR

Senator Feltes 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.

## ELECTION LAW AND MUNICIPAL AFFAIRS

SB 22, relative to the construction property tax exemption.

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

This bill will provide that any municipality that has adopted the construction property tax exemption under RSA 72:81 shall determine the rate and duration of the exemption on a per case basis, based on the public benefit generated by the commercial or industrial project. Currently if a municipality determines a rate and duration for one project they are locked in for other projects that come along. This legislation will give more control to the towns when choosing the best projects for their communities.

Election Law and Municipal Affairs

March 6, 2019

2019-0877s

05/10

## Amendment to SB 22

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

1 Property Tax Exemptions; Commercial and Industrial Construction Exemption. Amend RSA 72:81 to read as follows:

72:81 Property Tax Exemption.

*I.* An eligible municipality may, by vote of the local legislative body pursuant to RSA 72:82, adopt a new construction property tax exemption for commercial or industrial uses, or both. The intent of the exemption is to provide incentives to businesses to build, rebuild, modernize, or enlarge within the municipality. The exemption shall apply only for municipal and local school property taxes assessed by the municipality which shall exclude state education property taxes under RSA 76:3 and county taxes assessed against the municipality under RSA 29:11, and shall be a specified percentage on an annual basis of the increase in assessed value attributable to construction of new structures, and additions, renovations, or improvements to existing structures, but which shall not exceed 50 percent per year. The exemption may run for a maximum period of 10 years following the new construction.

**II.** Once adopted by the local legislative body, the percentage rate and duration of the exemption shall be granted ~~[uniformly within that municipality to all projects for which a proper application is filed]~~ **on a per case basis based on the amount and value of public benefit as determined by the governing body either:**

**(a) Uniformly to all properties within the municipality; or**

**(b) To a specific group or groups of parcels within the municipality as designated by the legislative body.**

**III. For the purposes of this section, public benefit shall be defined by the local legislative body as part of the adoption of the property tax exemption.**

2 Procedure for Adoption. Amend RSA 72:82, I to read as follows:

I. A municipality desiring to adopt the provisions of RSA 72:81 shall do so in accordance with the procedures set forth in RSA 72:27-a. **The vote shall specify that the exemption, if granted, shall apply uniformly to all properties within the municipality if adopted in accordance with RSA 72:81, II(a) or to a specific group or groups of parcels within the municipality if adopted in accordance with RSA 72:81, II(b).** The vote shall specify ~~[the percentage of new assessed value to be exempted,]~~ the number of years duration of the exemption following new construction, **a definition of public benefit**, and a reference to zoning use category definitions, if applicable. The exemption shall take effect in the tax year beginning April 1 following its adoption.

3 Effective Date. This act shall take effect April 1, 2019.

#### EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 173-FN, relative to criminal history background checks by employers and public agencies.

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

This bill requires the division of State Police to maintain an electronic database containing criminal history record information which would be accessible to an individual, and to a state agency to obtain public criminal history record information about applicants for positions or as a condition for occupational licensure. Furthermore, the bill also removes the notarization requirement for requesting a criminal history records check for purposes of employment and occupational licensing. The Committee amended the bill to clarify what is to be included in 'public criminal history record information'. The passage of this bill will streamline the background check process for hiring individuals, which will help to address New Hampshire's healthcare workforce shortage.

Senate Executive Departments and Administration

March 6, 2019

2019-0854s

04/05

#### Amendment to SB 173-FN

Amend RSA 106-B:1, XI as inserted by section 1 of the bill by replacing it with the following:

XI. "Public criminal history record information" means New Hampshire state criminal history record information that is not confidential criminal history record information. "Public criminal history record information" shall not include violations of RSA 638:13, relating to the use and possession of slugs; RSA 644:8-f, relating to transporting dogs in pickup trucks; RSA 644:16-a, relating to the sale or use of stink bombs; RSA 644:16-b, relating to the sale or use of smoke bombs; or RSA 635:3, relating to trespassing stock or domestic fowl.

SB 222-FN, relative to licensure of pharmacy benefits managers.

Re-refer to Committee, Vote 5-0. Senator Rosenwald for the committee.

This bill would establish the licensure and regulation of pharmacy benefits managers by the Insurance Department's commissioner. The Committee decided to move forward with SB226 on the same topic and therefore, would ask for support in re-referring this bill in case any issues arise with SB226.

SB 226-FN, relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

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

This bill establishes the registration and regulation of pharmacy benefits managers by the Insurance commissioner and re-establishes the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. The Committee amended the bill to clarify the role of the Insurance Department and believes this is an important step for transparency regarding pharmacy benefit managers.



Senate Executive Departments and Administration  
March 6, 2019  
2019-0871s  
01/10

Amendment to SB 226-FN

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

2 New Chapter; Pharmacy Benefits Managers. Amend RSA by inserting after chapter 402-M the following new chapter:

CHAPTER 402-N  
PHARMACY BENEFITS MANAGERS

402-N:1 Definitions. In this chapter:

I. "Claims processing services" means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include:

- (a) Receiving payments for pharmacist services.
- (b) Making payments to pharmacists or pharmacies for pharmacist services.

II. "Commissioner" means the commissioner of the insurance department.

III. "Pharmacist" means an individual licensed as a pharmacist by the pharmacy board.

IV. "Pharmacist services" means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy.

V. "Pharmacy" means the place licensed by the pharmacy board in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.

VI.(a) "Pharmacy benefits manager" means a person, business, or entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that provides claims processing services or other prescription drug or device services, or both, for health benefit plans.

(b) "Pharmacy benefits manager" shall not include any:

- (1) Health care facility licensed in this state;
- (2) Health care professional licensed in this state;
- (3) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager; or
- (4) Service provided to the Centers for Medicare and Medicaid Services.

402-N:2 Registration to do Business; Rulemaking; Penalties.

I. A person or organization shall not establish or operate as a pharmacy benefits manager in this state for health benefit plans without registering with the insurance commissioner under this chapter.

II.(a) The commissioner shall adopt rules pursuant to RSA 541-A to:

(1) Prescribe the application for registration as a pharmacy benefits manager and shall charge application fees and renewal fees not to exceed \$500 as established in rules.

(2) Establish registration fees, financial standards, and annual reporting requirements of pharmacy benefits managers.

(3) Add to the existing consumer complaint form and provide information in the department's consumer resource section.

(b) In establishing rules pursuant to subparagraph (a)(1) and (2), the commissioner may request:

- (1) A copy of the registrant's corporate charter, articles of incorporation, or other formation documents.
- (2) Name and address of the registrant and person designated to address consumer complaints.
- (3) Rebates to the client.

(4) Discounts offered directly to the consumer.

(5) Lists of health benefit plans administered by a pharmacy benefits manager in this state.

III. If the commissioner finds after notice and hearing that any person has violated any provision of this chapter, or rules adopted pursuant to this chapter, the commissioner may order:

(a) For each separate violation, a penalty in an amount of \$2,500.

(b) Revocation or suspension of the pharmacy benefits manager registration.

#### 402-N:3 Provider Contract Standards for Pharmacy Benefit Managers.

I. All contracts between a carrier or pharmacy benefit manager and a contracted pharmacy shall include:

(a) The sources used by the pharmacy benefit manager to calculate the drug product reimbursement paid for covered drugs available under the pharmacy health benefit plan administered by the carrier or pharmacy benefit manager.

(b) A process to appeal, investigate, and resolve disputes regarding the maximum allowable cost pricing. The process shall include the following provisions:

(1) A provision granting the contracted pharmacy or pharmacist at least 30 business days following the initial claim to file an appeal;

(2) A provision requiring the carrier or pharmacy benefit manager to investigate and resolve the appeal within 30 business days;

(3) A provision requiring that, if the appeal is denied, the carrier or pharmacy benefit manager shall:

(A) Provide the reason for the denial; and

(B) Identify the national drug code of a drug product that may be purchased by contracted pharmacies at a price at or below the maximum allowable cost; and

(4) A provision requiring that, if an appeal is granted, the carrier or pharmacy benefits manager shall within 30 business days after granting the appeal:

(A) Make the change in the maximum allowable cost; and

(B) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question.

II. For every drug for which the pharmacy benefit manager establishes a maximum allowable cost to determine the drug product reimbursement, the pharmacy benefit manager shall:

(a) Include in the contract with the pharmacy information identifying the national drug pricing compendia or sources used to obtain the drug price data.

(b) Make available to a contracted pharmacy the actual maximum allowable cost for each drug.

(c) Review and make necessary adjustments to the maximum allowable cost for every drug for which the price has changed at least every 14 days.

III. A pharmacy benefit manager shall not require accreditation of providers other than requirements set forth by the New Hampshire pharmacy board or other state or federal entity.

#### 402-N:4 Prescription Drugs.

I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge an enrollee or insured person the pharmacy's usual and customary price of filling the prescription or the contracted copayment, whichever is less.

II. Once it has settled a claim for filling a prescription for an enrollee or insured person and notified the pharmacy of the amount the pharmacy benefits manager or insurer shall pay to the pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such settled claim; provided, however, that this paragraph shall not apply if the claim was submitted fraudulently or with inaccurate or misrepresented information.

#### 402-N:5 Complaints Relative to Pharmacy Benefit Managers.

I. Consumers may file a complaint related to a registered pharmacy benefit manager pursuant to RSA 400-A:15-e.

II. The commissioner shall adopt rules, pursuant to RSA 541-A, to implement RSA 402-N:4, II. Such rules shall include procedures for addressing complaints, provisions for enforcement, the receipt of complaints referred to the insurance department under RSA 318:47-h, III(b), and for reporting to the board of pharmacy on the status of complaints referred.

402-N:6 Severability. If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared severable.

3 Pharmacists and Pharmacies; Definition of Pharmacy Benefits Manager. Amend RSA 318:1, XI-a to read as follows:

XI-a. "Pharmacy benefits manager" means any person or entity ***registered under RSA 402-N and practicing*** as defined in RSA 420-J:3, XXVIII-a.

4 Managed Care Law; Definition of Pharmacy Benefits Manager. Amend RSA 420-J:3, XXVIII-a to read as follows:

XXVIII-a. "Pharmacy benefits manager" means a person ***registered under RSA 402-N*** who performs pharmacy benefits management services, including a person acting on behalf of a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management services for a covered entity. "Pharmacy benefits manager" shall not include a health insurer licensed in this state if the health insurer or its subsidiary is providing pharmacy benefits management services exclusively to its own insureds, or a private single employer self-funded plan that provides such benefits or services directly to its beneficiaries. "Pharmacy benefits management" means the administration of prescription drug benefits provided by a covered entity under the terms and conditions of the contract between the pharmacy benefits manager and the covered entity and the provision of mail order pharmacy services.

5 New Section; Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. Amend RSA 126-A by inserting after section 77 the following new section:

126-A:77-a Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs Reestablished.

I. There is established a commission to study greater transparency in pharmaceutical costs and drug rebate programs.

(a) The members of the commission shall be as follows:

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

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

(3) The insurance commissioner, or designee.

(4) The commissioner of the department of health and human services, or designee.

(5) One public member, appointed by the governor.

(6) A representative of the New Hampshire Hospital Association, appointed by the association.

(7) A physician licensed under RSA 329, appointed by the New Hampshire Medical Society.

(8) The executive director of New Futures, or designee.

(9) A representative of the New Hampshire Pharmacists Association, appointed by the association.

(10) A representative of the Business and Industry Association of New Hampshire, appointed by the association.

(11) A member representing pharmacy benefit managers, appointed by the Pharmaceutical Care Management Association.

(12) A representative of America's Health Insurance Plans (AHIP), appointed by that organization.

(13) A representative of Pharmaceutical Research and Manufacturers of America, appointed by that organization.

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

II.(a)(1) The commission shall study how to achieve greater transparency in pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role in overall health care spending in the New Hampshire and by analyzing the amounts rebated by drug manufacturers for certain high cost and high utilization prescription drugs. The commission's study shall include, but not be limited to:

(A) Studying strategies available to achieve greater transparency in pharmaceutical costs by identifying and analyzing certain critical prescription drugs and their role in overall health care spending and the impact of price increases on patients and their families.

(B) Reviewing legislative efforts in other states and taking advantage of any other analysis by outside organizations or foundations.

(C) Analyzing the impact of drug prices on insurance premium costs, consumer out-of-pocket costs for prescription drugs, and state and county purchasing of prescription drugs.

(D) Analyzing the potential impact of transparency in relation to the practices of pharmaceutical manufacturers and pharmacy benefits managers, including how research and development, marketing, and rebates affect drug prices.

(E) Proposing changes to New Hampshire law, as needed, to reduce the rising cost of pharmaceuticals.

(2) The commission shall also study the role pharmacy benefit managers play in the cost, administration, and distribution of prescription drugs; if greater transparency in pharmaceutical costs to purchasers would lower costs in overall health care spending in New Hampshire; and analyzing the amounts rebated by drug manufacturers for prescription drugs passed to purchasers and patients. The goal shall be to determine if any changes to New Hampshire laws could reduce the rising cost of pharmaceuticals to purchasers or patients.

(b) The commission may solicit input from any person or entity the commission deems relevant to its study.

III. 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. Eight members of the commission shall constitute a quorum.

IV. The commission shall make a report with its findings and any recommendations for proposed legislation on or before November 1, 2020 to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

6 Repeal. RSA 126-A:77-a, relative to a commission to study greater transparency in pharmaceutical costs and drug rebate programs, is repealed.

7 Repeal. RSA 402-N:3, III, relative to accreditation of providers, is repealed.

8 Membership of the Commission to Study Greater Transparency in Pharmaceutical Costs and Drug Rebate Programs. To the extent possible, the membership of the commission to study greater transparency in pharmaceutical costs and drug rebate programs reestablished in section 5 of this act shall remain the same as the commission established in former RSA 126-A:77.

9 Effective Date.

I. Sections 1-4 of this act shall take effect January 1, 2020.

II. Section 6 of this act shall take effect November 1, 2020.

III. Section 7 of this act shall take effect June 30, 2020.

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

SB 235-FN, relative to sexual harassment complaints in the general court and authorizing an independent human resources professional.

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

This bill authorizes an independent human resources professional in the General Court administrative office, who shall be responsible for complaints involving sexual harassment. The bill also allows the legislative facilities committee to propose rules for required training on harassment and discrimination. It

is vital that all individuals who visit or work within the State House have access to an avenue free from political influence when reporting a complaint of sexual harassment against an elected official. The creation of this new position will fulfill that role, giving individuals an opportunity to raise complaints in a confidential manner and without fear of retribution.

Senate Executive Departments and Administration

March 6, 2019

2019-0857s

10/05

#### Amendment to SB 235-FN

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

1 New Subdivision; General Court Administrative Office. Amend RSA 14 by inserting after section 51 the following new subdivision:

#### General Court Administrative Office

##### 14:52 Administrative Office.

I. There shall be a general court administrative office in the state house under a director of the administrative office. The director may employ and contract for such additional professional, technical, clerical, or other employees necessary to perform the functions and duties of the office.

II. The director shall designate a person as the independent human resources professional. The director shall ensure the person designated has had or will receive training or certification in sexual harassment investigations. In addition to the procedure in RSA 14-B:3, I(d), the designated person shall carry out obligations as set forth in the general court's sexual harassment policy, including but not limited to, the receipt, investigation, and processing of verbal or written complaints from legislative staff, members of the public, or other members of the general court concerning current members of the general court, or members of the general court whose service ceased within 2 years prior to the complaint. Neither the office of the senate president nor the office of the speaker of the house of representatives shall have any oversight or responsibility for any complaints involving sexual harassment.

III. A sexual harassment complaint filed with the general court administrative office shall be confidential and not subject to disclosure to any third party, including but not limited to the attorney general's office; provided that the complainant may waive such confidentiality protections with informed, written consent.

2 New Paragraph; Joint Committee on Legislative Facilities; Duty Added. Amend RSA 17-E:5-a by inserting after paragraph X the following new paragraph:

XI. Prior to the beginning of each biennium, to review sexual harassment policies of other jurisdictions and legislatures and adopt a sexual harassment policy consistent with best practices, which shall include procedures for the independent human resources professional in the general court administrative office to address sexual harassment complaints and ensure independence from the office of the senate president and the office of the speaker of the house of representatives. Prior to the beginning of each biennium, the committee shall determine whether to propose to the senate and house of representatives that each body shall propose by rule that all legislators, legislative officers, and legislative staff shall attend in-person education and training regarding sexual and other unlawful discrimination and harassment. The sexual harassment policy shall be posted online and shall be included in the ethics guidelines, statutes, and procedural rules booklet.

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

2019-0857s

#### AMENDED ANALYSIS

This bill authorizes an independent human resources professional in the general court administrative office, who shall be responsible for complaints involving sexual harassment. The bill also allows the legislative facilities committee to propose rules for required training on harassment and discrimination.

SB 255-FN, relative to dementia training for direct care staff in residential facilities and community-based settings.

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

This bill requires dementia training for direct care staff in residential facilities and community-based settings and grants rulemaking authority to the commissioner for the purposes of the bill. The Committee amended



the bill to adjust the training requirements and the RFP process. The ED&A Committee recognizes that more work may be needed on this bill and hopes that the stakeholders will come together to work on it as the bill moves forward.

Senate Executive Departments and Administration

March 6, 2019

2019-0872s

01/10

Amendment to SB 255-FN

Amend the bill by replacing section 2 with the following:

2 New Subdivision; Dementia Training for Direct Care Staff in Residential Facilities and Community-Based Services. Amend RSA 151 by inserting after section 46 the following new subdivision:

Dementia Training for Direct Care Staff in Residential Facilities  
and Community-Based Services

151:47 Definitions. In this subdivision:

I. "Covered administrative staff member" means the senior manager of the facility or program, including administrators, as well as managerial staff members that directly supervise covered direct service staff members.

II. "Covered direct service staff member" means a staff member whose work involves extensive contact with residents or program participants. Such staff members include: certified nursing assistants, nurse aides, personal care assistants, home health or personal care aides, licensed practical nurses, licensed vocational nurses, registered nurses, social workers, activity directors, and dietary staff.

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

IV. "Facilities or programs" means residential facilities or home and community-based programs, serving an adult population, licensed as appropriate under this chapter, that provide supportive services including, but not limited to, skilled care facilities, intermediate care facilities, assisted living facilities, residential care for the elderly, adult day programs, home health, in-home services, or adult family care homes or programs that advertise specialty memory care that have residents or program participants with Alzheimer's disease or other dementias.

V. "Other covered staff member" means a staff member who has incidental contact on a recurring basis with residents or program participants, including housekeeping staff, front desk staff, maintenance staff, other administrative staff, and other individuals who have such incidental contact.

VI. "Staff member" includes full and part-time employees, independent consultants, and staff of contractors and subcontractors.

151:48 Initial and Continuing Training in Dementia Required.

I. Facilities and programs shall provide initial training to:

(a) All covered staff members hired on or after July 1, 2019, who shall complete initial training within 90 days of the commencement of employment.

(b) All covered staff members who were employed prior to the date under subparagraph (a) and who have not received equivalent training; such training shall be completed within 6 months of that date.

II. Each facility or program shall establish a system for ongoing onsite support, supervision, and mentoring for its staff with regard to the treatment and care of persons with dementia.

III. For covered direct service staff members and covered administrative staff members, at a minimum, the curriculum used for the initial training shall cover the following topics:

- (a) Detection and cognitive assessment of Alzheimer's disease and dementia;
- (b) Person-centered care;
- (c) Assessment and care planning;
- (d) Supportive and therapeutic environments;
- (e) Staffing, training, management, and systems for improvement;

- (f) Medical management;
- (g) Ongoing care for behavioral and psychological symptoms of dementia and support activities of daily living;
- (h) Information, education, and support; and
- (i) Transitions and coordination of services.

IV. For other covered staff members, training shall include, at a minimum, communication issues related to dementia.

V. Initial dementia training shall be considered complete only after the staff member has taken and passed an evaluation.

#### 151:49 Portability.

I. The facility or staff shall issue a certificate to covered staff members upon completion of initial training, which shall be portable between settings. Provided that the covered staff member does not have a lapse of dementia related direct service or administration employment for 24 consecutive months or more, the covered staff member shall not be required to repeat the initial dementia training.

II. Covered staff members shall be responsible for maintaining records of certificates received.

151:50 Continuing Education. In addition to initial training, the commissioner shall adopt rules to determine when and how often continuing education on dementia shall be required. Such continuing education shall include new information on best practices in the treatment and care of persons with dementia. The department shall require at least a minimum of 6 hours of initial continuing education for covered administrative staff members and covered direct service staff members and shall require at least a minimum of 4 hours of ongoing training each calendar year. Such continuing education shall include new information on best practices in the treatment and care of persons with dementia.

151:51 Requirements for Trainers; Training Costs. Persons responsible for conducting in-person dementia trainings shall meet minimum criteria including: 2 years of work experience related to Alzheimer's disease or other dementias or in health care, gerontology, or other related field; and have completed training equivalent to the requirements provided herein. Covered staff members shall not be required to bear any of the cost of training or to attend trainings and shall receive their normal compensation when attending required trainings.

#### 151:52 Departmental Oversight.

I. The department shall exercise oversight of a facility's or program's dementia training program as part of its comprehensive regulatory responsibilities. Such oversight shall:

- (a) Ensure that the facility or program provides continuing education opportunities.
- (b) Ensure that the facility or program uses designated online training programs or facility-based training that meets the requirements for dementia training in the state.
- (c) Ensure compliance with any other requirements specified in this subdivision.

II. The department may use all of its enforcement tools to ensure that facilities and programs comply with paragraph I.

SB 256-FN, relative to emergency generators in certain senior housing.

Re-refer to Committee, Vote 5-0. Senator Cavanaugh for the committee.

This bill would require that senior housing receiving any state, county, or federal funding be equipped with emergency power generator service in a common area. The sponsor of the bill has requested more time to work on this matter with the stakeholders, and therefore the ED&A Committee asks for support for the Re-Refer motion.

SB 273-FN, relative to the regulation of nursing assistants by the board of nursing.

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

This bill establishes a committee to study the regulation of nursing assistants by the Board of Nursing and criminal history record checks for nurses. The ED&A Committee asks for support in creating this study committee, as the topic of the bill needs further review and examination.

Senate Executive Departments and Administration  
 March 6, 2019  
 2019-0859s  
 10/08

#### Amendment to SB 273-FN

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

AN ACT establishing a committee to study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses.

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

1 Committee Established. There is established a committee to study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses.

2 Membership and Compensation.

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

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

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

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

3 Duties. The committee shall study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2019.

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

2019-0859s

#### AMENDED ANALYSIS

This bill establishes a committee to study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses.

HB 453, making changes to the membership of the state house bicentennial commission, declaring June 2 - June 8 as New Hampshire State House Bicentennial Week, and declaring June 6 as New Hampshire Legislators' Homecoming Day.

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

This bill adds members to the State House Bicentennial Commission and makes all living former governors, speakers of the house of representatives, senate presidents, chief justices of the Supreme Court, and secretaries of state honorary chairs of the commission. The bill also establishes a week in June 2019 as the New Hampshire State House Bicentennial Week and establishes June 6, 2019 as New Hampshire Legislators' Homecoming Day. The ED&A Committee asks for your support in recognizing this important historical event for the New Hampshire State House and all those who have served in its halls.

#### HEALTH AND HUMAN SERVICES

SB 181-FN, requiring monitoring of certain radioactive air pollutants.

Re-refer to Committee, Vote 5-0. Senator Sherman for the committee.

There are unresolved issues concerning how this legislation will be funded. To ensure that SB 181-FN can be properly implemented with the appropriate funding mechanisms, the committee is recommending that the Senate re-refer this legislation in order to allow stakeholders to have adequate time to resolve these issues.

SB 319-FN, requiring automated external defibrillators in health clubs.

Re-refer to Committee, Vote 5-0. Senator Bradley for the committee.

There was widespread agreement among members of the committee that health clubs should have defibrillators in their facilities. However, there are still several outstanding questions about this specific legislation. To ensure that this legislation is given the proper due diligence, the committee is recommending that the Senate re-refer this legislation to Health and Human Services.

#### JUDICIARY

SB 35, making a technical correction to the bail statute.

Re-refer to Committee, Vote 5-0. Senator French for the committee.

This bill would correct a statutory reference in the law governing release of a defendant pending trial. However, this language can also be found in SB314, which the Committee has recommended to pass. Re-referring this bill will allow the Committee to pass this technical correction if the language in SB314 fails.

SB 295-FN, relative to the office of the child advocate.

Re-refer to Committee, Vote 5-0. Senator Carson for the committee.

This bill would recodify the statutes governing the office of the child advocate, clarify the authority and independence of the office, and expand the jurisdiction of the office to include a broader range of agencies that serve children. The bill would also establish a child fatality review committee and an oversight commission on children's services. The bill is in need of further review and examination and therefore, the Judiciary Committee asks for support on a re-refer motion in order to be afforded more time.

SB 315-FN, relative to claims against the state.

Re-refer to Committee, Vote 5-0. Senator Hennessey for the committee.

This bill would increase the liability of the state of New Hampshire in certain cases regarding children in its custody or in need of its services. The language of this bill needs more work and re-referring it will allow the Committee to continue working on it.

SB 316-FN, relative to the protection of personal information.

Re-refer to Committee, Vote 5-0. Senator Hennessey for the committee.

This bill would establish criminal penalties for failure to protect another person's personal information. The Committee recommends a re-refer motion in order to have more time to work on the bill.

#### TRANSPORTATION

SB 188, relative to shore lights.

Ought to Pass, Vote 5-0. Senator Ward for the committee.

This bill gives the Marine Patrol Bureau the authority to assess, on an individual basis, shore lights that might be deemed hazardous. The committee heard testimony that some individuals display red or green lights under their docks or atop their flagpoles, which can mimic the red and green lights that boats are required to display at night to signify various meanings. This can cause confusion for boat operators at night and potentially cause them to take unnecessary evasive maneuvers. The bill allows Marine Patrol to require individuals to extinguish lights that they deem hazardous while still allowing those that pose no threat or confusion.

SB 218, relative to duties of the commissioner of transportation regarding air navigation facilities.

Ought to Pass, Vote 5-0. Senator Watters for the committee.

This bill was requested by the Department of Transportation. It inserts definitions of small unmanned aircraft and small unmanned aircraft system into the New Hampshire Aeronautics Act. These definitions are consistent with the Federal Aviation Administration's definitions and will cover the majority of drones being used in the state. The bill also authorizes the Commissioner of the Department of Transportation to regulate small unmanned aircraft systems.

SB 219, relative to the disposal of highway or turnpike funded real estate.

Ought to Pass, Vote 5-0. Senator Birdsell for the committee.

The intent of the bill is to clarify confusing language in RSA 4:39-c, IV relative to the disposal of highway or turnpike funded real estate. The bill will make it faster and easier for the Department of Transportation to negotiate with local property owners regarding the exchange of state owned lands during construction projects without having to go through the Long Range Capital Planning and Utilization Committee for approval. The requests will still be reviewed and approved by the Governor and Council.

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

## REGULAR CALENDAR

## COMMERCE

SB 194-FN, relative to the insurance data security law.  
Ought to Pass, Vote 5-0. Senator Morgan for the committee.

Senator Morgan offered a Floor Amendment.

Sen. Morgan, Dist 23

March 13, 2019

2019-1044s

01/10

## Floor Amendment to SB 194-FN

Amend RSA 420-P:6, III as inserted by section 1 of the bill by replacing it with the following:

III. Once the criteria for commissioner notice under paragraph I is met, each licensee shall notify affected consumers of a determination that a cybersecurity event has occurred as soon as possible but not before notification to the commissioner under paragraph I. As to notification to consumers, a licensee shall comply with RSA 359-C:20, I(b) and (c), II-IV, and VI, and provide a copy of the notice sent to consumers under that statute to the commissioner, when a licensee is required to notify the commissioner under paragraph I.

Amend RSA 420-P:9, I as inserted by section 1 of the bill by replacing it with the following:

I. The following exceptions shall apply to this chapter:

(a) A licensee with fewer than 20 employees, including any independent contractors, shall be exempt from RSA 420-P:4.

(b) A continuing care retirement community, as defined by RSA 420-D, shall be exempt from RSA 420-P:4.

(c) A life settlement provider, as defined by RSA 408-D, shall be exempt from RSA 420-P:4.

(d) A licensee that is a bank or a credit union, as defined in RSA 383-A:2-201, that has established and maintains programs and procedures regarding administrative, technical, and physical safeguards for customer information that are prescribed by section 501(b) of the Gramm-Leach-Bliley Act, 15 U.S.C. section 6801 et seq. and by section 216 of the Fair and Accurate Credit Transaction Act of 2003, and that is subject to periodic examination by its federal regulatory authorities, shall be exempt from RSA 420-P:4, and those provisions of this chapter that apply to a bank or credit union apply only to the extent that it involves insurance. Notification to affected consumers and the commissioner as required under RSA 420-P:6 shall be made consistent with the requirements of the Gramm-Leach Bliley Act.

Amend RSA 420-P:10 through RSA 420-P:13 as inserted by section 1 of the bill by replacing them with the following:

420-P:10 Safe Harbor for HIPAA Compliance. A licensee that is in possession of protected health information subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and that has established and maintains programs and procedures regarding information privacy, security, and breach notification that are prescribed by HIPAA and by Parts 160 and 164 of Title 45 of the Code of Federal Regulations established pursuant to HIPAA, shall be considered to meet the requirements of this chapter with respect to such protected health information, provided that the licensee is compliant with the HIPAA privacy, security, and breach notification requirements and submits a written statement certifying such compliance. Furthermore, to the extent a licensee maintains other nonpublic information concerning a consumer in the same manner as protected health information, it shall be considered to meet the requirements of this chapter with respect to such nonpublic information, provided the licensee submits a written statement that it does maintain and protect other nonpublic information as it does protected health information. However, any licensee subject to this HIPAA safe harbor shall continue to be subject to, and shall comply with, the commissioner notification requirements of RSA 420-P:6, I and II. For purposes of this section, the definition of "protected health information" shall be as set forth in HIPAA and the regulations promulgated thereunder and shall be considered to be a subset of nonpublic information, as defined in RSA 420-P:3, XI.

420-P:11 Safe Harbor for New York Regulatory Compliance. A licensee that is in compliance with N.Y. Comp. Codes R. & Regs. Title 23, section 500, Cybersecurity Requirements for Financial Services Companies, effective March 1, 2017, shall be considered to meet the requirements of this chapter, provided that the licensee submits a written statement to the commissioner certifying such compliance. However, any licensee



subject to this New York Regulatory Safe Harbor shall continue to be subject to, and shall comply with, the commissioner notification requirements of RSA 420-P:6, I and II and the consumer notification requirements under RSA 420-P:6, III.

420-P:12 Penalties. A licensee which violates this chapter may be penalized in accordance with RSA 400-A:15, III.

420-P:13 Rulemaking. The commissioner may adopt rules pursuant to RSA 541-A as necessary to carry out the provisions of this chapter.

420-P:14 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable.

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

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

SB 227-FN, relative to multiple-employer welfare arrangements.  
Re-refer to Committee, Vote 3-2. Senator Cavanaugh for the committee.

The question is on the adoption of the motion of Rerefer to Committee.

A roll call was requested by Senator Bradley, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

SB 228-FN, relative to multiple-employer welfare arrangements.  
Ought to Pass with Amendment, Vote 3-2. Senator Morgan for the committee.

Commerce  
March 6, 2019  
2019-0841s  
01/04

#### Amendment to SB 228-FN

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

1 Statement of Purpose. It is the purpose of this act to help small businesses obtain more affordable health care coverage and new coverage options through multiple employer group purchasing mechanisms as authorized in this act while preserving protections for higher risk individuals and groups and while protecting against adverse impacts on New Hampshire's existing individual and small group health insurance markets.

2 Title. This act shall be known as the Small Business Health Care Reform Act of 2019.

3 Multiple-Employer Welfare Arrangements; Definitions. RSA 415-E:1 is repealed and reenacted to read as follows:

415-E:1 Definitions. In this chapter:

I. "Bona fide association" means a bona fide pathway I association or a bona fide pathway II association.

II. "Bona fide pathway I association" means a group or association that satisfies the criteria established by the United States Department of Labor prior to the adoption in 2018 of 29 C.F.R. section 2510.3-5, including the guidance provided in the United States Department of Labor publication entitled "MEWAS, Multiple-Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, Revised August 2013" and including published United States Department of Labor ERISA Advisory Opinion Letters.

III. "Bona fide pathway II association" means a group or association that meets the requirements of 29 C.F.R. section 2510.3-5(b).

IV. "Commissioner" means the insurance commissioner of the state of New Hampshire.

V. "Eligible employee" means a full time or part-time employee who meets the requirements for eligibility for group coverage set forth in RSA 415:18, I(q).

VI. "Employee welfare benefit plan" has the same meaning as in 29 U.S.C. section 1002(1).

VII. "Fully insured health benefit plan" means a policy, contract, certificate, or agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services, that is offered or issued to bona fide association by a health insurer licensed to do business in New Hampshire and that bears the risk under the plan.

VIII. "Fund balance" means the total assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement shall not be included in the fund balance. Fund balance shall include other contributed capital, retained earnings, and surplus notes.

IX. "Insolvency termination" means the termination of an arrangement where the fund balance as of the termination date is inadequate.

X. "Insurer" means any insurer, nonprofit hospital or medical service corporation, health maintenance organization, or managed care organization, including but not limited to an insurer offering health coverage as defined in RSA 420-G:2, IX.

XI. "Multiple-employer welfare arrangement (MEWA)" or "association" means an employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health benefits to the eligible employees of 2 or more employers, or to their beneficiaries, and shall include a MEWA as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 et seq. (ERISA). This shall include plans established by any political subdivision of the state or religious organization, but shall not include any plan or arrangement established or maintained under or pursuant to one or more agreements deemed collective bargaining agreements under section 3(40)(A)(i) of (ERISA). For the purposes of this chapter, 2 or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are under common ownership or within the same control group as defined under section 3(40)(B) of ERISA.

4 Multiple-Employer Welfare Arrangements; Applicability; General Eligibility. Amend RSA 415-E:2 to read as follows:

415-E:2 Applicability.

I. No person shall~~[-after April 1, 1992,]~~ operate a multiple-employer welfare arrangement unless such arrangement is approved by the commissioner. ~~[No person shall, after April 1, 1992, operate a multiple-employer welfare arrangement in existence prior to April 1, 1992, unless such arrangement has submitted for approval in compliance with RSA 415-E:4, or otherwise meets the special requirements of paragraph III of this section.]~~ ***A foreign or domestic MEWA or association shall be subject to the jurisdiction of this state if it provides a health benefit plan that covers the employees of at least one employer that maintains a work location in New Hampshire, which is the primary workplace of at least one New Hampshire resident, including any self-employed New Hampshire resident who is qualified to enroll in the plan.***

II. This chapter shall not apply to a multiple-employer welfare arrangement which offers or provides benefits ~~[which are fully insured by an authorized insurer or]~~ under the provisions of RSA 5-B.

~~[III. RSA 415-E:4, RSA 415-E:8, RSA 415-E:9, III and RSA 415-E:11 shall not apply to a multiple-employer welfare arrangement which:-~~

~~(a) Meets the general eligibility requirements of RSA 415-E:3, I;-~~

~~(b) Is administered primarily from a principal place of business located within the state of New Hampshire;~~

~~(c) Has provided employee health benefits for a continuous period of 10 or more years;-~~

~~(d) Maintains a termination liability fund wherein the fund balance plus the total liabilities of the multiple-employer welfare arrangement shall at no time, for a consecutive 90-day period, be less than 40 percent of the aggregate amount of premiums billed during the 6 prior months. For purposes of this subparagraph, that surety amount, if any, deposited with the commissioner pursuant to RSA 415-E:7, I, may be credited as a fund balance asset toward the termination liability fund amount required under this chapter; and-~~

(e) Files with the commissioner, not later than 4 months following the end of each fiscal year, a report on the financial status of the termination liability fund, which report is filed under oath by a member of its board of trustees, or by an administrative executive duly appointed by the board, and further certified to by an independent certified public accountant with a place of business located within the state of New Hampshire.

IV. In the event a multiple-employer welfare arrangement does not satisfy the requirements of paragraph III, the arrangement shall within 60 days file with the commissioner an application for approval under RSA 415-E:4, and shall be subject to all provisions of this chapter until such time as the requirements of paragraph III are satisfied.]

5 Multiple-Employer Welfare Arrangements. RSA 415-E:3 is repealed and reenacted to read as follows:

415-E:3 General Eligibility: Pathway I and Pathway II. To meet the requirements for approval and to maintain a multiple employer welfare arrangement, an association shall be approved either as a bona fide pathway I or pathway II association as follows:

I. An association seeking approval as a bona fide pathway I association shall:

- (a) Meet the definition in RSA 415-E:II of a bona fide pathway I association.
- (b) Sponsor health coverage that is self-insured.
- (c) Be nonprofit.

(d) Be established by a trade association, industry association, political subdivision of the state, religious organization, or professional association of employers or professionals which has a constitution or bylaws and which has been organized and maintained in good faith for a continuous period of one year for purposes other than that of obtaining or providing insurance.

(e) Be operated pursuant to a trust agreement by a board of trustees which shall have complete fiscal control over the arrangement and which shall be responsible for all operations of the arrangement. The trustees selected shall be owners, partners, officers, directors, or employees of one or more employers in the arrangement. A trustee may not be an owner, officer, or employee of the administrator or service company of the arrangement. The trustees shall have the authority to approve applications of association members for participation in the arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the arrangement.

(f) Be neither offered nor advertised to the public generally.

(g) Be operated in accordance with sound actuarial principles.

II. An association seeking approval as a bona fide pathway II association shall:

(a) Meet the definition in RSA 415-E:III of a bona fide pathway II association.

(b) Have a formal organizational structure with a governing body, bylaws, and other similar indications of formality, and complies with RSA 415-E:3 I-a (e) above and with all other organizational requirements under this chapter and, if the association offers fully insured coverage, under RSA 420-M.

(c) Have its functions and activities controlled by its employer members, and the association's employer members that participate in the group health plan shall control the plan, both in form and in substance.

(d) Have a commonality of interest with its employer members, such that one or both of the following standards are met, in a manner that is not a subterfuge for discrimination as prohibited under RSA 415-E:1-e;

- (1) The employers are in the same trade, industry, line of business, or profession; or
- (2) Each employer has a principal place of business in the same region;

(e) Have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees.

(f) Have each employer member of the association participating in the group health plan who is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

(g) Not make health coverage through the association's group health plan available other than to:

- (1) An employee of a current employer member of the association; and

(2) A beneficiary of an individual eligible under subparagraph (f)(1).

(h) Not be a health insurance issuer, or owned or controlled by a health insurance issuer, or by a subsidiary or affiliate of a health insurance issuer, other than to the extent such entities participate in the association in their capacity as employer members of the association.

6 New Sections; Multiple-Employer Welfare Arrangements. Amend RSA 415-E by inserting after section 3 the following new sections:

415-E:3-a Bona Fide Pathway Association Coverage; General Authorization. Bona fide pathway association coverage as set forth in the United States Department of Labor's June 21, 2018 amendment to 29 C.F.R. section 2510, 83 Fed. Reg. 28,961 (codified at 29 C.F.R., section 2510.3-5) shall be permissible in New Hampshire provided it conforms with this chapter and all of the provisions of Title XXXVII concerning this coverage.

415-E:3-b Bona Fide Pathway II Association Coverage: Option to Offer Fully-Insured Coverage.

I. A bona fide pathway II association may offer coverage on a fully insured basis if it is licensed as a qualified purchasing alliance under RSA 420-M and meets all of the pathway II requirements under this chapter. No insurer shall issue a fully-insured health benefit plan to an association or MEWA with covered lives in New Hampshire unless the association or MEWA meets the requirement of a bona fide pathway II association under this chapter has been licensed by the department as a qualified purchasing alliance under RSA 420-M.

II. A fully-insured association or MEWA that has been licensed by the department as a qualified purchasing alliance shall not be subject to the financial reporting and solvency requirements of this chapter that are applicable only to self-funded associations.

III. An insurer issuing a fully insured health benefit plan to an association or MEWA shall ensure that the terms of the plan conform with all applicable requirements of this chapter with respect to bona fide association coverage and that the coverage has received all required approvals from the department.

415-E:3-c Bona Fide Pathway II Association Coverage; Benefit Requirements.

I. Each health benefit plan offered to or by a bona fide pathway II association, whether on a fully insured or self-funded basis, shall, at a minimum, provide the following benefits:

(a) Coverage for each of the 10 essential health benefits as defined in 42 U.S.C. section 18022(b)(1), either in conformance with the New Hampshire benchmark plan or, subject to approval of the commissioner, based on a showing of actuarial value equivalence to the New Hampshire benchmark, except that pediatric dental and vision coverage may be offered to the association in either a stand-alone dental or vision plan or as a benefit embedded in the health benefit plan;

(b) Cost sharing requirements of 42 U.S.C. section 18022(c)(1)-(c)(3);

(c) Lifetime and annual limits as prescribed in 29 C.F.R. section 2590.715-2711;

(d) A level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan; and

(e) All other benefits required to comply with applicable federal laws and regulations.

II. Every health benefit plan offered by any bona fide pathway II association, whether offering coverage on a self-funded basis or fully insured basis, and any insurer contracting with an offering association, shall comply with the following:

(a) Except as otherwise specifically provided herein, all requirements of RSA 420-G, including claims data and other reporting requirements;

(b) Requirements contained in RSA 420-J, and any rules adopted thereunder by the commissioner including, but not limited to, network adequacy, balance billing protections, and appeal and grievance processes;

(c) Payment of premium tax as provided in RSA 400-A:31-35 and administrative assessment under RSA 400-A:39;

(d) Requirements pertaining to examinations under RSA 400-A:37;

(e) Requirements pertaining to unfair insurance trade practices under RSA 417;

(f) Vaccine association assessment under RSA 126-Q; and

(g) Individual market assessment under RSA 404-G.

III. No health benefit plan or related policy, contract, certificate, or agreement offered or issued in this state to a bona fide pathway II association shall reserve discretion to the insurer or sponsoring association to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this state. Any such policy, contract, certificate, or agreement shall be void and unenforceable to the extent it conflicts with this section.

IV. A bona fide pathway II association shall not offer, and an insurer shall not deliver or issue for delivery to a bona fide pathway II association, a health benefit plan covering lives located in this state that contains an exclusion or limitation for pre-existing conditions or a waiting period on the coverage of pre-existing conditions.

V. For any bona fide pathway II association coverage that is issued to a sole proprietor, the association or purchasing alliance sponsoring the coverage shall be responsible for monitoring and ensuring that the sole proprietor meets the requirements to qualify as an employer under 29 C.F.R. section 2510.3-5(b) and meets the per month hourly work requirement contained in RSA 126-AA:2, III. Failure to ensure compliance with this provision shall be a violation of this chapter.

#### 415-E:3-d Rating Requirements for Bona Fide Pathway II Association Coverage; Rating Requirements.

I. Any bona fide pathway II association, or any insurer contracting with a bona fide pathway II association to provide a health benefit plan, shall comply with all requirements of RSA 420-G, except that, for a bona fide pathway II association with 250 or more New Hampshire covered lives, small group rating standards under RSA 420-G shall not apply, regardless of the size of the member employer groups, and the association as a whole may be rated as a single risk pool.

II. Coverage for a bona fide pathway II association with 250 or more New Hampshire covered lives may be rated as a single large group in accordance with all standards applicable to large employer groups under RSA 420-G. The following additional requirements shall apply to such coverage:

(a) All premium rates charged shall be guaranteed for a rating period of at least 12 months, and shall not be changed for any reason, including, but not limited to, a change in the group's case characteristics.

III. The association may vary rates among member small employers, including participating self-employed New Hampshire members, as follows:

(a) Variation associated with age shall not exceed 5:1.

(b) Variation associated with tobacco use shall not exceed 1.5 to 1.

(c) No other variation shall be permitted.

IV. The same rating methodology shall apply to newly covered member employer groups and employee members renewing at each annual renewal date or anniversary date. The rating methodology shall not be construed to include health carrier incentives to individual subscribers or members to participate in wellness and fitness programs provided such incentives are approved by the insurance department.

V. Nothing in this chapter shall be construed to allow a member small employer group within any association to be rated separately under large group rating standards.

415-E:3-e Bona Fide Pathway II Association Coverage; Nondiscrimination Requirements. In accordance with 29 C.F.R. section 2590.702, bona fide pathway II association coverage shall comply with the following:

I. The group or association shall not condition employer membership in the group or association on any health factor of any individual who is or may become eligible to participate in the group health plan sponsored by the group or association.

II. The group health plan sponsored by the group or association shall comply with 29 C.F.R. section 2590.702(b) with respect to nondiscrimination in rules for eligibility of benefits.

III. The group health plan sponsored by the group or association shall comply with 29 C.F.R. section 2590.702(c) with respect to nondiscrimination in premiums or contributions required by any participant or beneficiary for coverage under the plan.

IV. In applying the nondiscrimination provisions of paragraphs II and III, the group or association shall not treat the employees of different employer members of the group or association as distinct groups of similarly-situated individuals based on a health factor of one or more individuals.



415-E:3-f Bona Fide Pathway II Association Coverage: Movement from Bona Fide Pathway II Association Coverage to Small Group Coverage. A small employer that leaves the small group market for bona fide pathway II association coverage shall not be permitted to return to small group coverage for a period of 24 months following the departure from the small group market, nor shall an insurer be permitted to issue small group coverage to such a group, unless the employer can demonstrate that association coverage is no longer available to that employer.

415-E:3-g Bona Fide Pathway II Association Coverage: Mitigation of Individual and Small Group Market Impacts of Pathway II Association Coverage.

I. In order to mitigate potential adverse effects of pathway II association coverage on the existing individual and small group markets, the following protective measures shall apply:

(a) Prior to January 1, 2020, the commissioner shall retain an independent actuarial firm to model and quantify the impacts of pathway II coverage on the existing individual and small group markets and to perform the actuarial review necessary to support a section 1332 waiver as required in subparagraph (b) and the small group risk adjustment program required in RSA 420-K.

(b) Prior to January 1, 2021, the commissioner shall apply for a waiver under section 1332 of the Patient Protection and Affordable Care Act, 42 U.S.C. section 18001 (2010) and under the commissioner's authority in RSA 420-N:6-a in order to create a risk subsidy mechanism for the individual market under RSA 404-G which is eligible to draw down federal pass-through funding to support such mechanism;

(c) The 1332 waiver, the plan of operation for the individual market risk subsidy mechanism, and the plan of operation for the small group risk adjustment mechanism shall be guided by the actuarial analysis in subparagraph (a). The commissioner shall publish and accept public comment on the 1332 waiver application, the plan of operation for the individual market risk subsidy mechanism, and the plan of operation for the small group risk adjustment program required under RSA 420-K prior to approving such plans.

II. No pathway II association coverage shall be issued to a sole proprietor until the 1332 waiver has been granted, and the risk subsidy mechanism for the individual market has been put in place.

III. The plan of operation for the small group risk adjustment program required under RSA 420-K shall be approved and in place by January 1, 2021.

IV. Upon the recommendation of the commission on the status of the individual established under RSA 420-K:8, small employer and pathway II association health coverage markets created under RSA 404-J, the commissioner may limit pathway II associations to the writing of existing business only and to adjust the risk score differential amount in RSA 420-K:4, I(d) as necessary to prevent the pathway II association market from having an adverse impact on the availability and choice of coverage or as necessary to prevent average premiums for individuals or small groups from increasing at a rate that is significantly higher than the trend in claims costs.

7 Multiple-Employer Welfare Arrangements; Filing of Application. Amend the section heading and the introductory paragraph of RSA 415-E:4 to read as follows:

415-E:4 ***Self-Funded Arrangements***; Filing of Application. ***For self-funded arrangements***, the sponsoring association shall file with the commissioner an application for approval of the arrangement upon a form to be furnished by the commissioner, which shall include or have attached the following:

8 Multiple-Employer Welfare Arrangements; Termination Liability Fund. RSA 415-E:5 is repealed and reenacted to read as follows:

415-E:5 Self-Funded Arrangements: Termination Liability Fund.

I. Each self-funded multiple-employer welfare arrangement shall maintain a termination liability fund wherein the fund balance of the multiple-employer welfare arrangement shall at no time, for a consecutive 90-day period, be less than \$750,000 or 33 percent of the aggregate premiums billed during the 12 prior months, whichever is greater. For purposes of this paragraph, that surety amount, if any, deposited with the commissioner pursuant to RSA 415-E:7, I, may be credited as a fund balance asset toward the termination liability fund amount.

II. Each self-funded multiple-employer welfare arrangement shall file with the commissioner, not later than 4 months following the end of each fiscal year, a report on the financial status of the termination liability fund, which report is filed under oath by a member of its board of trustees, or by an administrative executive duly appointed by the board, and further certified to by an independent certified public accountant.

9 Multiple-Employer Arrangements, Financial Condition, Loss Reserves. Amend RSA 415-E:6 to read as follows:

415-E:6 ***Self-Funded Arrangements***; Financial Condition, Loss Reserves, Reinsurance, or Working Capital; Determination of Inadequacy.

***I. Each self-funded arrangement shall maintain specific excess insurance with a retention level determined in accordance with sound actuarial principles and approved by the commissioner.***

***II. Each self-funded arrangement shall establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles and approved by the commissioner.***

[F:] ***III.*** The commissioner may, upon reasonable notice, conduct an examination of the loss reserves, financial condition, specific excess insurance, and working capital of a multiple-employer welfare arrangement ***the costs of which shall be borne by the arrangement.*** If the commissioner preliminarily finds that the reserves, specific excess insurance, or financial condition may be inadequate, or that the arrangement does not have a combined working capital in an amount establishing the financial strength and liquidity of the arrangement to pay claims promptly and showing evidence of the financial ability of the arrangement to meet its obligations to covered employees, the commissioner shall notify the arrangement of such inadequacy. Upon being so notified, the arrangement shall within 30 days file with the commissioner all information which, in the belief of the arrangement, proves the reasonableness and adequacy of the condition noted as being inadequate.

[H:] ***IV.*** If the commissioner determines, after reviewing the information filed, that an inadequate condition exists, the arrangement shall implement, within 30 days, a plan to correct the inadequacy and shall file proof of reasonable improvement or adequate condition with the commissioner within 6 months of the implementation of the plan. If the commissioner is satisfied that the plan submitted to improve the inadequate condition of the arrangement is sufficient, he shall so notify the arrangement. The arrangement shall report quarterly to the commissioner until the causes of the inadequate condition have been corrected.

[H:] ***V.*** The commissioner may suspend or revoke the approval of an arrangement if he finds that the arrangement has failed to correct or reasonably improve an inadequate condition within the time authorized by paragraph [H] ***IV.***

10 Multiple-Employer Arrangements; Insolvency Protection. Amend RSA 415-E:7, I to read as follows:

I. To assure the faithful performance of its obligations to its member employers and covered employees ***who are Hampshire residents*** and their dependents, every arrangement shall, within 30 days after the close of the arrangement's fiscal year, deposit with the commissioner cash, securities, or any combination of these or other measures acceptable to the commissioner, in an amount equal to ~~[25 percent of the preceding 12 months' health care claims expenditures or 5 percent of gross annual premiums for the succeeding year], \$100,000 or 25 percent of the aggregate premiums billed during the 12 prior months attributable to New Hampshire residents,~~ whichever is greater~~[-; however, in no case shall the amount of the deposit exceed \$100,000]~~. All income from deposits shall belong to the depositing arrangement and shall be paid to it as it becomes available. An arrangement that has made a securities deposit may withdraw that deposit, or any part of such deposit, after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value, upon approval by the commissioner. No judgment creditor or other claimant of a multiple-employer welfare association shall have the right to levy upon any of the assets or securities held in this state as a deposit under this section.

11 Multiple-Employer Arrangements. Amend RSA 415-E:8 through RSA 415-E:13 to read as follows:

415-E:8 Policy Forms.

***I. Whether an arrangement is self-funded or fully insured,*** no policy or contract form, application form, certificate, rider, endorsement, summary plan description, or other evidence of coverage shall be ***sponsored or*** issued by an arrangement unless the form and all changes to it have been filed with the commissioner by or on behalf of the arrangement which proposed to use such form and have been approved by the commissioner.

***II.*** The commissioner shall disapprove any form filed under this section, or withdraw any previous approval, only if the form:

(a) Is in any respect in violation of, or does not comply with, this chapter.

(b) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(c) Has any title, heading, or other indication of its provisions which is misleading.

(d) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

(e) Contains provisions which are unfair or inequitable, or contrary to the public policy of this state or which encourage misrepresentation.

**III. Each self-funded arrangement shall issue to each covered employee a policy contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of the benefits and coverages provided shall contain in boldfaced print in a conspicuous location, the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by a group of employers."**

**IV. Each self-funded arrangement shall provide to each covered employee, on request, a written statement of the dollar amount of allowable benefit for any procedure which is requested by the appropriate procedure code.**

**415-E:9 Self-Funded Arrangements; Employer Participants' Liability. For self-funded arrangements:**

I. The liability of each employer participant for the obligations of the multiple-employer welfare arrangement shall be individual, several, and proportionate, but not joint.

II. Each employer participant shall have a contingent assessment liability pursuant to 415-E:10 for payment of actual losses and expenses incurred while the policy was in force.

III. Each policy issued by the arrangement shall contain a statement of the contingent liability. Both the application for insurance and policy shall contain, in contrasting color and not less than 10-point type, the following statement: "This is a fully assessable policy. In the event the arrangement is unable to pay its obligations, policyholders (employers) shall be required to contribute on a pro rata earned premium basis the money necessary to meet any unfulfilled obligations."

**415-E:10 Self-Funded Arrangements; Termination of Arrangement. For self-funded arrangements,** if an arrangement is terminated for any reason, it shall pay all outstanding claims, debts, and obligations. The arrangement may retain sufficient funds to provide coverage for such additional period as the trustees of the arrangement consider prudent. In addition, the trustees may purchase such additional insurance as they consider necessary for protection against potential future claims. Any funds remaining in the arrangement after satisfaction of all obligations upon termination shall be paid to participating employers and/or covered employees as of the termination date in some equitable manner meeting with the approval of the commissioner, including, without ruling out other alternatives, equally on a per capita basis to each participating employer and/or employee who is covered under the arrangement as of the effective date of termination.

**415-E:11 Self-Funded Arrangements; Annual Reports and Triennial Actuarial Reports. For self-funded arrangements:**

I. Every **such** arrangement shall, annually within 4 months of the end of the fiscal year or within such extension of time as the commissioner for good cause may grant, file a report with the commissioner, verified by the oath of a member of the board of trustees or by an administrative executive appointed by the board, showing its condition on the last day of the preceding fiscal year. The report shall contain a financial statement of the arrangement, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant. The report shall also include an analysis of the adequacy of reserves and contributions or premiums charged, based on a review of past and projected claims and expenses.

II. In addition to information called for and furnished in connection with the annual report, if reasonable grounds exist, the commissioner may request information which summarizes paid and incurred expenses, and contributions or premiums received, and may request evidence satisfactory to the commissioner that the arrangement is actuarially sound. Such information and evidence shall be furnished to the commissioner by the arrangement as soon as reasonably possible after requested by the commissioner, but no later than 30 days after such request, unless the commissioner, for good cause, grants an extension.

III. At least once every 3 years, each **such** arrangement shall have a report prepared by an actuary who is a member of the Society of Actuaries of the American Academy of Actuaries as to the actuarial soundness of the arrangement. The report shall be made available to the commissioner upon request. The report shall consist of, but shall not be limited to, the following:

(a) Adequacy of contribution rate in meeting the level of benefits provided and changes, if any, needed in the contribution rates to achieve or preserve a level of funding deemed adequate to enable payment of the benefit amounts provided under the arrangement, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the plan and the extent of any unfunded accrued liabilities.

(b) A plan to amortize any unfunded liabilities and a description of actions taken to reduce unfunded liabilities.

(c) A description and explanation of actuarial assumptions.

(d) A schedule illustrating the amortization of any unfunded liabilities.

(e) A comparative review illustrating the level of funds available to the arrangement from rates, investment income, and other sources realized over the period covered by the report, indicating the assumptions used.

(f) A statement by the actuary that the report is complete and accurate and that in his opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this chapter.

(g) Other factors or statements as may be reasonably required by the commissioner in order to determine the actuarial soundness of the plan.

415-E:12 ~~[Place of Business;]~~ Maintenance of Records. Each arrangement shall ~~[have and maintain its principal place of business in this state and shall]~~ make available to the commissioner complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for, or suitable to, the kind or kinds of business transacted.

415-E:13 ***Qualification for Approval and*** Suspension[;] ***or*** Revocation of Approval.

I. Subject to other provisions in this chapter, the commissioner shall deny, suspend, or revoke an arrangement's approval if it finds that the arrangement:

(a) Has failed to meet the financial requirements of this chapter, RSA 420-G, or has violated any lawful order or rules.

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) No longer meets the requirements for the authority originally granted.

II. The commissioner may, in his discretion, deny, suspend, or revoke the approval of any arrangement if it finds that the arrangement:

(a) Has violated any lawful order or rule of the commissioner, provision of this chapter, RSA 420-J, or relevant provision of RSA 161-H.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

***III. The commissioner shall not grant or continue approval until such time as the arrangement replaces any trustee found by the commissioner, upon the presentation of sufficient evidence:***

***(a) To be incompetent;***

***(b) To be guilty of, or to have pled guilty or no contest to a felony, or a crime involving moral turpitude;***

***(c) To have had any type of insurance license revoked in this or any other state;***



*(d) To have improperly manipulated assets, accounts, or specific excess insurance or to have otherwise acted in bad faith.*

**IV. To qualify for and retain approval to transact business, an arrangement shall make all contracts with administrators or service companies available for inspection by the department initially, and thereafter upon reasonable notice.**

**V. Failure to maintain compliance with applicable eligibility or filing requirements established by this section shall be grounds for suspension or revocation of approval of an arrangement, provided, however, that such arrangement shall have 60 days after notification by the commissioner to take such action necessary to correct the deficiency.**

12 Multiple Employer Arrangements; Rehabilitation; Rulemaking. Amend RSA 415-E:15 and RSA 415-E:16 to read as follows:

415-E:15 Rehabilitation, Dissolution. Any rehabilitation, liquidation, conservation, **supervision**, or dissolution of a multiple-employer welfare arrangement shall be conducted under the supervision of the commissioner, who shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, conservation, **supervision**, or dissolution of insurers.

415-E:16 Rulemaking. The commissioner may adopt such rules, pursuant to RSA 541-A, as ~~he deems~~ **are** reasonable and necessary in order to carry out properly the functions and responsibilities assigned the insurance department under ~~[the laws of the state]~~ **this chapter**. ~~[This rulemaking authority shall expire on January 1, 1993, at which time this section, unless replaced by a later legislative enactment, shall be deemed repealed. Any rules adopted under this section shall be drafted in as narrow a manner as possible, consistent with the authority granted the department under the laws of this state.]~~

13 Health Coverage; Definitions. Amend RSA 420-G:2, XVI(a) to read as follows:

XVI.(a) "Small employer" means a business or organization which employed on average, one and up to 50 employees, including owners and self-employed persons, on business days during the previous calendar year. A small employer is subject to this chapter whether or not it becomes part of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it meets this definition; ***provided that coverage written to a bona fide pathway II association with at least 500 New Hampshire covered lives that meets all applicable standards under RSA 415-E and all large group standards under this chapter shall not be considered small employer coverage and may be offered to sole proprietors or self-employed persons.***

14 Health Coverage; Guaranteed Issue and Renewability. Amend RSA 420-G:6, III to read as follows:

III. Health carriers shall actively market, issue, and renew all of the health coverages they sell in the small employer market to all small employers ***except that a health carrier shall not be permitted to issue small employer coverage to a group that previously was covered as part of a bona fide pathway II association under chapter RSA 415-E for a period of 24 months after the date that the group initiated pathway II coverage, unless the group can demonstrate that association coverage is no longer available to that group.***

15 Purchasing Alliances; Definitions. Amend RSA 420-M:2, X to read as follows:

X. "Qualified purchasing alliance" means a purchasing alliance that has obtained certification from the commissioner under RSA 420-M:13 as a qualified purchasing alliance with authority to ~~[operate in the same manner as a qualified association trust pursuant to RSA 420-G:10]~~ ***sponsor fully-insured bona fide pathway II association coverage under RSA 415-E.***

16 Purchasing Alliances. RSA 420-M:13 is repealed and reenacted to read as follows:

420-M:13 Qualified Purchasing Alliance. A purchasing alliance that has a minimum of 500 enrollees may elect to obtain certification from the commissioner as a qualified purchasing alliance. To obtain certification, a purchasing alliance shall demonstrate:

I. That the purchasing alliance meets all requirements under RSA 415-E to operate as a bona fide pathway II association; and

II. That certification of the applicant as a qualified purchasing alliance will promote the purposes set out in RSA 420-M:1; and



III. That the purchasing alliance has the capacity to monitor and screen sole proprietor members purchasing pathway II association coverage to ensure that they meet all requirements to qualify as an “employee” under 29 C.F.R. section 2510.3-5(b) and meets the per month hourly work requirement contained in RSA 126-AA:2, III.

17 Health Coverage; Qualified Association Trust. Amend RSA 420-G:10 to read as follows:

420-G:10 Qualified Association Trust [~~and Qualified Purchasing Alliance~~].

I. A qualified association trust or other entity, as defined in RSA 420-G:2, XV[, ~~and a qualified purchasing alliance, as defined in RSA 420-M:2, X,~~] shall:

(a) Comply with the rating restrictions outlined in RSA 420-G:4 for all small employer members with 50 or fewer employees based upon the association’s or alliance’s group experience, except that [~~for a qualified association trust,~~] no rating factor shall be utilized without the express written consent of the association.

(b) Offer all eligible members, as defined under the applicable trust or other documents, coverage and rates on a guaranteed issue and renewable basis.

(c) Comply with the regulations concerning medical underwriting in RSA 420-G:5.

(d) Comply with the preexisting conditions provision of RSA 420-G:7.

(e) Prohibit any employer that voluntarily discontinues participation in either a qualified association trust or a qualified purchasing alliance from rejoining for a period of at least 24 months.

II. Nothing in this chapter shall be interpreted to limit the size of employers who may participate in coverage with a qualified association trust [~~or a qualified purchasing alliance~~].

18 Small Employer Health Reinsurance Pool. Amend the chapter heading of RSA 420-K to read as follows:

**SMALL EMPLOYER HEALTH [REINSURANCE POOL] *RISK ADJUSTMENT PROGRAM***

19 Small Employer Health Reinsurance Pool; Definitions. RSA 420-K:1 is repealed and reenacted to read as follows:

420-K:1 Definitions. In this chapter:

I. “Assessment” means the liability of the member insurer to the reinsurance pool.

II. “Board” means the board of directors of the small employer health reinsurance pool.

III. “Bona fide pathway II association coverage” means coverage, whether self-funded or fully insured, that constitutes an employee welfare benefit plan sponsored by a bona fide pathway II association as defined in RSA 415-E:1.

IV. “Commissioner” means the insurance commissioner.

V. “Covered lives” shall include all persons who have health insurance via a health carrier and who are employees or dependents of employees of a small employer, including sole proprietors covered under bona fide pathway II association coverage.

VI. “Health insurance” means “health insurance” as defined in RSA 404-G:2, VII.

VII. “Plan of operation” means the plan of operation of the small employer health risk adjustment program, including articles, bylaws and operating rules, procedures and policies approved by the commissioner and adopted by the pool.

VIII. “Small employer” means “small employer” as defined in RSA 420-G: 2, XVI.

IX. “Small employer health carrier” means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health insurance in New Hampshire to any small employer. For purposes of this chapter, health carrier shall include any association, organization or arrangement offering or sponsoring bona fide pathway II association coverage.

20 Establishment of the Risk Adjustment Program. Amend RSA 420-K:2 to read as follows:

420-K:2 Establishment of the [~~Pool~~] ***Risk Adjustment Program***.

I. There is established a nonprofit entity to be known as the “New Hampshire small employer health [~~reinsurance pool~~] ***risk adjustment program***.” All ***small employer*** health carriers[, ~~writers of health insurance, and other insurers~~] issuing or maintaining health insurance in this state shall be members of the [~~pool~~] ***program***.

II. ~~[On or before July 1, 2005,]~~ The commissioner shall give notice to all members of the ~~[pool]~~ **program** of the time and place for the initial organizational meeting~~[- which shall take place by July 15, 2005]~~. The members shall select the initial board at the organizational meeting and such initial board shall be subject to approval by the commissioner. The members shall elect each subsequent board at the annual meeting of members and each such subsequent board shall be subject to approval by the commissioner. The initial board and each subsequent board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than one board member on the initial board and each subsequent board representing any one member company. In determining voting rights at the organizational meeting and all subsequent meetings of members, each member shall be entitled to vote in person or by proxy. All such votes shall be proportional to the member's covered lives. To the extent possible, at least 2/3 of members of each board shall be small employer health carriers. ~~[At least one member of each board shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state.]~~ The commissioner, or designee, shall be an ex-officio voting member of the board. In approving selection of each board, the commissioner shall assure that all members are fairly represented.

III. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

IV. Within 60 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the ~~[pool]~~ **program**. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the ~~[pool]~~, ~~and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of paragraph VI of this section]~~ **program**. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments ~~[no later than October 1, 2005]~~. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner.

V. The board shall select reinsurance pool administrators through a competitive bidding process to administer the ~~[pool]~~ **program**. The board shall evaluate bids submitted based on criteria established by the board. ~~[Each month, total payments to administrators shall not exceed the larger of \$2,500 or an amount equal to \$10 per life for which the reinsurance pool has any potential claims liability.]~~

VI. The plan of operation shall establish procedures for:

(a) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.

(b) Filling vacancies on the board, subject to the approval of the commissioner.

(c) Selecting an administrator and setting forth the powers and duties of the administrator.

(d) ~~[Reinsuring risks in accordance with the provisions of this chapter]~~ **Establishing risk adjustment parameters.**

(e) Collecting assessments from all members to provide for ~~[claims reinsured]~~ **risk adjustment payments** by the ~~[pool]~~ **program** and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.

(f) Any additional matters at the discretion of the board.

21 Powers of the Program. RSA 420-K:3 and RSA 420-K:4 are repealed and reenacted to read as follows:

420-K:3 Powers of the Program. The program may:

I. Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

II. Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

III. Take such legal action as necessary to avoid the payment of improper claims against the program.

IV. Define the array of health coverage products for which risk adjustment will be applied in accordance with the requirements of this chapter.

V. Establish rules, conditions, and procedures pertaining to the risk adjustment mechanism, including implementation and measurement time frames and the permitted risk corridor where no transfer of risk adjustment funds shall take place.

VI. Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the program.

VII. Assess members in accordance with the provisions of this chapter, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses and to pay claims by the program. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.

VIII. Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy, and other contract design, and any other function within the authority of the program.

IX. Borrow money to effectuate the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for insurers and may be carried as admitted assets.

#### 420-K:4 Risk Adjustment Program.

##### I. The board shall:

(a) Develop and monitor a measure of risk to be used in comparing populations covered by small employer health insurance coverage and bona fide pathway II association coverage.

(b) Access from the New Hampshire comprehensive health care information system (CHIS), as described under RSA 420-G:11-a, member level information, including length of coverage, gender, age, and diagnosis, sufficient to measure and monitor risk for carriers issuing or administering small employer health insurance.

(c) Perform risk adjustment analysis using data from the CHIS, including calculating New Hampshire specific relative weights as necessary, to analyze the difference in the medical care resources expected to be necessary to treat the 2 different populations, one covered in the small group insurance risk pool and the other covered by bona fide pathway II association coverage.

(d) Subject to the limitation in paragraph II, establish risk adjustment payments between carriers that are triggered whenever the average risk between bona fide pathway II association coverage and all other small group coverage differs by more than 20 percent over any calendar year, and that serve to create a net effect of reducing future expected risk score differences after payments to approximately 12 percent.

(e) Provide a report to the insurance commissioner in a form and format acceptable to the commissioner.

II. The board shall not implement any adjustments until the number of lives covered by bona fide pathway II association coverage exceeds 5,000 member months for 3 consecutive months.

#### 22 Immunity and Indemnification. Amend RSA 420-K:7 to read as follows:

##### 420-K:7 Immunity and Indemnification.

I. Neither the participation in the ~~[pool]~~ **program** as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this chapter shall be the basis of any legal action against the pool or any of its members.

II. Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the pool against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit, or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The right of indemnification shall not be

exclusive of other rights or defenses to which such person or the legal representative or successors of such person, may be entitled to as a matter of law. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this chapter and such expenses shall be paid by the ~~[pool]~~ **program** established in this chapter.

23 New Section; Small Employer Health Risk Adjustment Program; Commission Established. Amend RSA 420-K by inserting after section 7 the following new section:

420-K:8 Commission on the Status of the Individual, Small Employer And Pathway II Association Health Coverage Markets.

I. There is hereby established a commission on the status of the individual, small employer and pathway II association health coverage markets.

(a) The members of the commission shall be as follows:

(1) Three members of the senate, one of whom shall be a member of the minority party, appointed by the president of the senate.

(2) Three members of the house of representatives, one of whom shall be a member of the minority party, appointed by the speaker of the house of representatives.

(3) The commissioner of the department of health and human services, or designee.

(4) The commissioner of the department of insurance, or designee.

(5) A representative of a commercial carrier, appointed by the governor.

(6) A representative of a hospital that operates in New Hampshire, appointed by the New Hampshire Hospital Association.

(7) A public member, who has health care expertise, appointed by the senate president.

(8) A public member, who currently receives coverage through the program, appointed by the speaker of the house of representatives.

(9) A public member representing the interests of the individual market in New Hampshire, appointed by the president of the senate.

(10) A representative of the medical care advisory committee, department of health and human services.

(11) A licensed physician, appointed by the New Hampshire Medical Society.

(12) A licensed mental health professional, appointed by the National Alliance on Mental Illness New Hampshire.

(13) A licensed substance use disorder professional, appointed by the New Hampshire Alcohol and Drug Abuse Counselors Association.

(14) An advanced practice registered nurse (APRN), appointed by the New Hampshire Nurse Practitioner Association.

(15) The chairperson of the governor's commission on alcohol and drug abuse prevention, treatment, and recovery, or designee.

(b) Of the commission members listed in subparagraph (a), only the 6 legislative members shall be voting members. All other members shall serve in an advisory capacity.

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

II.(a) The commission shall evaluate the effectiveness and future of pathway II association coverage, as well as the status of the individual and small employer markets for health coverage. Specifically the commission shall evaluate the pathway II program, as follows:

(1) Review the program's ability to cover pre-existing conditions and provide essential health benefits.

(2) Review the program's product offerings.

(3) Review the program's impact on insurance premiums for individuals and small businesses.

(4) Make recommendations for future program modifications.

(5) Evaluate reimbursement rates to determine if they are sufficient to ensure access to and provider capacity for all behavioral health services.

(6) Review the number of sole proprietorships involved in the program and evaluate whether or not they are complying with the work requirements.

(7) Review the program's provider reimbursement rates and overall financing structure to ensure it is able to provide a stable provider network and sustainable funding mechanism that serves patients, communities, and the state of New Hampshire.

(8) Review any and all impacts of the program on the individual and small group markets, including on premiums, and the availability of choice of plans.

(b) Any solutions recommended by the commission shall not include the use of new general funds.

(c) The commission shall solicit information from any person or entity the commission deems relevant to its study.

III. The commissioner shall provide information and reports to the commission on a biannual basis concerning the status of the individual, small employer and pathway II association markets as necessary to allow the commission to carry out its duties. The commission may, at any time, upon a finding that pathway II association coverage is having an adverse impact on the availability and choice of coverage in the individual or small employer markets or is causing average premiums for individuals or small groups to increase at a rate that is significantly higher than the trend in claims costs, recommend that the commissioner limit pathway II associations to the writing of existing business only or adjust the risk score differential amount in RSA 420-K:4, I (d).

IV. The commission shall make a recommendation on or by March 1, 2020 to the commissioner concerning recommended monitoring and evaluation of the work requirement for sole proprietorships.

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 of the 6 voting members of the commission shall constitute a quorum.

VI. The commission shall submit an interim report on or before March 1, 2020 and a final report, together with its findings and any recommendations for proposed legislation, to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, 2022. Both reports shall contain the commission's recommendation regarding whether the program should continue.

24 Repeal. The following are repealed:

I. RSA 420-K:5, relative to eligibility, coverage, and rates.

II. RSA 420-K:6, relative to assessments.

25 Repeal. RSA 420-K:24, relative to commission to evaluate the effectiveness and future of pathway II associations, is repealed.

26 Prospective Repeal and Reinstatement. The amendments and insertions to the RSAs enacted in sections 3-22 of this act are repealed effective January 1, 2023. On January 1, 2023 at 12:01 a.m., the director of legislative services shall cause the RSA sections in sections 3-22 of this act to be reinstated to the version of the law which was in effect immediately prior to the effective date of those sections.

27 Effective Date.

I. Sections 1-17 of this act shall take effect January 1, 2020.

II. Section 25 of this act shall take effect December 1, 2022.

III. The remainder of this act shall take effect 30 days after its passage.

Recess. Out of recess.

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



Senator Feltes offered a Floor Amendment.

Sen. Feltes, Dist 15  
March 14, 2019  
2019-1055s  
01/10

Floor Amendment to SB 228-FN

Amend RSA 415-E:2, II as inserted by section 4 of the bill by replacing it with the following:

II. This chapter shall not apply to a multiple-employer welfare arrangement ***sponsored by a bona fide pathway I association which is fully insured by an authorized insurer or*** which offers or provides benefits which are fully insured by an authorized insurer or under the provisions of RSA 5-B.

Amend RSA 415-E:3-c, I as inserted by section 6 of the bill by replacing it with the following:

I. Each health benefit plan offered to or by a bona fide pathway II association, whether on a fully insured or self-funded basis, shall, at a minimum, provide the following benefits:

(a) Coverage for each of the 10 essential health benefits as defined in 42 U.S.C. section 18022(b)(1), subject to approval of the commissioner based on the New Hampshire benchmark plan;

(b) Cost sharing requirements of 42 U.S.C. section 18022(c)(1)-(c)(3);

(c) Lifetime and annual limits as prescribed in 29 C.F.R. section 2590.715-2711;

(d) A level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan; and

(e) All other benefits required to comply with applicable federal laws and regulations and with any provision of title XXXVII that applies to large group health insurance coverage.

Amend RSA 415-E:3-g, I(a) and (b) as inserted by section 6 of the bill by replacing them with the following:

(a) Prior to July 1, 2019, the commissioner shall retain an independent actuarial firm to model and quantify the impacts of pathway II coverage on the existing individual and small group markets and to perform the actuarial review necessary to support a section 1332 waiver as required in subparagraph (b) and the small group risk adjustment program required in RSA 420-K.

(b) Prior to January 1, 2020, the commissioner shall apply for a waiver under section 1332 of the Patient Protection and Affordable Care Act, 42 U.S.C. section 18001 (2010) and under the commissioner's authority in RSA 420-N:6-a in order to create a risk subsidy mechanism for the individual market under RSA 404-G which is eligible to draw down federal pass-through funding to support such mechanism;

Amend RSA 420-K:4 as inserted by section 21 of the bill by replacing it with the following:

420-K:4 Risk Adjustment Program.

I. The board shall:

(a) Develop and monitor a measure of risk to be used in comparing populations covered by small employer health insurance coverage and bona fide pathway II association coverage.

(b) Access from the New Hampshire comprehensive health care information system (CHIS), as described under RSA 420-G:11-a, member level information, including length of coverage, gender, age, and diagnosis, sufficient to measure and monitor risk for carriers issuing or administering small employer health insurance.

(c) Perform risk adjustment analysis which may include the use of data from the CHIS, including calculating New Hampshire specific relative weights as necessary, to analyze the difference in the medical care resources expected to be necessary to treat the 2 different populations, one covered in the small group insurance risk pool and the other covered by bona fide pathway II association coverage.

(d) Subject to the limitation in paragraph II, establish risk adjustment payments between carriers that are triggered whenever the average risk between bona fide pathway II association coverage and all other small group coverage differs by more than 5 percent over any calendar year, and that serve to create a net effect of reducing future expected risk score differences after payments to approximately 3 percent.

(e) Provide a report to the insurance commissioner in a form and format acceptable to the commissioner.

II. The board shall not implement any adjustments until the number of lives covered by bona fide pathway II association coverage exceeds 2,000 member months for 3 consecutive months.

Amend the bill by replacing all after section 22 with the following:

23 New Paragraph; Jurisdiction of the Commissioner; Penalties. Amend RSA 420-M:3 by inserting after paragraph III the following new paragraph:

IV. This chapter shall not apply to a multiple-employer welfare arrangement sponsored by a bona fide pathway I association, as defined in RSA 415-E:1, which is fully insured by an authorized insurer.

24 New Chapter; Commission on the Status of Health Coverage Markets for Individuals and Small Employers. Amend RSA by inserting after chapter 404-I the following new chapter:

#### CHAPTER 404-J

### COMMISSION ON THE STATUS OF HEALTH COVERAGE MARKETS FOR INDIVIDUALS AND SMALL EMPLOYERS

I. There is hereby established a commission on the status of health coverage markets for individuals and small employers.

(a) The members of the commission shall be as follows:

(1) Three members of the senate, one of whom shall be a member of the minority party, appointed by the president of the senate.

(2) Three members of the house of representatives, one of whom shall be a member of the minority party, appointed by the speaker of the house of representatives.

(3) The insurance commissioner, or designee.

(4) Three persons representing health carriers, appointed by the insurance commissioner, as follows:

(A) One person representing a health carrier with a significant presence in the individual market;

(B) One person representing a health carrier with a significant presence in the small employer market; and

(C) One person representing a health carrier with an interest in providing or administering health coverage in the pathway II association market.

(5) Two producers, appointed by the insurance commissioner, one of whom shall be a producer with a significant clientele in the individual market and the other a producer with a significant clientele in the small employer market.

(6) A public member from an academic institution or charitable foundation who has health care and health insurance expertise, appointed by the senate president.

(7) A public member who shall represent the interests of persons who obtain their coverage through that market, appointed by the speaker of the house of representatives.

(8) A public member who shall represent the interests of persons who obtain their coverage through the individual market, appointed by the president of the senate.

(9) Two public members from organizations that represent the interests of the medically underserved, persons with pre-existing conditions, or persons with chronic health conditions, including mental health or substance use disorders, appointed by the governor.

(10) A public member who shall represent the interests of small employers sponsoring health coverage for their employees, appointed by the governor.

(11) A public member from the Business and Industry Association of New Hampshire or a New Hampshire chamber of commerce, appointed by the governor.

(12) A public member from a national organization with a New Hampshire chapter that is interested in qualifying as a bona fide pathway II association, as defined in RSA 415-E:1, III, appointed by the governor.

(b) Of the commission members listed under subparagraph (a), only the 6 legislative members shall be voting members. All other members shall serve in an advisory capacity only.

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

(d) The commission shall be a public body subject to RSA 91-A, and its meetings shall be considered public proceedings.

II.(a) The commission shall evaluate the status of health coverage markets for individuals and small employers. This shall include the individual market, the small employer market, and the pathway II association market. These markets shall be evaluated in terms of their performance in making available to individuals and small employers affordable coverage that provides access to medically necessary care on affordable terms. Consideration shall be given to market competitiveness, price, choice of plans, market size, market segmentation, the risk profile of the covered population in each market, adverse selection against specific markets, migration between markets, the rate of growth or diminution in the overall number of covered lives, and other similar factors that may affect the coverage available to individuals and small employers. Specifically, the commission shall evaluate markets and make recommendations on the following:

(1) The performance and effectiveness of the market for pathway II association coverage in itself and in conjunction with the individual and small group markets. This shall include consideration of coverage for pre-existing conditions and essential health benefits, premium rates and product offerings, impact on premiums, the availability and choice of plans, and the number of covered lives in the individual and small employer markets, and the overall impact on the availability and affordability of coverage for higher risk individuals and small employer groups. Based on this evaluation, the commission shall make recommendations for future program modifications, including modifications to the risk adjustment program authorized under RSA 420-K, as well as a final recommendation as to whether the general court should allow the continuation or should phase out the market for pathway II association coverage.

(2) The performance and effectiveness of the individual market in itself and in conjunction with the market for pathway II association coverage. This shall include consideration of the migration of sole proprietors to the pathway II market and the effectiveness of screening procedures in validating sole proprietorship status, the price and availability of coverage for individuals who do not qualify for an advanced premium tax credit or cost sharing reduction assistance through the marketplace exchange, and the design and effectiveness of the risk subsidy mechanism and 1332 waiver for the individual market authorized under RSA 415-E:3-g. Based on this evaluation, the commission shall make recommendations concerning the individual market risk subsidy mechanism under the 1332 waiver, any changes that are needed to screening and monitoring procedures for compliance with the hourly work standard to qualify as a sole proprietor, and any other legislative or regulatory measures that would promote market stability and growth in the individual market.

(b) The commission shall not make any recommendation that includes the use of new general funds.

(c) The commission shall solicit information from any person or entity the commission deems relevant to its study.

III. The insurance commissioner shall provide information and reports to the commission on a biannual basis concerning the status of the individual, small employer and pathway II association markets as necessary to allow the commission to carry out its duties. The commission shall have the authority, at any time, upon a finding that pathway II association coverage is having an adverse impact on the availability and choice of coverage in the individual or small employer markets or is causing average premiums for individuals or small groups to increase at a rate that is significantly higher than the trend in claims costs, to recommend that the commissioner limit pathway II associations to the writing of existing business only or adjust the risk score differential amount in RSA 420-K:4, I(d), and the commissioner shall have authority to implement this recommendation by order pursuant to RSA 400-A:14 and this paragraph.

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 senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Four of the 6 voting members of the commission shall constitute a quorum.

V. The commission shall make an interim report on or before March 1, 2021 and a final report, together with its findings and any recommendations for proposed legislation, to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, 2022. Both reports shall contain the commission's recommendation regarding whether the market for pathway II association coverage should continue or be phased out.

25 Repeal. RSA 404-J, relative to the commission on the status of health insurance markets for individuals and small employers, is repealed.

26 Effective Date.

I. Sections 1-17 and section 23 of this act shall take effect 60 days after its passage.

II. Section 25 of this act shall take effect December 1, 2022.

III. The remainder of this act shall take effect 30 days after its passage.

#### INTRODUCTION OF GUESTS

Senator Reagan introduced students from Pembroke Hill School visiting in the gallery.

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

Recess. Out of recess.

Senator Bradley offered a Floor Amendment.

Sen. Bradley, Dist 3

March 14, 2019

2019-1057s

01/10

#### Floor Amendment to SB 228-FN

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

1 Statement of Purpose. It is the purpose of this act to help small businesses obtain more affordable health care coverage and new coverage options through multiple employer group purchasing mechanisms as authorized in this chapter while preserving protections for higher risk individuals and groups and while protecting against adverse impacts on New Hampshire's existing individual and small group health insurance markets.

2 Title. This act shall be known as the Small Business Health Care Reform Act of 2019.

3 Multiple-Employer Welfare Arrangements; Definitions. RSA 415-E:1 is repealed and reenacted to read as follows:

415-E:1 Definitions. In this chapter:

I. "Bona fide association" means a bona fide pathway I association or a bona fide pathway II association.

II. "Bona fide pathway I association" means a group or association that satisfies the criteria established by the United States Department of Labor prior to the adoption in 2018 of 29 C.F.R. section 2510.3-5, including the guidance provided in the United States Department of Labor publication entitled "MEWAS, Multiple-Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, Revised August 2013" and including published United States Department of Labor ERISA Advisory Opinion Letters.

III. "Bona fide pathway II association" means a group or association that meets the requirements of 29 C.F.R. section 2510.3-5(b).

IV. "Commissioner" means the insurance commissioner of the state of New Hampshire.

V. "Eligible employee" means a full time or part-time employee who meets the requirements for eligibility for group coverage set forth in RSA 415:18, I(q).

VI. "Employee welfare benefit plan" has the same meaning as in 29 U.S.C. section 1002(1).

VII. "Fully insured health benefit plan" means a policy, contract, certificate, or agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services, that is offered or issued to bona fide association by a health insurer licensed to do business in New Hampshire and that bears the risk under the plan.

VIII. "Fund balance" means the total assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement shall not be included in the fund balance. Fund balance shall include other contributed capital, retained earnings, and surplus notes.

IX. "Insolvency termination" means the termination of an arrangement where the fund balance as of the termination date is inadequate.

X. "Insurer" means any insurer, nonprofit hospital or medical service corporation, health maintenance organization, or managed care organization, including but not limited to an insurer offering health coverage as defined in RSA 420-G:2, IX.

XI. "Multiple-employer welfare arrangement (MEWA)" or "association" means an employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health benefits to the eligible employees of 2 or more employers, or to their beneficiaries, and shall include a MEWA as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001 et seq. (ERISA). This shall include plans established by any political subdivision of the state or religious organization, but shall not include any plan or arrangement established or maintained under or pursuant to one or more agreements deemed collective bargaining agreements under section 3(40)(A)(i) of (ERISA). For the purposes of this chapter, 2 or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are under common ownership or within the same control group as defined under section 3(40)(B) of ERISA.

4 Multiple-Employer Welfare Arrangements; Applicability; General Eligibility. Amend RSA 415-E:2 to read as follows:

415-E:2 Applicability.

I. No person shall~~[- after April 1, 1992,]~~ operate a multiple-employer welfare arrangement unless such arrangement is approved by the commissioner. ~~[No person shall, after April 1, 1992, operate a multiple-employer welfare arrangement in existence prior to April 1, 1992, unless such arrangement has submitted for approval in compliance with RSA 415-E:4, or otherwise meets the special requirements of paragraph III of this section.]~~ ***A foreign or domestic MEWA or association shall be subject to the jurisdiction of this state if it provides a health benefit plan that covers the employees of at least one employer that maintains a work location in New Hampshire, which is the primary workplace of at least one New Hampshire resident, including any self-employed New Hampshire resident who is qualified to enroll in the plan.***

II. This chapter shall not apply to a multiple-employer welfare arrangement which offers or provides benefits which are fully insured by an authorized insurer or under the provisions of RSA 5-B.

~~[III. RSA 415-E:4, RSA 415-E:8, RSA 415-E:9, III and RSA 415-E:11 shall not apply to a multiple-employer welfare arrangement which:-~~

~~(a) Meets the general eligibility requirements of RSA 415-E:3, I;-~~

~~(b) Is administered primarily from a principal place of business located within the state of New Hampshire;~~

~~(c) Has provided employee health benefits for a continuous period of 10 or more years;-~~

~~(d) Maintains a termination liability fund wherein the fund balance plus the total liabilities of the multiple-employer welfare arrangement shall at no time, for a consecutive 90-day period, be less than 40 percent of the aggregate amount of premiums billed during the 6 prior months. For purposes of this subparagraph, that surety amount, if any, deposited with the commissioner pursuant to RSA 415-E:7, I, may be credited as a fund balance asset toward the termination liability fund amount required under this chapter; and-~~

~~(e) Files with the commissioner, not later than 4 months following the end of each fiscal year, a report on the financial status of the termination liability fund, which report is filed under oath by a member of its board of trustees, or by an administrative executive duly appointed by the board, and further certified to by an independent certified public accountant with a place of business located within the state of New Hampshire.~~

~~IV. In the event a multiple-employer welfare arrangement does not satisfy the requirements of paragraph III, the arrangement shall within 60 days file with the commissioner an application for approval under RSA 415-E:4, and shall be subject to all provisions of this chapter until such time as the requirements of paragraph III are satisfied.]~~

5 Multiple-Employer Welfare Arrangements. RSA 415-E:3 is repealed and reenacted to read as follows:

415-E:3 General Eligibility: Pathway I and Pathway II. To meet the requirements for approval and to maintain a multiple employer welfare arrangement, an association shall be approved either as a bona fide pathway I or pathway II association as follows:

I. An association seeking approval as a bona fide pathway I association shall:

(a) Meet the definition in RSA 415-E:II of a bona fide pathway I association.



(b) Sponsor health coverage that is self-insured.

(c) Be nonprofit.

(d) Be established by a trade association, industry association, political subdivision of the state, religious organization, or professional association of employers or professionals which has a constitution or bylaws and which has been organized and maintained in good faith for a continuous period of one year for purposes other than that of obtaining or providing insurance.

(e) Be operated pursuant to a trust agreement by a board of trustees which shall have complete fiscal control over the arrangement and which shall be responsible for all operations of the arrangement. The trustees selected shall be owners, partners, officers, directors, or employees of one or more employers in the arrangement. A trustee may not be an owner, officer, or employee of the administrator or service company of the arrangement. The trustees shall have the authority to approve applications of association members for participation in the arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the arrangement.

(f) Be neither offered nor advertised to the public generally.

(g) Be operated in accordance with sound actuarial principles.

II. An association seeking approval as a bona fide pathway II association shall:

(a) Meet the definition in RSA 415-E:III of a bona fide pathway II association.

(b) Have a formal organizational structure with a governing body, bylaws, and other similar indications of formality, and complies with RSA 415-E:3 I-a (e) above and with all other organizational requirements under this chapter and, if the association offers fully insured coverage, under RSA 420-M.

(c) Have its functions and activities controlled by its employer members, and the association's employer members that participate in the group health plan shall control the plan, both in form and in substance.

(d) Have a commonality of interest with its employer members, such that one or both of the following standards are met, in a manner that is not a subterfuge for discrimination as prohibited under RSA 415-E:1-e;

(1) The employers are in the same trade, industry, line of business, or profession; or

(2) Each employer has a principal place of business in the same region;

(e) Have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees.

(f) Have each employer member of the association participating in the group health plan who is a person acting directly as an employer of at least one employee who is a participant covered under the plan.

(g) Not make health coverage through the association's group health plan available other than to:

(1) An employee of a current employer member of the association; and

(2) A beneficiary of an individual eligible under subparagraph (f)(1).

(h) Not be a health insurance issuer, or owned or controlled by a health insurance issuer, or by a subsidiary or affiliate of a health insurance issuer, other than to the extent such entities participate in the association in their capacity as employer members of the association.

6 New Sections; Multiple-Employer Welfare Arrangements. Amend RSA 415-E by inserting after section 3 the following new sections:

415-E:3-a Bona Fide Pathway Association Coverage; General Authorization. Bona fide pathway association coverage as set forth in the United States Department of Labor's June 21, 2018 amendment to 29 C.F.R. section 2510, 83 Fed. Reg. 28,961 (codified at 29 C.F.R., section 2510.3-5) shall be permissible in New Hampshire provided it conforms with this chapter and all of the provisions of Title XXXVII concerning this coverage.

415-E:3-b Bona Fide Pathway II Association Coverage: Option to Offer Fully-Insured Coverage.

I. A bona fide pathway II association may offer coverage on a fully insured basis if it is licensed as a qualified purchasing alliance under RSA 420-M and meets all of the pathway II requirements under this chapter. No insurer shall issue a fully-insured health benefit plan to an association or MEWA with covered

lives in New Hampshire unless the association or MEWA meets the requirement of a bona fide pathway II association under this chapter has been licensed by the department as a qualified purchasing alliance under RSA 420-M.

II. A fully-insured association or MEWA that has been licensed by the department as a qualified purchasing alliance shall not be subject to the financial reporting and solvency requirements of this chapter that are applicable only to self-funded associations.

III. An insurer issuing a fully insured health benefit plan to an association or MEWA shall ensure that the terms of the plan conform with all applicable requirements of this chapter with respect to bona fide association coverage and that the coverage has received all required approvals from the department.

415-E:3-c Bona Fide Pathway II Association Coverage; Benefit Requirements.

I. Each health benefit plan offered to or by a bona fide pathway II association, whether on a fully insured or self-funded basis, shall, at a minimum, provide the following benefits:

(a) Coverage for each of the 10 essential health benefits as defined in 42 U.S.C. section 18022(b)(1), either in conformance with the New Hampshire benchmark plan or, subject to approval of the commissioner, based on a showing of actuarial value equivalence to the New Hampshire benchmark, except that pediatric dental and vision coverage may be offered to the association in either a stand-alone dental or vision plan or as a benefit embedded in the health benefit plan;

(b) Cost sharing requirements of 42 U.S.C. section 18022(c)(1)-(c)(3);

(c) Lifetime and annual limits as prescribed in 29 C.F.R. section 2590.715-2711;

(d) A level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan; and

(e) All other benefits required to comply with applicable federal laws and regulations.

II. Every health benefit plan offered by any bona fide pathway II association, whether offering coverage on a self-funded basis or fully insured basis, and any insurer contracting with an offering association, shall comply with the following:

(a) Except as otherwise specifically provided herein, all requirements of RSA 420-G, including claims data and other reporting requirements;

(b) Requirements contained in RSA 420-J, and any rules adopted thereunder by the commissioner including, but not limited to, network adequacy, balance billing protections, and appeal and grievance processes;

(c) Payment of premium tax as provided in RSA 400-A:31-35 and administrative assessment under RSA 400-A:39;

(d) Requirements pertaining to examinations under RSA 400-A:37;

(e) Requirements pertaining to unfair insurance trade practices under RSA 417;

(f) Vaccine association assessment under RSA 126-Q; and

(g) Individual market assessment under RSA 404-G.

III. No health benefit plan or related policy, contract, certificate, or agreement offered or issued in this state to a bona fide pathway II association shall reserve discretion to the insurer or sponsoring association to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this state. Any such policy, contract, certificate, or agreement shall be void and unenforceable to the extent it conflicts with this section.

IV. A bona fide pathway II association shall not offer, and an insurer shall not deliver or issue for delivery to a bona fide pathway II association, a health benefit plan covering lives located in this state that contains an exclusion or limitation for pre-existing conditions or a waiting period on the coverage of pre-existing conditions.

415-E:3-d Rating Requirements for Bona Fide Pathway II Association Coverage; Rating Requirements.

I. Any bona fide pathway II association, or any insurer contracting with a bona fide pathway II association to provide a health benefit plan, shall comply with all requirements of RSA 420-G, except that, for a bona fide pathway II association with 250 or more New Hampshire covered lives, small group rating standards under RSA 420-G shall not apply, regardless of the size of the member employer groups, and the association as a whole may be rated as a single risk pool.

II. Coverage for a bona fide pathway II association with 250 or more New Hampshire covered lives may be rated as a single large group in accordance with all standards applicable to large employer groups under RSA 420-G. The following additional requirements shall apply to such coverage:

(a) All premium rates charged shall be guaranteed for a rating period of at least 12 months, and shall not be changed for any reason, including, but not limited to, a change in the group's case characteristics.

III. The association may vary rates among member small employers, including participating self-employed New Hampshire members, as follows:

(a) Variation associated with age shall not exceed 5:1.

(b) Variation associated with tobacco use shall not exceed 1.5 to 1.

(c) No other variation shall be permitted.

IV. The same rating methodology shall apply to newly covered member employer groups and employee members renewing at each annual renewal date or anniversary date. The rating methodology shall not be construed to include health carrier incentives to individual subscribers or members to participate in wellness and fitness programs provided such incentives are approved by the insurance department.

V. Nothing in this chapter shall be construed to allow a member small employer group within any association to be rated separately under large group rating standards.

415-E:3-e Bona Fide Pathway II Association Coverage; Nondiscrimination Requirements. In accordance with 29 C.F.R. section 2590.702, bona fide pathway II association coverage shall comply with the following:

I. The group or association shall not condition employer membership in the group or association on any health factor of any individual who is or may become eligible to participate in the group health plan sponsored by the group or association.

II. The group health plan sponsored by the group or association shall comply with 29 C.F.R. section 2590.702(b) with respect to nondiscrimination in rules for eligibility of benefits.

III. The group health plan sponsored by the group or association shall comply with 29 C.F.R. section 2590.702(c) with respect to nondiscrimination in premiums or contributions required by any participant or beneficiary for coverage under the plan.

IV. In applying the nondiscrimination provisions of paragraphs II and III, the group or association shall not treat the employees of different employer members of the group or association as distinct groups of similarly-situated individuals based on a health factor of one or more individuals.

415-E:3-f Bona Fide Pathway II Association Coverage: Movement from Bona Fide Pathway II Association Coverage to Small Group Coverage. A small employer that leaves the small group market for bona fide pathway II association coverage shall not be permitted to return to small group coverage for a period of 24 months following the departure from the small group market, nor shall an insurer be permitted to issue small group coverage to such a group, unless the employer can demonstrate that association coverage is no longer available to that employer.

415-E:3-g Bona Fide Pathway II Association Coverage: Mitigation of Individual and Small Group Market Impacts of Pathway II Association Coverage.

I. In order to mitigate potential adverse effects of pathway II association coverage on the existing individual and small group markets, the following protective measures shall apply:

(a) Prior to January 1, 2020, the commissioner shall retain an independent actuarial firm to model and quantify the impacts of pathway II coverage on the existing individual and small group markets and to perform the actuarial review necessary to support a section 1332 waiver as required in subparagraph (b) and the small group risk adjustment program required in RSA 420-K.

(b) Prior to January 1, 2020, the commissioner shall apply for a waiver under section 1332 of the Patient Protection and Affordable Care Act, 42 U.S.C. section 18001 (2010) and under the commissioner's authority in RSA 420-N:6-a in order to create a risk subsidy mechanism for the individual market under RSA 404-G which is eligible to draw down federal pass-through funding to support such mechanism.

(c) The commissioner shall publish and accept public comment on the 1332 waiver application, the plan of operation for the individual market risk subsidy mechanism, and the plan of operation for the small group risk adjustment program required under RSA 420-K prior to approving such plans.

II. No pathway II association coverage shall be issued to a sole proprietor until the 1332 waiver has been granted, and the risk subsidy mechanism for the individual market has been put in place; except that a pathway II association that has established membership criteria that limit membership in the association to businesses that are members of or affiliated with an association, trade group, or other entity that has been in existence for at least 10 years and was established and maintained for purposes other than the provision of health coverage may provide coverage to sole proprietor members.

III. The plan of operation for the small group risk adjustment program required under RSA 420-K shall be approved and in place by January 1, 2021.

7 Multiple- Employer Welfare Arrangements; Filing of Application. Amend the section heading and the introductory paragraph of RSA 415-E:4 to read as follows:

415-E:4 ***Self-Funded Arrangements***; Filing of Application. ***For self-funded arrangements***, the sponsoring association shall file with the commissioner an application for approval of the arrangement upon a form to be furnished by the commissioner, which shall include or have attached the following:

8 Multiple-Employer Welfare Arrangements; Termination Liability Fund. RSA 415-E:5 is repealed and reenacted to read as follows:

415-E:5 Self-Funded Arrangements: Termination Liability Fund.

I. Each self-funded multiple-employer welfare arrangement shall maintain a termination liability fund wherein the fund balance of the multiple-employer welfare arrangement shall at no time, for a consecutive 90-day period, be less than \$750,000 or 33 percent of the aggregate premiums billed during the 12 prior months, whichever is greater. For purposes of this paragraph, that surety amount, if any, deposited with the commissioner pursuant to RSA 415-E:7, I, may be credited as a fund balance asset toward the termination liability fund amount.

II. Each self-funded multiple-employer welfare arrangement shall file with the commissioner, not later than 4 months following the end of each fiscal year, a report on the financial status of the termination liability fund, which report is filed under oath by a member of its board of trustees, or by an administrative executive duly appointed by the board, and further certified to by an independent certified public accountant.

9 Multiple-Employer Arrangements, Financial Condition, Loss Reserves. Amend RSA 415-E:6 to read as follows:

415-E:6 ***Self-Funded Arrangements***; Financial Condition, Loss Reserves, Reinsurance, or Working Capital; Determination of Inadequacy.

***I. Each self-funded arrangement shall maintain specific excess insurance with a retention level determined in accordance with sound actuarial principles and approved by the commissioner.***

***II. Each self-funded arrangement shall establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles and approved by the commissioner.***

[H:] ***III.*** The commissioner may, upon reasonable notice, conduct an examination of the loss reserves, financial condition, specific excess insurance, and working capital of a multiple-employer welfare arrangement ***the costs of which shall be borne by the arrangement***. If the commissioner preliminarily finds that the reserves, specific excess insurance, or financial condition may be inadequate, or that the arrangement does not have a combined working capital in an amount establishing the financial strength and liquidity of the arrangement to pay claims promptly and showing evidence of the financial ability of the arrangement to meet its obligations to covered employees, the commissioner shall notify the arrangement of such inadequacy. Upon being so notified, the arrangement shall within 30 days file with the commissioner all information which, in the belief of the arrangement, proves the reasonableness and adequacy of the condition noted as being inadequate.

[H:] ***IV.*** If the commissioner determines, after reviewing the information filed, that an inadequate condition exists, the arrangement shall implement, within 30 days, a plan to correct the inadequacy and shall file proof of reasonable improvement or adequate condition with the commissioner within 6 months of the implementation of the plan. If the commissioner is satisfied that the plan submitted to improve the inadequate condition of the arrangement is sufficient, he shall so notify the arrangement. The arrangement shall report quarterly to the commissioner until the causes of the inadequate condition have been corrected.

[H:] ***V.*** The commissioner may suspend or revoke the approval of an arrangement if he finds that the arrangement has failed to correct or reasonably improve an inadequate condition within the time authorized by paragraph [H] ***IV.***



10 Multiple-Employer Arrangements; Insolvency Protection. Amend RSA 415-E:7, I to read as follows:

I. To assure the faithful performance of its obligations to its member employers and covered employees ***who are New Hampshire residents*** and their dependents, every arrangement shall, within 30 days after the close of the arrangement's fiscal year, deposit with the commissioner cash, securities, or any combination of these or other measures acceptable to the commissioner, in an amount equal to ~~[25 percent of the preceding 12 months' health care claims expenditures or 5 percent of gross annual premiums for the succeeding year],~~ ***\$100,000 or 25 percent of the aggregate premiums billed during the 12 prior months attributable to New Hampshire residents,*** whichever is greater~~[-; however, in no case shall the amount of the deposit exceed \$100,000]~~. All income from deposits shall belong to the depositing arrangement and shall be paid to it as it becomes available. An arrangement that has made a securities deposit may withdraw that deposit, or any part of such deposit, after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value, upon approval by the commissioner. No judgment creditor or other claimant of a multiple-employer welfare association shall have the right to levy upon any of the assets or securities held in this state as a deposit under this section.

11 Multiple-Employer Arrangements. Amend RSA 415-E:8 through RSA 415-E:13 to read as follows:

415-E:8 Policy Forms.

I. ***Whether an arrangement is self-funded or fully insured,*** no policy or contract form, application form, certificate, rider, endorsement, summary plan description, or other evidence of coverage shall be ***sponsored or*** issued by an arrangement unless the form and all changes to it have been filed with the commissioner by or on behalf of the arrangement which proposed to use such form and have been approved by the commissioner.

II. The commissioner shall disapprove any form filed under this section, or withdraw any previous approval, only if the form:

- (a) Is in any respect in violation of, or does not comply with, this chapter.
- (b) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
- (c) Has any title, heading, or other indication of its provisions which is misleading.
- (d) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.
- (e) Contains provisions which are unfair or inequitable, or contrary to the public policy of this state or which encourage misrepresentation.

***III. Each self-funded arrangement shall issue to each covered employee a policy contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of the benefits and coverages provided shall contain in boldfaced print in a conspicuous location, the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by a group of employers."***

***IV. Each self-funded arrangement shall provide to each covered employee, on request, a written statement of the dollar amount of allowable benefit for any procedure which is requested by the appropriate procedure code.***

415-E:9 ***Self-Funded Arrangements;*** Employer Participants' Liability. ***For self-funded arrangements:***

I. The liability of each employer participant for the obligations of the multiple-employer welfare arrangement shall be individual, several, and proportionate, but not joint.

II. Each employer participant shall have a contingent assessment liability pursuant to 415-E:10 for payment of actual losses and expenses incurred while the policy was in force.

III. Each policy issued by the arrangement shall contain a statement of the contingent liability. Both the application for insurance and policy shall contain, in contrasting color and not less than 10-point type, the following statement: "This is a fully assessable policy. In the event the arrangement is unable to pay its obligations, policyholders (employers) shall be required to contribute on a pro rata earned premium basis the money necessary to meet any unfulfilled obligations."



415-E:10 ***Self-Funded Arrangements***; Termination of Arrangement. ***For self-funded arrangements***, if an arrangement is terminated for any reason, it shall pay all outstanding claims, debts, and obligations. The arrangement may retain sufficient funds to provide coverage for such additional period as the trustees of the arrangement consider prudent. In addition, the trustees may purchase such additional insurance as they consider necessary for protection against potential future claims. Any funds remaining in the arrangement after satisfaction of all obligations upon termination shall be paid to participating employers and/or covered employees as of the termination date in some equitable manner meeting with the approval of the commissioner, including, without ruling out other alternatives, equally on a per capita basis to each participating employer and/or employee who is covered under the arrangement as of the effective date of termination.

415-E:11 ***Self-Funded Arrangements***; Annual Reports and Triennial Actuarial Reports. ***For self-funded arrangements***:

I. Every ***such*** arrangement shall, annually within 4 months of the end of the fiscal year or within such extension of time as the commissioner for good cause may grant, file a report with the commissioner, verified by the oath of a member of the board of trustees or by an administrative executive appointed by the board, showing its condition on the last day of the preceding fiscal year. The report shall contain a financial statement of the arrangement, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant. The report shall also include an analysis of the adequacy of reserves and contributions or premiums charged, based on a review of past and projected claims and expenses.

II. In addition to information called for and furnished in connection with the annual report, if reasonable grounds exist, the commissioner may request information which summarizes paid and incurred expenses, and contributions or premiums received, and may request evidence satisfactory to the commissioner that the arrangement is actuarially sound. Such information and evidence shall be furnished to the commissioner by the arrangement as soon as reasonably possible after requested by the commissioner, but no later than 30 days after such request, unless the commissioner, for good cause, grants an extension.

III. At least once every 3 years, each ***such*** arrangement shall have a report prepared by an actuary who is a member of the Society of Actuaries of the American Academy of Actuaries as to the actuarial soundness of the arrangement. The report shall be made available to the commissioner upon request. The report shall consist of, but shall not be limited to, the following:

(a) Adequacy of contribution rate in meeting the level of benefits provided and changes, if any, needed in the contribution rates to achieve or preserve a level of funding deemed adequate to enable payment of the benefit amounts provided under the arrangement, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the plan and the extent of any unfunded accrued liabilities.

(b) A plan to amortize any unfunded liabilities and a description of actions taken to reduce unfunded liabilities.

(c) A description and explanation of actuarial assumptions.

(d) A schedule illustrating the amortization of any unfunded liabilities.

(e) A comparative review illustrating the level of funds available to the arrangement from rates, investment income, and other sources realized over the period covered by the report, indicating the assumptions used.

(f) A statement by the actuary that the report is complete and accurate and that in his opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this chapter.

(g) Other factors or statements as may be reasonably required by the commissioner in order to determine the actuarial soundness of the plan.

415-E:12 [~~Place of Business~~]; Maintenance of Records. Each arrangement shall [~~have and maintain its principal place of business in this state and shall~~] make available to the commissioner complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for, or suitable to, the kind or kinds of business transacted.

415-E:13 ***Qualification for Approval and*** Suspension[;] ***or*** Revocation of Approval.

I. Subject to other provisions in this chapter, the commissioner shall deny, suspend, or revoke an arrangement's approval if it finds that the arrangement:

(a) Has failed to meet the financial requirements of this chapter, RSA 420-G, or has violated any lawful order or rules.

(b) Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) No longer meets the requirements for the authority originally granted.

II. The commissioner may, in his discretion, deny, suspend, or revoke the approval of any arrangement if it finds that the arrangement:

(a) Has violated any lawful order or rule of the commissioner, provision of this chapter, RSA 420-J, or relevant provision of RSA 161-H.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination, when required by the commissioner.

**III. The commissioner shall not grant or continue approval until such time as the arrangement replaces any trustee found by the commissioner, upon the presentation of sufficient evidence:**

**(a) To be incompetent;**

**(b) To be guilty of, or to have pled guilty or no contest to a felony, or a crime involving moral turpitude;**

**(c) To have had any type of insurance license revoked in this or any other state;**

**(d) To have improperly manipulated assets, accounts, or specific excess insurance or to have otherwise acted in bad faith.**

**IV. To qualify for and retain approval to transact business, an arrangement shall make all contracts with administrators or service companies available for inspection by the department initially, and thereafter upon reasonable notice.**

**V. Failure to maintain compliance with applicable eligibility or filing requirements established by this section shall be grounds for suspension or revocation of approval of an arrangement, provided, however, that such arrangement shall have 60 days after notification by the commissioner to take such action necessary to correct the deficiency.**

12 Multiple Employer Arrangements; Rehabilitation; Rulemaking. Amend RSA 415-E:15 and RSA 415-E:16 to read as follows:

415-E:15 Rehabilitation, Dissolution. Any rehabilitation, liquidation, conservation, **supervision**, or dissolution of a multiple-employer welfare arrangement shall be conducted under the supervision of the commissioner, who shall have all power with respect thereto granted to it under the laws governing the rehabilitation, liquidation, conservation, **supervision**, or dissolution of insurers.

415-E:16 Rulemaking. The commissioner may adopt such rules, pursuant to RSA 541-A, as ~~[he deems]~~ **are** reasonable and necessary in order to carry out properly the functions and responsibilities assigned the insurance department under ~~[the laws of the state]~~ **this chapter**. ~~[This rulemaking authority shall expire on January 1, 1993, at which time this section, unless replaced by a later legislative enactment, shall be deemed repealed. Any rules adopted under this section shall be drafted in as narrow a manner as possible, consistent with the authority granted the department under the laws of this state.]~~

13 Health Coverage; Definitions. Amend RSA 420-G:2, XVI(a) to read as follows:

XVI.(a) "Small employer" means a business or organization which employed on average, one and up to 50 employees, including owners and self-employed persons, on business days during the previous calendar year. A small employer is subject to this chapter whether or not it becomes part of an association, multi-employer plan, trust, or any other entity cited in RSA 420-G:3 provided it meets this definition; **provided that coverage written to a bona fide pathway II association with at least 250 New Hampshire covered lives**

*that meets all applicable standards under RSA 415-E and all large group standards under this chapter shall not be considered small employer coverage and may be offered to sole proprietors or self-employed persons.*

14 Health Coverage; Guaranteed Issue and Renewability. Amend RSA 420-G:6, III to read as follows:

III. Health carriers shall actively market, issue, and renew all of the health coverages they sell in the small employer market to all small employers *except that a health carrier shall not be permitted to issue small employer coverage to a group that previously was covered as part of a bona fide pathway II association under chapter RSA 415-E for a period of 24 months after the date that the group initiated pathway II coverage, unless the group can demonstrate that association coverage is no longer available to that group.*

15 Purchasing Alliances; Definitions. Amend RSA 420-M:2, X to read as follows:

X. "Qualified purchasing alliance" means a purchasing alliance that has obtained certification from the commissioner under RSA 420-M:13 as a qualified purchasing alliance with authority to ~~operate in the same manner as a qualified association trust pursuant to RSA 420-G:10~~ *sponsor fully-insured bona fide pathway II association coverage under RSA 415-E.*

16 Purchasing Alliances. RSA 420-M:13 is repealed and reenacted to read as follows:

420-M:13 Qualified Purchasing Alliance. A purchasing alliance that has a minimum of 250 enrollees may elect to obtain certification from the commissioner as a qualified purchasing alliance. To obtain certification, a purchasing alliance shall demonstrate:

I. That the purchasing alliance meets all requirements under RSA 415-E to operate as a bona fide pathway II association;

II. That certification of the applicant as a qualified purchasing alliance will promote the purposes set out in RSA 420-M:1; and

III. That the purchasing alliance has the capacity to monitor and screen sole proprietor members purchasing pathway II association coverage to ensure that they meet all requirements to qualify as an "employee" under 29 C.F.R. section 2510.3-5(b) and meets the per month hourly work requirement contained in RSA 126-AA:2, III.

17 Health Coverage; Qualified Association Trust. Amend RSA 420-G:10 to read as follows:

420-G:10 Qualified Association Trust ~~[and Qualified Purchasing Alliance]~~.

I. A qualified association trust or other entity, as defined in RSA 420-G:2, XV~~[-and a qualified purchasing alliance, as defined in RSA 420-M:2, X,]~~ shall:

(a) Comply with the rating restrictions outlined in RSA 420-G:4 for all small employer members with 50 or fewer employees based upon the association's or alliance's group experience, except that ~~[for a qualified association trust,]~~ no rating factor shall be utilized without the express written consent of the association.

(b) Offer all eligible members, as defined under the applicable trust or other documents, coverage and rates on a guaranteed issue and renewable basis.

(c) Comply with the regulations concerning medical underwriting in RSA 420-G:5.

(d) Comply with the preexisting conditions provision of RSA 420-G:7.

(e) Prohibit any employer that voluntarily discontinues participation in either a qualified association trust or a qualified purchasing alliance from rejoining for a period of at least 24 months.

II. Nothing in this chapter shall be interpreted to limit the size of employers who may participate in coverage with a qualified association trust ~~[or a qualified purchasing alliance]~~.

18 Small Employer Health Reinsurance Pool. Amend the chapter heading of RSA 420-K to read as follows:

**SMALL EMPLOYER HEALTH [REINSURANCE POOL] *RISK ADJUSTMENT PROGRAM***

19 Small Employer Health Reinsurance Pool; Definitions. RSA 420-K:1 is repealed and reenacted to read as follows:

420-K:1 Definitions. In this chapter:

I. "Assessment" means the liability of the member insurer to the reinsurance pool.

II. "Board" means the board of directors of the small employer health reinsurance pool.

III. "Bona fide pathway II association coverage" means coverage, whether self-funded or fully insured, that constitutes an employee welfare benefit plan sponsored by a bona fide pathway II association as defined in RSA 415-E:1.

IV. "Commissioner" means the insurance commissioner.

V. "Covered lives" shall include all persons who have health insurance via a health carrier and who are employees or dependents of employees of a small employer, including sole proprietors covered under bona fide pathway II association coverage.

VI. "Health insurance" means "health insurance" as defined in RSA 404-G:2, VII.

VII. "Plan of operation" means the plan of operation of the small employer health risk adjustment program, including articles, bylaws and operating rules, procedures and policies approved by the commissioner and adopted by the pool.

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

IX. "Small employer health carrier" means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health insurance in New Hampshire to any small employer. For purposes of this chapter, health carrier shall include any association, organization or arrangement offering or sponsoring bona fide pathway II association coverage.

20 Establishment of the Risk Adjustment Program. Amend RSA 420-K:2 to read as follows:

420-K:2 Establishment of the ~~[Pool]~~ **Risk Adjustment Program.**

I. There is established a nonprofit entity to be known as the "New Hampshire small employer health ~~[reinsurance pool]~~ **risk adjustment program.**" All **small employer** health carriers~~[-writers of health insurance, and other insurers]~~ issuing or maintaining health insurance in this state shall be members of the ~~[pool]~~ **program.**

II. ~~[On or before July 1, 2005,]~~ The commissioner shall give notice to all members of the ~~[pool]~~ **program** of the time and place for the initial organizational meeting~~[-which shall take place by July 15, 2005]~~. The members shall select the initial board at the organizational meeting and such initial board shall be subject to approval by the commissioner. The members shall elect each subsequent board at the annual meeting of members and each such subsequent board shall be subject to approval by the commissioner. The initial board and each subsequent board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than one board member on the initial board and each subsequent board representing any one member company. In determining voting rights at the organizational meeting and all subsequent meetings of members, each member shall be entitled to vote in person or by proxy. All such votes shall be proportional to the member's covered lives. To the extent possible, at least 2/3 of members of each board shall be small employer health carriers. ~~[At least one member of each board shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state.]~~ The commissioner, or designee, shall be an ex-officio voting member of the board. In approving selection of each board, the commissioner shall assure that all members are fairly represented.

III. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

IV. Within 60 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the ~~[pool]~~ **program**. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the ~~[pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of paragraph VI of this section]~~ **program**. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments ~~[no later than October 1, 2005]~~. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner.



V. The board shall select reinsurance pool administrators through a competitive bidding process to administer the [pool] **program**. The board shall evaluate bids submitted based on criteria established by the board. ~~[Each month, total payments to administrators shall not exceed the larger of \$2,500 or an amount equal to \$10 per life for which the reinsurance pool has any potential claims liability.]~~

VI. The plan of operation shall establish procedures for:

(a) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.

(b) Filling vacancies on the board, subject to the approval of the commissioner.

(c) Selecting an administrator and setting forth the powers and duties of the administrator.

(d) ~~[Reinsuring risks in accordance with the provisions of this chapter]~~ **Establishing risk adjustment parameters.**

(e) Collecting assessments from all members to provide for ~~[claims reinsured]~~ **risk adjustment payments** by the [pool] **program** and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.

(f) Any additional matters at the discretion of the board.

21 Powers of the Program. RSA 420-K:3 and RSA 420-K:4 are repealed and reenacted to read as follows:

420-K:3 Powers of the Program. The program may:

I. Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

II. Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

III. Take such legal action as necessary to avoid the payment of improper claims against the program.

IV. Define the array of health coverage products for which risk adjustment will be applied in accordance with the requirements of this chapter.

V. Establish rules, conditions, and procedures pertaining to the risk adjustment mechanism, including implementation and measurement time frames and the permitted risk corridor where no transfer of risk adjustment funds shall take place.

VI. Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the program.

VII. Assess members in accordance with the provisions of this chapter, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses and to pay claims by the program. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.

VIII. Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the program, policy, and other contract design, and any other function within the authority of the program.

IX. Borrow money to effectuate the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for insurers and may be carried as admitted assets.

420-K:4 Risk Adjustment Program.

I. The board shall:

(a) Develop and monitor a measure of risk to be used in comparing populations covered by small employer health insurance coverage and bona fide pathway II association coverage.

(b) Access from the New Hampshire comprehensive health care information system (CHIS), as described under RSA 420-G:11-a, member level information, including length of coverage, gender, age, and diagnosis, sufficient to measure and monitor risk for carriers issuing or administering small employer health insurance.



(c) Perform risk adjustment analysis using data from the CHIS, including calculating New Hampshire specific relative weights as necessary, to analyze the difference in the medical care resources expected to be necessary to treat the 2 different populations, one covered in the small group insurance risk pool and the other covered by bona fide pathway II association coverage.

(d) Subject to the limitation in paragraph II, establish risk adjustment payments between carriers that are triggered whenever the average risk between bona fide pathway II association coverage and all other small group coverage differs by more than 20 percent over any calendar year, and that serve to create a net effect of reducing future expected risk score differences after payments to approximately 12 percent.

(e) Provide a report to the insurance commissioner in a form and format acceptable to the commissioner.

II. The board shall not implement any adjustments until the number of lives covered by bona fide pathway II association coverage exceeds 5,000 member months for 3 consecutive months.

22 Repeal. The following are repealed:

I. RSA 420-K:5, relative to eligibility, coverage, and rates.

II. RSA 420-K:6, relative to assessments.

23 Immunity and Indemnification. Amend RSA 420-K:7 to read as follows:

420-K:7 Immunity and Indemnification.

I. Neither the participation in the ~~[pool]~~ **program** as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this chapter shall be the basis of any legal action against the pool or any of its members.

II. Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the pool against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit, or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The right of indemnification shall not be exclusive of other rights or defenses to which such person or the legal representative or successors of such person, may be entitled to as a matter of law. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this chapter and such expenses shall be paid by the ~~[pool]~~ **program** established in this chapter.

24 Effective Date. This act shall take effect January 1, 2020.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

The following Senators voted Yes: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

The following Senators voted No: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

Roll Call, Yeas: 10 - Nays: 14. Failed.

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

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to Third Reading.

SB 271-FN-L, relative to requiring prevailing wages on state-funded public works projects.  
Ought to Pass with Amendment, Vote 3-2. Senator Cavanaugh for the committee.

Commerce  
March 6, 2019  
2019-0873s  
05/04

Amendment to SB 271-FN-LOCAL

Amend RSA 280-A:7, III(g) as inserted by section 1 of the bill by replacing it with the following:

(g) Whether or not a worker receives employer-provided benefits as defined in RSA 280-A:1, VII.

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

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

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to Third Reading.

SB 279-FN, relative to access to fertility care.

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

Commerce  
March 6, 2019  
2019-0835s  
01/06

Amendment to SB 279-FN

Amend RSA 417-G:1 through RSA 417-G:3 as inserted by section 2 of the bill by replacing it with the following:

417-G:1 Definitions. In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Experimental infertility procedure" means a procedure for which the published medical evidence regarding risks, benefits, and overall safety and efficacy is not sufficient to regard the procedure as an established medical practice.

III. "Fertility treatment" means health care services or products provided with the intent to achieve a pregnancy that results in a live birth with healthy outcomes.

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

V. "Infertility" means a disease, caused by an illness, injury, underlying disease, or condition, where an individual's ability to become pregnant or to carry a pregnancy to live birth is impaired, or where an individual's ability to cause pregnancy and live birth in the individual's partner is impaired.

VI. "Medically necessary" means health care services or products provided to an enrollee for the purpose of preventing, stabilizing, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease in a manner that is:

- (a) Consistent with generally accepted standards of medical practice;
- (b) Clinically appropriate in terms of type, frequency, extent, site, and duration;
- (c) Demonstrated through scientific evidence to be effective in improving health outcomes;
- (d) Representative of "best practices" in the medical profession; and
- (e) Not primarily for the convenience of the enrollee or physician or other health care provider.

VII. "Standard fertility preservation services" means procedures consistent with established medical practices and professional guidelines published by the American Society for Reproductive Medicine or the American Society of Clinical Oncology.

## 417-G:2 Diagnosis of Infertility, Fertility Treatment, and Fertility Preservation.

I. Each health carrier that issues or renews any group policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance coverage for the diagnosis of the etiology of infertility.

II. Each health carrier that issues or renews any group policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance coverage for medically necessary fertility treatment, and for fertility treatment that is otherwise medically necessary for an enrollee, but is performed on another individual for the benefit of an enrollee.

III. Each health carrier that issues or renews any group policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses, shall provide to certificate holders of such insurance coverage for fertility preservation when a person is expected to undergo surgery, radiation, chemotherapy, or other medical treatment that is recognized by medical professionals to cause a risk of impairment of fertility. Coverage under this section shall include coverage for standard fertility preservation services, including the procurement, cryopreservation, and storage of preserved reproductive material. Storage shall be covered for a period of 5 years from the time of cryopreservation.

IV. Coverage under paragraphs I-III shall not apply to plans available through the Small Business Health Options Program (SHOP) or to Extended Transition to Affordable Care Act-Compliant Policies.

## 417-G:3 Prohibited and Permissible Limitations on Coverage.

I. No insurer shall:

(a) Impose deductibles, copayments, coinsurance, benefit maximums, waiting periods or any other limitations on coverage for required infertility benefits which are different from those imposed upon benefits for services not related to infertility or any limitations on coverage of fertility medications that are different from those imposed on any other prescription medications.

(b) Impose pre-existing condition exclusions or pre-existing condition waiting periods on coverage for required infertility benefits or use any prior diagnosis of or prior treatment for infertility as a basis for excluding, limiting or otherwise restricting the availability of coverage for required infertility benefits.

(c) Impose limitations on coverage based solely on arbitrary factors including, but not limited to, number of attempts or dollar amounts or age, or provide different benefits to, or impose different requirements upon, a class protected under RSA 354-A than that provided to, or required of, other patients.

II. Limitations on coverage shall be based on clinical guidelines and the insured's medical history. Clinical guidelines shall be maintained in written form and shall be available to any insured upon request. Standards or guidelines developed by the American Society for Reproductive Medicine, the American College of Obstetrics and Gynecology, or the Society for Assisted Reproductive Technology may serve as a basis for these clinical guidelines. Making, issuing, circulating, or causing to be made, issued or circulated, any clinical guidelines that are based upon data that are not reasonably current or that do not cite with specificity any references relied upon shall constitute an unfair and deceptive act and practice in the business of insurance, under RSA 417:4.

III. This section shall not be construed to provide benefits for:

- (a) An experimental infertility procedure;
- (b) Non-medical costs related to third party reproduction; and
- (c) Reversal of voluntary sterilization.

2019-0835s

## AMENDED ANALYSIS

This bill requires insurers issuing or renewing group health insurance policies to cover fertility treatment. The question is on the adoption of the Committee Amendment. Adopted.

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

## EDUCATION AND WORKFORCE DEVELOPMENT

SB 199, requiring teachers to have training in suicide and bullying awareness and prevention. Inexpedient to Legislate, Vote 4-1. Senator Ward for the committee.

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

Recess. Out of recess.

SB 253-FN, relative to statewide deployment of a real-time threat notification system for schools.  
Re-refer to Committee, Vote 4-1. Senator Dietsch for the committee.

The question is on the adoption of the motion of Rerefer to Committee.

A roll call was requested by Senator Bradley, seconded by Senator Giuda.

The following Senators voted Yes: Dietsch, Kahn.

The following Senators voted No: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Reagan, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

Roll Call, Yeas: 2 - Nays: 22. Failed.

Senator Watters moved Ought to Pass.

A roll call was requested by Senator Kahn, seconded by Senator Carson.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Kahn, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Reagan, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

The following Senators voted No: Dietsch.

Roll Call, Yeas: 23 - Nays: 1. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 266-FN, relative to funding for kindergarten pupils, keno revenues, and school building aid.  
Ought to Pass with Amendment, Vote 5-0. Senator Ward for the committee.

Education and Workforce Development

March 5, 2019

2019-0819s

06/04

#### Amendment to SB 266-FN

Amend RSA 198:15-a, V as inserted by section 3 of the bill by replacing it with the following:

V. There is hereby established the school building aid fund to be used for the purpose of funding school building aid grants under paragraph IV. This fund shall consist of funds collected and paid over to the state treasurer by the lottery commission pursuant to RSA 284:47 and a one-time transfer of funds identified as surplus funds in the educational trust fund or general fund, for a total of \$15,600,000 allocated to projects currently identified on the department of education's list of ranked projects for 2020 which are approved by the state board of education. Any additional surplus funds may be allocated to this account for additional projects as ranked by the department of education for 2021 and subsequent years.

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

Recess. Out of recess.

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

Senators Birdsell and Giuda withdrew their request for a roll call.

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

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Reagan, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

The following Senators voted No: (None)

Roll Call, Yeas: 24 - Nays: 0. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 277-FN-L, relative to grants to chartered public schools.

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

Education and Workforce Development  
 March 5, 2019  
 2019-0816s  
 06/08

#### Amendment to SB 277-FN-LOCAL

Amend RSA 194-B:11, I(b)(1)(A) as inserted by section 1 of the bill by replacing it with the following:

(b)(1)(A) Except as provided in subparagraph (2), for a chartered public school authorized by the state board of education pursuant to RSA 194-B:3-a, the state shall pay tuition pursuant to RSA 198:40-a, II(a)-(c) and (e) plus an additional grant of \$3,286 to all chartered public schools for the fiscal year ending June 30, 2018, ~~and~~ \$3,411 to all chartered public schools for the fiscal year ending June 30, 2019, **and \$3,911 to all chartered public schools for the fiscal year ending June 30, 2020** and each fiscal year thereafter, except for the Virtual Learning Academy Charter School, directly to the chartered public school for each pupil who is a resident of this state in attendance at such chartered public school. Beginning July 1, ~~2017~~ **2020** and every biennium thereafter, the department of education shall adjust the per pupil amount of the additional grant based on the average change in the Consumer Price Index for All Urban Consumers, Northeast Region, using the "services less medical care services" special aggregate index, as published by the Bureau of Labor Statistics, United States Department of Labor. The state shall pay amounts required pursuant to RSA 198:40-a, II(d) directly to the resident district.

2019-0816s

#### AMENDED ANALYSIS

This bill increases the additional grant to all chartered public schools for the fiscal year ending June 30, 2020 and every fiscal year thereafter.

Senator Feltes moved Lay on the Table.

A division vote was requested.

Yeas: 14 - Nays: 10. Adopted.

SB 281-FN-A-L, relative to mental health services for schools and making an appropriation therefor. Ought to Pass, Vote 3-2. Senator Morgan for the committee.

Senator Birdsell offered a Floor Amendment.

Sen. Birdsell, Dist 19  
 March 13, 2019  
 2019-1028s  
 06/04

#### Floor Amendment to SB 281-FN-A-LOCAL

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

1 Department of Health and Human Services; School Mental Health Services. The commissioner of the department of health and human services shall undertake a 2-year demonstration project to provide school crisis response and prevention services to school districts in Rockingham County. The commissioner shall contract with the Center of Life Management in Rockingham County for these services within the area served by the Center. Following the first year of the program, the commissioner shall report to the governor, the president of the senate, and the speaker of the house of representatives on the implementation of the program and how the program may be expanded to other areas of the state.

2 Appropriation; Department of Health and Human Services. The sum of \$400,000 for the fiscal year ending June 30, 2020, and the sum of \$400,000 for the fiscal year ending June 30, 2021 are hereby appropriated to the department of health and human services for the purposes of section 1 of this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

2019-1028s

#### AMENDED ANALYSIS

This bill authorizes the department of health and human services to undertake a demonstration project to provide school crisis response and prevention services to school districts in Rockingham county, and makes an appropriation for the project.



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

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 282-FN, relative to suicide prevention education in schools.

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

Education and Workforce Development

March 5, 2019

2019-0821s

06/10

#### Amendment to SB 282-FN

Amend RSA 193-J:2, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Training faculty, staff, and designated school volunteers in youth suicide risk factors, warning signs, protective factors, response procedures, referrals, post-intervention, and resources available within the school and community.

Amend RSA 193-J:2, III as inserted by section 1 of the bill by replacing it with the following:

III. School suicide prevention policies required under paragraph I and the training required under paragraph II shall be evidence-informed.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2020.

2019-0821s

#### AMENDED ANALYSIS

This bill requires school districts and chartered public schools to:

I. Develop a policy for preventing, assessing the risk of, and responding to student suicide.

II. Provide training for faculty, staff, and designated school volunteers on suicide prevention.

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

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

A roll call was requested by Senator Bradley, seconded by Senator Giuda.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Reagan, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

The following Senators voted No: (None)

Roll Call, Yeas: 24 - Nays: 0. Adopted, bill ordered to Third Reading.

Recess. Out of recess.

#### ELECTION LAW AND MUNICIPAL AFFAIRS

SB 7-FN-L, establishing the secure modern accurate registration act (SMART ACT).

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

Election Law and Municipal Affairs

March 6, 2019

2019-0849s

11/06

#### Amendment to SB 7-FN-LOCAL

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

1 New Subdivision; Secure Modern Accurate Registration Technology Act. Amend RSA 654 by inserting after section 15 the following new subdivision:

Secure Modern Accurate Registration Technology Act

654:15-a Voter Registration at the Division of Motor Vehicles.

I. The secretary of state, pursuant to an interagency contract and jointly-adopted criteria, shall establish a secure data transfer program that satisfies the requirements of this section and any other applicable law.

II. Any time a person applies for a driver's license, a nondriver's picture identification card, or a record change to a driver's license or nondriver's picture identification card with the division of motor vehicles, as specified below, during which he or she demonstrates that he or she is a United States citizen, 18 years of age or older, and domiciled in New Hampshire, he or she shall, without taking any other action, automatically apply to register to vote unless he or she declines to submit such registration application under the procedures outlined in paragraph IV.

III. The division of motor vehicles shall electronically transmit to the secretary of state certain information as outlined in RSA 654:15-b about every eligible voter applying pursuant to this section. Such transmission shall be in a format that can be reviewed by election officials and translated and uploaded onto the statewide centralized voter registration database. The division of motor vehicles shall also transmit for review by election officials any updates to addresses or names to ensure that the voter checklists are kept up-to-date.

IV. The division of motor vehicles shall add a voter registration section to those online or paper forms used in connection with applying for a driver's license, a nondriver's picture identification card, or a record change related to a driver's license or nondriver's picture identification card, which shall collect information required for voter registration not already collected in such division of motor vehicles forms. The top of the voter registration section shall include a statement that reads: "If you are a victim of domestic violence or stalking, you may not wish to register to vote, as registration information is considered public information." The voter registration section shall also include the following preprinted statement: "Your application to register to vote shall be submitted unless you decline to apply to register below. By signing and submitting this application, you are authorizing the division of motor vehicles to transmit this application to the secretary of state for voter registration purposes. **YOU MAY DECLINE TO APPLY TO REGISTER.** Both the location of the office through which you submit this application and your decision of whether or not to apply to register to vote will remain confidential and will be used for voter registration purposes only." A check box shall appear below such preprinted statement and next to the following statement: "Do not register me to vote or update my voter registration. I decline to register to vote or update my voter registration."

V. Upon receiving the electronic record of the applicant's information, the secretary of state shall send a mailing to each eligible applicant, including a pre-paid return to be sent to the voter's town or city hall, which shall include the following:

- (a) The process used to adopt a political party affiliation.
- (b) The registrant's polling location.
- (c) A check box with a statement next to it that reads: "Do not register me to vote or update my voter registration. I decline to register to vote or update my voter registration."

VI. The registration process described in this section shall incorporate required voter data in order to comply with the voter registration requirements described in RSA 654:7 and RSA 654:12.

VII. An applicant who applies to register to vote pursuant to this section is entitled to provide any of the forms, affidavits, and documents listed in RSA 654:12 to establish his or her voter qualifications.

VIII. An application that complies with the requirements of this section shall constitute a completed voter registration unless the city or town clerk or supervisor of the checklist finds an error in the voter registration application pursuant to paragraph IX.

IX. If, during the review of the information sent by the secretary of state, the city or town clerk or supervisor of the checklist deems there to be an error in the voter registration application, such local election official shall promptly inform the applicant that his or her registration has not been processed, and shall provide such applicant a reasonable opportunity to cure such error.

X. The division of motor vehicles shall maintain a record of the documentation that the applicant provided regarding voter registration in a database that is audited for accuracy on a regular basis by the secretary of state.

XI. Any person applying to register to vote pursuant to this section within 30 calendar days immediately preceding an election shall be advised to apply to register to vote with a city or town clerk or supervisor of the checklist pursuant to this chapter.

**654:15-b Electronic Transmission of Voter Registration Data.**

I. The division of motor vehicles shall transmit, via a secure electronic transmission, data collected relevant to voter registration, including data relating to age, domicile, citizenship, and identity, as well as an electronic signature, for every citizen who applies to register to vote in accordance with RSA 654:15-a to the secretary of state. Such transmission shall be in a format that can be uploaded to the statewide centralized voter registration database, and that allows the city or town clerk or supervisor of the checklist to print the information on an 8.5 x 11 inch sheet of paper. Notwithstanding RSA 294-E and any other law to the contrary, the secretary of state, state agencies, and political subdivisions shall accept, use, and permit the use of the applicant's electronic signature for purposes of this subdivision.

II. The city or town clerk or supervisor of the checklist shall be alerted when a new eligible voter has been entered into the statewide centralized voter registration database.

III. The secretary of state shall also transmit for review by election officials any address or name updates to their records to ensure that the voter checklists are kept up-to-date and remove voters' registration from the previous address, in accordance with state and federal law.

**654:15-c Voter Registration Data Privacy and Security.**

I. The division of motor vehicles and the secretary of state shall regularly upgrade data security for the voter registration system, such that the system adheres to up-to-date security processes and protocols.

II. The secretary of state shall ensure the privacy of the information collected pursuant to this subdivision by prohibiting:

(a) Public disclosure of an individual's decision not to apply to register to vote, which shall be exempt from the provisions of RSA 91-A.

(b) Agencies from transmitting to election officials information other than that required for voter registration or specified information relevant to the administration of elections.

(c) The division of motor vehicles from sharing citizenship or information regarding a person's country of origin with any federal agency unless pursuant to a valid court order or other federal law.

(d) The disclosure of information relating to persons in categories designated confidential by federal or state law, including victims of domestic violence or stalking, prosecutors and law enforcement personnel, and participants in a witness protection program.

(e) Any other disclosure of information collected pursuant to this subdivision that is prohibited by federal or state law.

**654:15-d Designation of Other Automatic Voter Registration Assistance Agencies.**

I. Each year, the secretary of state shall conduct a review of each agency that offers public services or assistance and which is not already designated as a voter registration assistance agency in order to determine whether such designation is appropriate.

II. The secretary of state shall designate each such agency that collects information or documents that would provide proof of eligibility to vote as an automatic voter registration assistance agency unless the secretary of state determines that compelling reasons exist for why automatic voter registration is not feasible at the agency. If the secretary of state makes such a determination, he or she shall prepare and submit a report explaining those reasons to the president of the senate, speaker of the house of representatives, and minority leaders of both the house and senate by the end of the calendar year in which that determination is made.

III. The secretary of state shall, after consultation with the head of each state agency authorized to process voter registrations pursuant to this section, adopt criteria to implement and administer a system that automatically updates or registers to vote any citizen who applies for state services or assistance at such agency at the same time the citizen applies for state services or assistance. Such criteria shall comply with RSA 654:15-a through RSA 654:15-c and shall:

(a) Permit the transfer of applications for services or assistance and voter registration information from the agencies to the election officials.

(b) Respect all rules and statutes of this state concerning the confidentiality of information from applications for services or assistance.

(c) Provide for the reasonable accommodation of applicants with disabilities during the application and registration process.

(d) Provide for appropriate measures to educate the public about automatic voter registration under this section.

654:15-e Unauthorized Registration. The record and signature of an ineligible applicant that is transmitted through an electronic system by a government agency to any elections or voter registration authority shall not constitute a completed voter registration form, and that applicant shall not be considered to have registered to vote.

654:15-f Requests for Removal from the Checklist. Any person who applies to register to vote pursuant to this subdivision may, prior to the certification of the checklist pursuant to RSA 654:28 and RSA 654:29, request that he or she be removed from the checklist by submitting such request in person at his or her town or city hall.

2 New Paragraph; Access to Governmental Records and Meetings; Exemptions. Amend RSA 91-A:5 by inserting after paragraph X the following new paragraph:

XI. An individual's decision not to apply to register to vote under RSA 654:15-a.

3 New Paragraph; Motor Vehicles; Records and Certification. Amend RSA 260:14 by inserting after paragraph III-d the following new paragraph:

III-e. Motor vehicle records relevant to voter registration shall be provided to the secretary of state pursuant to RSA 654:15-b. These records may be further transferred or otherwise made available to city or town clerks and supervisors of the checklist for purposes of voter registration.

4 Funding. Funding for implementation of this act shall be provided by grants received pursuant to the 2018 Help America Vote Act Election Security Award and section 101 of the Help America Vote Act of 2002, Public Law 107-252.

5 Effective Date. This act shall take effect July 1, 2021.

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

A roll call was requested by Senator Levesque, seconded by Senator Giuda.

Senators Levesque and Giuda withdrew their request for a roll call.

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

A roll call was requested by Senator Feltes, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 48, relative to the city chief election officer.

Inexpedient to Legislate, Vote 3-2. Senator Morgan for the committee.

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

SB 71, relative to the election of delegates to party conventions.

Ought to Pass, Vote 3-2. Senator Sherman for the committee.

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

A roll call was requested by Senator Birdsell, seconded by Senator French.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to Third Reading.

SB 229-FN, relative to audit recounts.

Re-refer to Committee, Vote 5-0. Senator Levesque for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

SB 231-FN, promoting truth in political advertising.

Re-refer to Committee, Vote 5-0. Senator Birdsell for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

SB 283-FN, relative to post-election audits of electronic ballot counting devices.

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

Election Law and Municipal Affairs

March 6, 2019

2019-0850s

11/08

#### Amendment to SB 283-FN

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

2 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VII to read as follows:

VII. Each electronic ballot counting device shall have a **removable** memory [~~card, a metal bar covering the inserted memory card, a canvas cover closed by 2 zippers, 2 hard shell covers on the front of the device, a hard shell cover on the rear of the device, and 3 communication ports in the rear of the device~~] **device which can be secured in the device with a tamper evident seal that will disclose unauthorized access to the hardware and software inside the device. Electronic ballot counting devices that are stored in a canvas bag or storage case when not in use shall have a bag or case that is capable of being secured with a tamper evident seal.**

3 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(b) and (c) to read as follows:

(b) The town or city clerk shall preserve each memory [~~card~~] **device** used at each election until after the recounts for such election are complete and any and all legal challenges to the outcome of that election are adjudicated.

(c) The town or city clerk shall securely preserve each memory [~~card~~] **device** used in any election as directed by the secretary of state.

4 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(d)(1)(A)-(C) to read as follows:

(A) The connection of the [2] zippers on the closed canvas cover of the counting device **carrying bag, case, or the device base for devices stored in their bases.**

(B) The [~~metal bar in front of the inserted~~] memory [~~card~~] **device.**

(C) Electronic ballot counting device housing[~~:-~~

(i) ~~The seam connecting the 2 hard shell covers on the front of the counting device.~~

(ii) ~~The seam connecting the hard shell cover on the rear of the counting device.~~

(iii) ~~The 3 communication ports in the rear of the counting device]~~ **and all ports or access points to the device hardware or software, such that the seal(s) would be broken if the device is accessed.**

5 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(d)(7)-(8) to read as follows:

(7) Whenever the town or city clerk receives a memory [~~card~~] **device** from the vendor, the clerk shall break the memory [~~card~~] **device** seal, insert the memory [~~card~~] **device** in the electronic ballot counting device, and apply a new seal. The clerk shall lock any **programmed** memory [~~card~~] **device** not inserted into an electronic ballot counting device in a safe and record the names of individuals that have access to such safe on the activity log.

(8) Whenever the town or city clerk removes the memory [~~card~~] **device** from the electronic ballot counting device, the clerk shall immediately return it to the memory card programmer **or, if programmed locally, secure the device in a safe** and reseal the [~~metal bar in front of the~~] empty memory [~~card~~] **device slot or port.**

6 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(e)(10)-(11) to read as follows:



(10) The clerk shall test all electronic ballot counting devices and memory [cards] **devices** in the possession of the town or city.

(11) Prior to placing the electronic ballot counting device or any memory [card] **device** into service in an election, the moderator shall certify that there is evidence that pre-election testing was conducted on each electronic ballot counting device and each memory [card] **device** in the town or city clerk's possession, and that these **ballot counting** devices and [cards] **memory devices** have passed the test.

7 New Paragraph; Electronic Ballot Counting Devices; Rules. Amend RSA 656:42 by inserting after paragraph VIII the following new paragraph:

IX. Any electronic digital image of a marked ballot made by a ballot counting device, whether stored on the device, on a removable memory device, or on a government computer, shall be non-public and exempt from RSA 91-A.

8 New Section; Counting Write-In Votes. Amend RSA 654 by inserting after section 64 the following new section:

659:64-a Counting Write-In Votes.

I. In a town or city that uses a ballot counting device approved by the ballot law commission pursuant to RSA 656:40 and which prints an image of all write-in votes as part of the device's report of votes cast, a moderator may use the printed images to count write-in votes in place of examining each ballot to obtain the name of the person who received a write-in vote.

II. The moderator shall cause all write-in votes, whether viewed on the ballot or on the print out, to be examined for write-in votes that are for a person whose name is printed on the ballot as a candidate. Provided the voter did not overvote for that office, a write-in vote for a person whose name is on the ballot, shall be counted as a vote for that candidate. The moderator shall include that vote in the total of the number of votes cast for that candidate, adding votes by write-in to votes by a marked oval.

III. A ballot where the voter marked the oval beside the name of a candidate whose name is printed on the ballot and also wrote that same candidate's name in as a write-in shall be counted as one vote for that candidate. The moderator shall include that one vote in the total number of votes cast for that candidate. The write-in shall not be counted separately as a write-in vote.

IV. If the moderator shall not use the device report of printed images of write-in votes to fulfill the requirement for publicly announcing all persons receiving votes and the number of votes that person received, the printed images shall be stored for future reference and kept in the possession of the town or city clerk. If write in votes are tallied using the device report, the report shall be marked "name on ballot" or "NOB" beside each write-in vote that was counted as a vote for a candidate whose name was printed on the ballot.

V. If the device report is used to tally write-in votes, a copy of the report shall be preserved with the ballots used at the election. The printed report showing the write-in votes in the voter's handwriting shall be a non-public record, and shall be exempt from RSA 91-A. The moderator shall also provide the clerk with a copy of the printed images of all write-in votes to be available as a non-public record to assist with post-election reporting.

VI. For all state elections, if used in the ballot counting process, the moderator and the clerk shall retain a copy of the printed images of all write-in votes to be available for reference if needed to resolve questions regarding the return of votes. The copy shall be a non-public document and shall be stored and used in a manner that limits the risk of exposing, through recognition of handwriting, the candidate written in by any voter.

9 Repeal. RSA 656:45, relative to testing of equipment to conduct post-election audit of electronic ballot counting devices, is repealed.

10 Effective Date.

I. Section 9 of this act shall take effect November 1, 2019.

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

2019-0850s

#### AMENDED ANALYSIS

This bill requires the secretary of state to study the use of high speed, optical/digital scan ballot counting devices for use in conducting post-election audits of electronic ballot counting devices used in state and federal elections. This bill also modifies the rules relative to electronic ballot counting devices and clarifies counting procedures for write-in votes counted by electronic ballot counting devices.

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

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 304-FN-A, relative to campaign contributions and expenditures, and making an appropriation therefor. Re-refer to Committee, Vote 3-2. Senator Levesque for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

Senator Kahn is in opposition to the motion of Rerefer to Committee on SB 304-FN-A.

SB 305-FN, relative to voter registrations accepted by other state agencies. Re-refer to Committee, Vote 3-2. Senator Levesque for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

SB 306-FN, establishing the housing appeals board. Ought to Pass with Amendment, Vote 3-2. Senator Sherman for the committee.

Election Law and Municipal Affairs

March 6, 2019

2019-0858s

10/05

#### Amendment to SB 306-FN

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

1 Findings. The general court declares that:

I. An adequate supply of housing that is affordable to a range of incomes is essential to New Hampshire's economic and community development goals.

II. Access to an efficient and inexpensive legal appeals process is fundamental to protecting private property rights against unreasonable governmental regulation and processes.

III. Individual homeowners who are denied local permits for additions or other simple modifications to their homes often abandon their legal right to appeal because of the time and expense involved in a superior court appeal.

IV. Abutters and other parties with standing to appeal local land use decisions on housing developments often abandon their legal right to appeal because of the costs associated with court appeals.

V. There are several factors that inhibit builders' ability to meet the demand for new housing in New Hampshire. Significant among these factors are local land use regulations and board practices that can arbitrarily thwart development or impose costly delays. These powers are delegated to municipalities by the state, and must be used in a manner that is consistent with state law.

VI. Builders may appeal local land use decisions to the superior court, but such appeals are expensive and time consuming, often leading builders to either abandon their appeals or completely avoid seeking development permits.

VII. The cost of litigating such matters in court is significant, and by establishing an alternative process, but without eliminating the option of court appeals, will help to reduce costs of litigation for all parties.

VIII. It is appropriate and necessary to establish an alternative track for review of local decisions on housing and housing development without diminishing anyone's existing legal right to pursue a remedy in superior court and without affecting local control or changing the legal standards by which local decisions are adjudicated.

2 New Chapter; Housing Appeals Board. Amend RSA by inserting after chapter 678 the following new chapter:

#### CHAPTER 679

#### HOUSING APPEALS BOARD

679:1 Board Established. There is hereby established a housing appeals board, hereinafter referred to as the board, which shall be composed of 3 members who shall individually and collectively be learned and experienced in questions of land use law or housing development or both. At least one member shall be an attorney licensed to practice law in the state of New Hampshire, and at least one member shall be either a

professional engineer or land surveyor. The members of the board shall be full-time employees and shall not engage in any other employment, appointments, or duties during their terms that is in conflict with their duties as members of the board.

679:2 Appointment; Term; Chair. The members of the board shall be appointed by the supreme court and commissioned by the governor for a term of 5 years and until their successors are appointed and qualified; provided, however, that any vacancy on the board shall be filled for the unexpired term. The initial members of the board shall serve staggered terms of 3, 4, and 5 years. The supreme court shall designate one member as chair to serve in that capacity for the duration of his or her term.

679:3 Removal. Any member may be removed by the same authority for inefficiency, neglect of duty, or malfeasance in office; but, before removal, the member shall be furnished with a copy of the charges and have an opportunity to be heard in defense.

679:4 Compensation. Each member of the board shall receive the annual salary prescribed by RSA 94:1-a and reasonable expenses, including transportation, subject to the approval of the governor and council.

679:5 Authority; Duties.

I. It shall be the duty of the board and it shall have power and authority to hear and affirm, reverse, or modify, in whole or in part, appeals of final decisions of municipal boards, committees, and commissions regarding questions of housing and housing development. This includes, but is not limited to:

- (a) Planning board decisions on subdivisions or site plans.
- (b) Board of adjustment decisions on variances, special exceptions, administrative appeals, and ordinance administration.
- (c) The use of innovative land use controls.
- (d) Growth management controls and interim growth management controls.
- (e) Decisions of historic district commissions, heritage commissions, and conservation commissions.
- (f) Other municipal permits and fees applicable to housing and housing developments.
- (g) Matters subject to the board's authority may include mixed-use combinations of residential and nonresidential uses. Such different uses may occur on separate properties, provided such properties are all part of a common scheme of development.

II. In exercising its authority under this chapter, the board shall have the power to award all remedies available to the superior courts in similar cases, including permission to develop the proposed housing.

III. Relative to RSA 674:58 through RSA 674:61, the board shall have the power and authority to hear and determine appeals of decisions of local land use boards regarding proposals for workforce housing, including but not limited to whether the municipality's land use ordinances and regulations provide a reasonable and realistic opportunity for the development of workforce housing; whether the local land use board has imposed conditions of approval that render the proposal economically unviable; and whether a denial by a local land use board was unreasonable or unlawful.

IV. After local remedies have been exhausted, appeals may be brought before the board by an applicant to the municipal board, committee, or commission, or by any other aggrieved or injured party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15. The municipality shall be a party to the action. If the applicant is not the party initiating the action before the board, then the applicant shall automatically be an intervenor. The board shall grant intervenor status to abutters and to any other aggrieved or injured party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15.

679:6 Timing of Appeals and Board Proceedings.

I. Appeals shall be filed with the board within 30 days of the final decision of a municipal board, committee, or commission. At the same time an appeal is filed with the board, the applicant shall notify the municipal board, committee, or commission of such appeal.

II. The municipal board, committee, or commission shall within 30 days of receipt of such notice submit to the board a certified record of its proceedings on the matter subject to the appeal.

III. The board shall hold a hearing on the merits within 90 days of its receipt of a notice of appeal.

IV. The board shall make a decision on an appeal within 60 days after conducting a hearing on the merits.

**679:7 Jurisdiction; Court Appeals.**

I. In matters within its authority the board shall have concurrent, appellate jurisdiction with the superior court. An election by any party to bring an action before the board shall be deemed a waiver of any right to bring an action in the superior court, but shall not abrogate any party's right to appeal decisions of the board to the supreme court; as such, the board shall retain jurisdiction of any matter originally brought before it. At any time during an appeal to the board, if the board determines that it does not have jurisdiction to hear the appeal, the appellant shall have 30 days to file an appeal with the superior court.

II. In an appeal of a local decision on housing or housing development, any claim that is within the board's authority under RSA 679:5 and that has previously been or is subsequently included in an appeal in superior court by another party to the decision or by any other aggrieved or injured party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15 shall automatically be stayed by the court to provide the party with standing the opportunity to intervene in the matter before the board. If intervenor status is granted, the stay of the court action regarding those claims shall continue during the pendency of the appeal to the board. After the board has decided the appeal, the court shall dismiss the matter before it to the extent the matter has been resolved by the board. Any claim included in an appeal to superior court that is not within the board's authority shall not be subject to automatic stay by the court.

**679:8 Quorum; Disqualification; Temporary Members.**

I. In all matters a majority of the board shall constitute a quorum to transact business.

II. No member of the board shall represent a party or testify as an expert witness or render any professional service for any party or interest before the board, and any member having an interest in the subject matter shall be disqualified to act therein.

III. If, in the event of a disqualification or temporary disability of a member or members of the board, it shall become necessary to do so, the board, subject to the approval of the supreme court, shall appoint such number of temporary board members as shall be necessary to meet the requirements herein imposed. Such temporary board members shall serve with respect to such matter until the same has been fully disposed of before the board.

IV. Temporary board members shall have the same qualifications as regular board members in whose place they are acting.

V. A temporary board member shall be compensated at the rate of \$75 for each day devoted to the work of the board and shall be reimbursed the necessary and reasonable expenses incurred by him or her in the performance of his or her duties.

VI. In the event of a vacancy on the board, the appellant may elect to continue the proceedings while awaiting the appointment of a successor board member.

**679:9 Hearing Procedure; Standard of Review.**

I. Appeals to the board shall be consistent with appeals to the superior court pursuant to RSA 677:4 through RSA 677:16. Appeals shall be on the certified record, and except in such cases as justice may warrant, in the sole discretion of the board, no additional evidence will be introduced. Consistent with the contested case provisions of RSA 541-A, the rules of evidence shall not strictly apply. In addition to the provisions of RSA 91-A, the board shall record the proceedings of any hearing before it and shall make such recording available to the public for inspection and recording from the date of the hearing to a date which is 15 working days after the board has made a final decision on the matter which is the subject of the hearing, or, if an appeal is made from such decision, the date upon which the matter has been finally adjudicated, whichever date is later.

II. The board shall not reverse or modify a decision except for errors of law or if the board is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable.

**679:10 Representation by Nonattorneys.** Nonattorneys, including professional engineers, architects, and land surveyors, may represent any party before the board. Nothing in this section shall prevent the board from denying representation by any individual it deems to be improper, inappropriate, or unable to adequately represent the interests of the applicant to the municipal board, committee, or commission.

**679:11 Board Meetings.** The board's deliberative processes in adjudicatory proceedings held pursuant to RSA 541-A shall be exempt from the public meeting and notice provisions of RSA 91-A. Decisions and orders in adjudicatory proceedings shall be publicly available, but only after they have been reduced to writing, signed by

a quorum of the board, and served upon the parties, and shall set forth the board's rulings of law and findings of fact in support of its decisions. Discussions and actions by the board concerning procedural, administrative, legal, and internal matters shall be exempt from the meeting and notice provisions of RSA 91-A:2.

679:12 Rules and Regulations. The board may adopt rules under RSA 541-A necessary for carrying out its functions including but not limited to rules of procedure to be followed in hearings conducted by it not inconsistent with the provisions of this chapter.

679:13 Administration of Oaths, Subpoenas, Etc.; Fees. The board shall have authority to administer oaths and to compel the attendance of witnesses to proceedings before it. The board shall have the power to subpoena and subpoena duces tecum. Witnesses compelled to appear shall be paid the same fee and mileage that are paid to witnesses in the superior court of the state. A subpoena or subpoena duces tecum of the board may be served by any person designated in the subpoena or subpoena duces tecum to serve it. Any testimony given by a person duly sworn shall be subject to the pains and penalties of perjury. All applications or petitions to the board for which no filing fee has been otherwise specified by statute shall be accompanied by a \$250 filing fee. Costs and attorney's fees may be taxed as in the superior court.

679:14 Notice. The board shall serve notice in writing of the time, place, and cause of any hearing upon all parties at least 20 days prior to the date of the hearing.

679:15 Appeal. Decisions of the board may be appealed to the supreme court by any party only in accordance with the provisions of RSA 541 as from time to time amended.

679:16 Enforcement of Decisions. After a decision of the board becomes final, the board shall, at the request of any party, file a certified abstract thereof in the Merrimack county superior court. The clerk of said court shall forthwith enter judgment thereon and such judgment may be enforced as with any final judgment of the superior court.

679:17 Staff. The board shall have upon its staff at least one attorney who shall be a classified state employee and who shall have experience in municipal law or housing development or both. In addition, the board shall have such clerical, administrative, and technical staff as may be necessary within the limits of appropriation made therefor.

679:18 Office. The board shall be provided with an office in Concord in which its records, documents, and books shall be kept, and with a suitable room in which it may hold hearings.

679:19 Neglect to Comply With Board's Orders. Neglect or failure on the part of any municipality to comply with such orders shall be deemed willful neglect of duty, and it shall be subject to the penalties and damages provided by law in such cases.

3 Salaries Established; Amend RSA 94:1-a, I(b) by inserting in salary grade DD the following new positions:

DD	housing appeals board	member
DD	housing appeals board	chair

4 Effective Date. This act shall take effect July 1, 2019.

Recess. Out of recess.

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

Senator Giuda offered a Floor Amendment.

Sen. Giuda, Dist 2  
March 13, 2019  
2019-1041s  
10/08

#### Floor Amendment to SB 306-FN

Amend RSA 679:15 as inserted by section 2 of the bill by replacing it with the following:

679:15 Appeal. Decisions of the board may be appealed to the supreme court by any party in accordance with the provisions of RSA 541 as from time to time amended.

Amend RSA 679:17 as inserted by section 2 of the bill by replacing it with the following:

679:17 Staff. The board shall have such clerical, administrative, and technical staff as may be necessary within the limits of the appropriation made therefor.



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

4 Appropriation; Housing Appeals Board. The sums of \$400,000 for the fiscal year ending June 30, 2020 and \$400,000 for the fiscal year ending June 30, 2021 are hereby appropriated to the housing appeals board established pursuant to RSA 679 for the proper administration of said chapter. Said sums shall not lapse until June 30, 2021. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

2019-1041s

#### AMENDED ANALYSIS

This bill establishes a housing appeals board to hear appeals of decisions of municipal boards, committees, and commissions regarding questions of housing and housing development. The bill makes an appropriation to the housing appeals board for the administration of the board's duties.

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

Without objection, Senator Cavanaugh moved to call the question. Adopted.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

Senators Dietsch, Kahn and Morse are in opposition to the motion of Ought to Pass with Amendment on SB 306-FN.

#### ENERGY AND NATURAL RESOURCES

SB 74-FN-A, relative to register of deeds fees used to support the land and community heritage investment program (LCHIP).

Ought to Pass, Vote 4-0. Senator Fuller Clark for the committee.

Senator Giuda offered a Floor Amendment.

Sen. Giuda, Dist 2

March 14, 2019

2019-1054s

10/04

#### Floor Amendment to SB 74-FN-A

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

AN ACT relative to register of deeds fees used to support the land and community heritage investment program (LCHIP), and establishing a committee to study the economic impact of land conservation.

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

#### 2 Committee to Study the Economic Impact of Land Conservation.

I. There is established a legislative committee to study the economic impact of land conservation on housing prices, whose purpose shall be to develop a strategy balancing the need for responsible housing with the need for responsible land conservation. Members of the committee shall be as follows:

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

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

II. The committee shall study issues related to the economic and demographic impact of land conservation on housing and development throughout New Hampshire and shall solicit testimony from housing, development, and conservation stakeholders. Its duties shall include, but not be limited to:

(a) Reviewing current patterns of land conservation of all types in New Hampshire, including state, municipal, federal, and private land preservation efforts such as, but not limited to, voluntary conservation easements, acquisition by land trusts, and coastal protection efforts;

(b) Analyzing the impact of conservation efforts on the affordability of housing;

(c) Analyzing the extent of land conservation in municipalities to determine if conservation and development is occurring equitably around the state so as not to place undue development burden on neighboring municipalities;

(d) Proposing a permanent state land conservation impact commission to report annually on the annual increase, respectively, in land under conservation and balanced-use housing by municipality and by county, and the effects of such increases on housing and rental prices by community and by county;

(e) Analyzing the impact of land conservation on each municipality's property valuation per pupil;

(f) Analyzing the impact of conservation and housing on local property taxation; and

(g) Proposing legislation derived from the work of the committee.

III. The committee shall elect a chair from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

IV. The committee may engage the office of strategic initiatives, the legislative budget assistant, the department of revenue administration, and any other agencies within the state in formulating metrics and acquiring data, so long as such data is de-identified for use in computations and analysis.

V. Committee members shall receive mileage at the legislative rate when attending to the duties of the committee.

VI. The committee shall submit an interim report of its progress, including any findings and recommendations for proposed legislation, to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2019; and shall submit a final report or before November 1, 2020.

### 3 Effective Date.

I. Section 1 of this act shall take effect July 1, 2019.

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

2019-1054s

### AMENDED ANALYSIS

This bill increases the fee assessed in addition to register of deeds recording fees used to support the land and community heritage investment program. The bill also establishes a committee to study the economic impact of land conservation.

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

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

A roll call was requested by Senator Fuller Clark, seconded by Senator Giuda.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Sherman.

The following Senators voted No: Gray, French, Carson, Reagan, Birdsell, Morse, Morgan, Soucy.

Roll Call, Yeas: 16 - Nays: 8. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 122-FN, relative to expenditures from the energy efficiency fund.

Ought to Pass with Amendment, Vote 3-1. Senator Fuller Clark for the committee.

Energy and Natural Resources

March 6, 2019

2019-0829s

10/05

### Amendment to SB 122-FN

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

1 Regional Greenhouse Gas Initiative; Energy Efficiency Fund and Use of Auction Proceeds. Amend RSA 125-O:23, III to read as follows:

III. All [remaining] proceeds received by the state from the sale of allowances, excluding the amount used for commission and department administration under paragraph I, shall be allocated by the commission as follows:

(a) At least ~~[15]~~ **35** percent to the low-income *utility* core energy efficiency program.

(b) Beginning January 1, ~~[2014]~~ **2020**, ~~[up to \$2,000,000]~~ **no more than \$5,000,000** annually to utility core *energy efficiency* programs for municipal, *school district*, and local government energy efficiency projects, including projects by local governments that have their own municipal utilities. Funding elements shall include, but not be limited to, funding for direct technical and project management assistance to identify and encourage comprehensive projects and incentives structured to assist municipal and local governments funding energy efficiency projects. In calendar years 2014~~, 2015, and 2016,~~ **through 2019** any unused funds allocated to municipal and local government projects under this paragraph remaining at the end of the year shall roll over and be added to the new calendar year program funds and continue to be made available exclusively for municipal and local government projects. Beginning in calendar year ~~[2017]~~ **2020**, and all subsequent years, funds allocated to municipal and local government projects under this paragraph shall be offered first to municipal and local governments as described in this paragraph for no less than 4 full calendar months. If, at the end of this time, municipal and local governments have not submitted requests for eligible projects that will expend the funds allocated to municipal and local government projects under this paragraph within that program year, the funds shall be offered on a first-come, first-serve basis to business and municipal customers who fund the system benefits charge.

(c) The remainder to all-fuels, comprehensive energy efficiency programs administered by qualified parties which may include electric distribution companies as selected through a competitive bid process. The funding shall be distributed among residential, commercial, and industrial customers ~~[based upon each customer class's electricity usage]~~ **divided evenly between the 2 existing customer classes** to the greatest extent practicable as determined by the commission. Bids shall be evaluated based on, but not limited to, the following criteria:

- (1) A benefit/cost ratio analysis including all fuels.
- (2) Demonstrated ability to provide a comprehensive, fuel neutral program.
- (3) Demonstrated infrastructure to effectively deliver such program.
- (4) Experience of the bidder in administering energy efficiency programs.
- (5) Ability to reach out to customers.
- (6) The validity of the energy saving assumptions described in the bid.

2 Energy Efficiency Fund and Use of Auction Proceeds; Reports. Amend RSA 125-O:23, V to read as follows:

V. Each entity receiving funding under subparagraph III(c) shall file an annual report on the performance of the entity's program. The commission shall establish the format, content, and the methodologies used to provide the content of the reports. The commission shall make use of, as applicable and appropriate, the monitoring and verification requirements used in the natural gas and electric utility core programs. The annual reports shall be delivered to the governor, the president of the senate, the speaker of the house of representatives, the chairmen of the senate and house standing committees with jurisdiction over energy matters, and the chairman of the public utilities commission. ***The commission shall make these reports available to the public on the website and in person.*** The reports shall include, but not be limited to, the following:

- (a) Program expenditures, including direct customer installation costs.
- (b) Resulting actual and projected energy savings by fuel type and associated CO2 emissions reductions.
- (c) Any measurement and verification data that corroborate projected savings.
- (d) The number of customers served by the programs.
- (e) Other data as required by the commission in order to determine program effectiveness.

***VI. The public utilities commission and the department of environmental services shall review the use of auction proceeds under paragraph III and shall submit a report with recommendations to continue or revise the allocation of auction proceeds among the core programs based on program needs to the house and senate finance committees, the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before July 1, 2023.***

3 Repeal. RSA 125-O:23, II, relative to rebates to retail electric ratepayers, is repealed.

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

2019-0829s

## AMENDED ANALYSIS

This bill:

I. Requires the public utilities commission to allocate certain funds to school districts for energy efficiency projects.

II. Repeals a rebate to retail electric ratepayers.

III. Requires the public utilities commission and the department of environmental services to submit reports with recommendations for allocations of auction proceeds.

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

Senator Bradley offered a Floor Amendment.

Sen. Bradley, Dist 3

March 6, 2019

2019-0863s

10/01

## Floor Amendment to SB 122-FN

Amend the bill by deleting section 3 and renumbering the original section 4 to read as 3.

2019-0863s

## AMENDED ANALYSIS

This bill:

I. Requires the public utilities commission to allocate certain funds to school districts for energy efficiency projects.

II. Requires the public utilities commission and the department of environmental services to submit reports with recommendations for allocations of auction proceeds.

The question is on the adoption of the Floor Amendment.

A roll call was requested by Senator Bradley, seconded by Senator Birdsell.

The following Senators voted Yes: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

The following Senators voted No: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

Roll Call, Yeas: 10 - Nays: 14. Failed.

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

A roll call was requested by Senator Bradley, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to Third Reading.

SB 284-FN, establishing a statewide, multi-use online energy data platform.

Ought to Pass with Amendment, Vote 3-1. Senator Fuller Clark for the committee.

Energy and Natural Resources

March 6, 2019

2019-0855s

06/05

## Amendment to SB 284-FN

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

2 New Subdivision; Multi-Use Energy Data Platform. Amend RSA 378 by inserting after section 49 the following new subdivision:

## Multi-Use Energy Data Platform

378:50 Definitions. In this subdivision:

I. “Data sharing” means providing data and accessing data provided by others.

II. “Individual customer data” means the customer’s name, address, opt-in status pursuant to RSA 374:62, energy usage as recorded by meters supplied by electric and natural gas utilities, and other data segments established and authorized by the commission.

III. “Third party” means:

(a) Any service provider within the meaning of RSA 363:37, II other than a utility; and

(b) The office of the consumer advocate established pursuant to RSA 363:28.

378:51 Online Energy Data Platform Established.

I. The commission shall require electric and natural gas utilities to establish and jointly operate a state-wide, multi-use online energy data platform. The data platform shall:

(a) Consist of a common base of energy data for use in wide range of applications and business uses.

(b) Adhere to specific and well-documented standards.

(c) Isolate users from underlying system complexities and provide an application programming interface.

(d) Adhere to a common statewide logical data model that defines the relationships among the various categories of data included in the platform.

(e) Allow for sharing of individual customer data consistent with the opt-in requirements for third-party access specified in RSA 363:38.

(f) Protect from unauthorized disclosure the personally identifying information of utility customers in a manner that advances applicable constitutional and statutory privacy rights, including the protections of RSA 363:38.

(g) Provide for the voluntary participation of municipal utilities and deregulated rural electric cooperatives in data sharing and the operation of the online energy data platform, subject to terms, conditions, and cost sharing which are reasonable and in the public interest.

II. The commission shall adopt rules, pursuant to RSA 541-A, relative to:

(a) Standards for data accuracy, retention, availability, and security, including the integrity and uniformity of the logical data model.

(b) Financial security standards or other mechanisms to assure compliance with privacy standards by third parties.

378:52 Platform Requirements. The utilities shall:

I. Design and operate the energy data platform to provide opportunities for utilities, their customers, and third parties to access the online energy data platform and to participate in data sharing.

II. Require, as a condition of accessing the online energy data platform, that a third party complete a qualification and registration process to ensure that any customer data downloaded from the platform remains in a safe, secure environment according to data privacy standards established by the commission.

III. Administer the online energy data platform in a manner consistent with RSA 363:38.

378:53 Certification. The platform shall be certified by the Green Button Alliance and support the Energy Service Provider Interface of the North American Energy Standards Board and the Green Button “Connect My Data” initiative of the United States Department of Energy.

378:54 Cost Recovery. The utilities may:

I. Impose reasonable charges to third parties for access to data via the multi-use online energy data platform, and

II. Otherwise recover from customers the prudently incurred costs of developing and operating the multi-use online energy data platform.



3 Definition of Public Utility; Applicability of Chapter to Rural Electric Cooperatives. Amend RSA 362:2, II to read as follows:

II. For the purposes of this title only, rural electric cooperatives for which a certificate of deregulation is on file with the public utilities commission pursuant to RSA 301:57 shall not be considered public utilities; provided, however, that the provisions of RSA 362-A:1, 362-A:2, 362-A:3, 362-A:4, 362-A:5, 362-A:6, 362-A:7, 362-A:8, 363-B, 371, 374:2-a, 374:26, 374:48-56, 374-A, 374-C, 374-F, [and] 378:37, **and 378:51** shall, unless otherwise provided herein, be applicable to rural electric cooperatives, without regard to whether a certificate of regulation or deregulation is on file with the public utilities commission. The provisions of RSA 374-A and the provisions of RSA 374-F:3, V(b) and (f) and RSA 374-F:7 shall be applicable to rural electric cooperatives for which a certificate of deregulation is on file with the public utilities commission to the same extent as municipal utilities.

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

2019-0855s

#### AMENDED ANALYSIS

This bill establishes a statewide online energy data platform regulated by the public utilities commission and operated by the state's electric and natural gas utilities.

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

Senator Fuller Clark offered a Floor Amendment.

Sen. Fuller Clark, Dist 21

March 13, 2019

2019-1030s

06/01

#### Floor Amendment to SB 284-FN

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

2 New Subdivision; Multi-Use Energy Data Platform. Amend RSA 378 by inserting after section 49 the following new subdivision:

#### Multi-Use Energy Data Platform

378:50 Definitions. In this subdivision:

I. "Data sharing" means providing data and accessing data provided by others.

II. "Individual customer data" means the customer's name, address, opt-in status pursuant to RSA 374:62, energy usage as recorded by meters supplied by electric and natural gas utilities, and other data segments established and authorized by the commission.

III. "Third party" means:

- (a) Any service provider within the meaning of RSA 363:37, II other than a utility; and
- (b) The office of the consumer advocate established pursuant to RSA 363:28.

378:51 Online Energy Data Platform Established.

I. The commission shall require electric and natural gas utilities to establish and jointly operate a state-wide, multi-use online energy data platform. The data platform shall:

- (a) Consist of a common base of energy data for use in wide range of applications and business uses.
- (b) Adhere to specific and well-documented standards.
- (c) Isolate users from underlying system complexities and provide an application programming interface.
- (d) Adhere to a common statewide logical data model that defines the relationships among the various categories of data included in the platform.

(e) Allow for sharing of individual customer data consistent with the opt-in requirements for third-party access specified in RSA 363:38.

(f) Protect from unauthorized disclosure the personally identifying information of utility customers in a manner that advances applicable constitutional and statutory privacy rights, including the protections of RSA 363:38.

(g) Provide for the voluntary participation of municipal utilities and deregulated rural electric cooperatives in data sharing and the operation of the online energy data platform, subject to terms, conditions, and cost sharing which are reasonable and in the public interest.

II. The commission shall adopt rules, pursuant to RSA 541-A, relative to:

(a) Standards for data accuracy, retention, availability, and security, including the integrity and uniformity of the logical data model.

(b) Financial security standards or other mechanisms to assure compliance with privacy standards by third parties.

III. The commission shall defer the implementation of the statewide multi-use online energy data platform pursuant to paragraph I if it determines that the cost of such platform to be recovered from customers exceeds the benefits to such customers.

378:52 Platform Requirements. The utilities shall:

I. Design and operate the energy data platform to provide opportunities for utilities, their customers, and third parties to access the online energy data platform and to participate in data sharing.

II. Require, as a condition of accessing the online energy data platform, that a third party complete a qualification and registration process to ensure that any customer data downloaded from the platform remains in a safe, secure environment according to data privacy standards established by the commission.

III. Administer the online energy data platform in a manner consistent with RSA 363:38.

378:53 Certification. The platform shall be certified by the Green Button Alliance and support the Energy Service Provider Interface of the North American Energy Standards Board and the Green Button "Connect My Data" initiative of the United States Department of Energy.

378:54 Cost Recovery. The utilities may:

I. Impose reasonable charges to third parties for access to data via the multi-use online energy data platform, and

II. Otherwise recover from customers the prudently incurred costs of developing and operating the multi-use online energy data platform.

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

2019-1030s

#### AMENDED ANALYSIS

This bill establishes a statewide online energy data platform regulated by the public utilities commission and operated by the state's electric and natural gas utilities.

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

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

SB 286-FN-L, relative to aggregation of electric customers by municipalities and counties.  
Ought to Pass with Amendment, Vote 4-0. Senator Feltes for the committee.

Energy and Natural Resources

March 6, 2019

2019-0866s

06/01

#### Amendment to SB 286-FN-LOCAL

Amend RSA 53-E:4, IV and V as inserted by section 4 of the bill by replacing them with the following:

IV. For the purpose of obtaining interval meter data for load settlement, the provision of energy services, and near real-time customer access to such data, municipal and county aggregators may contribute to the cost of electric utility provided meter upgrades, jointly own revenue grade meters with an electric utility, or provide its own revenue grade electric meter, which would be in addition to a utility provided meter, subject to commission finding in the public good and approval of the terms and conditions for such arrangements, including sharing or transfer of meter data from and to the electric distribution utility.

V. Municipal or county aggregations that supply power shall be treated as competitive electricity suppliers for the purpose of access to the electric distribution utility's electronic data interface and for ceasing operations.

Amend RSA 53-E:6, III(g) as inserted by section 4 of the bill by replacing it with the following:

(g) How the program will ensure participants who are enrolled in the Electric Assistance Program administered by the commission will receive their discount.

Amend RSA 53-E:7 as inserted by section 4 of the bill by inserting after paragraph V the following new paragraph:

VI. The commission shall adopt rules, pursuant to RSA 541-A, relative to the administration and implementation of this chapter.

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

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

SB 287-FN, requiring the commissioner of the department of environmental services to revise rules relative to perfluorinated chemical contamination in drinking water.

Re-refer to Committee, Vote 4-0. Senator Fuller Clark for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

SB 307-FN, relative to outdoor lighting.

Ought to Pass with Amendment, Vote 4-0. Senator Watters for the committee.

Energy and Natural Resources

March 6, 2019

2019-0869s

06/08

#### Amendment to SB 307-FN

Amend RSA 9-E:3, II as inserted by section 2 of the bill by replacing it with the following:

***II. To better enable communities to conserve energy consumed by outdoor lighting and carry out dark sky policies, the public utilities commission shall institute proceedings and may approve pilots or adopt rules or waivers as it deems necessary to reasonably enable the state, its agencies, subdivisions, and instrumentalities to own and operate outdoor street lights on utility poles under its jurisdiction under RSA 374:34-a or otherwise, including the use of smart adaptive street lighting with networked lighting controls. To the extent technically and economically feasible and consistent with the public good, the commission shall enable the use of revenue grade metering built into networked street lighting controls and may enable the collaborative or shared use of networked street lighting controls and supporting communication systems by utilities and the state, its agencies, subdivisions, and instrumentalities for providing additional utility and public services, such as advanced electric and water meter reading, public electric vehicle charging stations, and environmental sensors used for traffic and parking management and public safety.***

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 New Section; Exemption. Amend RSA 72 by inserting after section 12-e the following new section:

72:12-f Exemption. Street lights, including networked street lighting controls, built in revenue grade metering, supporting communication system hardware, and other connected or networked equipment used to provide public governmental functions or services, such as environmental sensors and public electric vehicle charging stations, and that are paid for by the state, its agencies, subdivisions, and instrumentalities shall be exempt from taxation as real estate.

2019-0869s

#### AMENDED ANALYSIS

This bill:

I. Requires an agency funding permanent outdoor luminaires to ensure that such luminaires have a certain color correlated temperature.

II. Requires the public utilities commission to adopt rules enabling the state and its subdivisions to use revenue grade metering built into networked street light controls to provide additional utility and public services.

III. Exempts certain street lights used to provide governmental functions and services from taxation as real estate.

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

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

#### EXECUTIVE DEPARTMENTS AND ADMINISTRATION

SB 234-FN, establishing the position of director of the office of outdoor recreation industry development in the department of business and economic affairs.

Ought to Pass with Amendment, Vote 3-1. Senator Cavanaugh for the committee.

Senate Executive Departments and Administration

March 6, 2019

2019-0868s

05/10

#### Amendment to SB 234-FN

Amend RSA 12-O:23-a, II(b)(4) as inserted by section 2 of the bill by replacing it with the following:

(4) Improving motorized and nonmotorized recreational opportunities in cooperation with the department of natural and cultural resources.

Amend the introductory paragraph of RSA 12-O:23-a, III as inserted by section 2 of the bill by replacing it with the following:

III. Provided that any federally funded programs managed by the department of natural and cultural resources, division of parks on the effective date of this section shall continue to be managed by the division of parks, the office of outdoor recreation industry development may:

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 New Paragraph; Community Recreation Service; Duties. Amend RSA 12-B:3 by inserting after paragraph X the following new paragraph:

XI. To serve as liaison to the office of outdoor recreation industry development established pursuant to RSA 12-O:23-a.

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

Recess. Out of recess.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 257-FN, prohibiting foams containing perfluoroalkyl chemicals for use in fighting fires.

Ought to Pass with Amendment, Vote 4-1. Senator Carson for the committee.

Senate Executive Departments and Administration

March 6, 2019

2019-0845s

08/04

#### Amendment to SB 257-FN

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

1 New Section; Certain Chemicals In Firefighting Foam. Amend RSA 154 by inserting after section 8-a the following new section:

154:8-b Certain Chemicals Prohibited in Firefighting Foam.

I. In this section,

(a) "Class B firefighting foam" means foam designed for flammable liquid fires.

(b) “Department” means the department of environmental services.

(c) “Firefighting personal protective equipment” means any clothing designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for the use in fire and rescue activities, including jackets, pants, shoes, gloves, helmets, hoods, and respiratory equipment.

(d) “Legacy foams” means firefighting foams manufactured prior to January 1, 2004, containing PFAS chemicals.

(e) “Manufacturer” includes any person, firm, association, partnership, corporation, governmental entity, organization, joint venture, importer, or domestic manufacturer or distributor of firefighting agents or firefighting equipment. For the purposes of this section, “importer” means the owner of the product.

(f) “Municipalities” means any county, city, town, fire district, regional fire district, or other special purpose district that provides firefighting services.

(g) “Perfluoroalkyl and polyfluoroalkyl substances” or “PFAS chemicals” means, for the purposes of firefighting agents and firefighting equipment, a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

(h) “Testing” includes calibration testing, conformance testing, and fixed system testing.

II. Beginning on January 1, 2020, no person, local government, or state agency shall discharge or otherwise use for training or testing purposes class B firefighting foam. However, the testing of class B firefighting foam may occur if the department has evaluated the testing facility for containment, treatment, and disposal measures to prevent uncontrolled release of foam to the environment.

III. Beginning January 1, 2020, a manufacturer of class B firefighting foam shall not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state class B firefighting foam to which PFAS chemicals have been intentionally added.

IV. The restrictions in paragraph III shall not apply to any sale or use of class B firefighting foam where the inclusion of PFAS chemicals are required by federal law, including but not limited to the requirements of 14 C.F.R. section 139.317, as that section existed as of January 1, 2018. In the event that applicable federal regulations change after January 1, 2018, to allow the use of alternative firefighting agents that do not contain PFAS chemicals, the department may adopt rules for the sales and uses of firefighting foam that are addressed by the federal regulation that restrict the use of firefighting foam that contains PFAS chemicals.

V. Beginning January 1, 2020, a manufacturer or other person that sells firefighting personal protective equipment to any person, municipality, or state agency shall provide written notice to the purchaser at the time of sale if the firefighting personal protective equipment contains PFAS chemicals. The written notice shall include a statement that the firefighting personnel protective equipment contains PFAS chemicals. All notices shall be included in all personal files of all employees using the firefighting personal protective equipment which contain perfluoroalkyl chemicals

VI. The manufacturer or person selling firefighting personal protective equipment and the purchaser of the equipment shall retain the notice on file for at least 3 years from the date of the transaction. Upon the request of the department, a person, manufacturer, or purchaser shall furnish the notice, or written copies, and associated sales documentation to the department within 60 days.

VII. A manufacturer of class B firefighting foam restricted under paragraph III shall notify, in writing, persons that sell the manufacturer’s products in this state about the provisions of this chapter no less than one year prior to the effective date of the restrictions.

VIII. A manufacturer that produces, sells, or distributes a class B firefighting foam restricted under paragraph III shall recall the product and reimburse the retailer or any other purchaser for the product.

IX. The department may request a certificate of compliance from a manufacturer of class B firefighting foam or firefighting personal protective equipment. A certificate of compliance attests that a manufacturer’s product or products meets the requirements of this chapter.

X. The department shall assist the office of strategic initiatives, other state agencies, fire protection districts, and other municipalities to avoid purchasing or using firefighting agents containing PFAS chemicals, as required under paragraph III. The department shall assist the office of strategic initiatives, other state agencies, fire protection districts, and other municipalities to give priority and preference to the purchase of firefighting personal protective equipment that does not contain PFAS chemicals.



XI. A manufacturer of class B firefighting foam in violation of paragraph III shall be subject to an administrative fine not to exceed \$5,000 for each violation in the case of a first offense. Manufacturers or persons that are repeat violators shall be subject to an administrative fine not to exceed \$10,000 for each repeat offense.

XII. Beginning on January 1, 2021, the department shall institute a take-back program of legacy foams for the purpose of safe and contained disposal.

XIII. Fire departments which use remaining class B firefighting foam shall be immune from civil or criminal damages only if discharged in an emergency situation.

XIV. Any time a class B firefighting foam is discharged, the agency or department making such discharge shall notify the department of environmental services within 48 hours of such discharge.

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

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

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

A roll call was requested by Senator Sherman, seconded by Senator Birdsell.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

The following Senators voted No: Reagan.

Roll Call, Yeas: 23 - Nays: 1. Adopted, bill ordered to Third Reading.

SB 308-FN-A, relative to the health care workforce and making appropriations therefor.  
Ought to Pass with Amendment, Vote 5-0. Senator Rosenwald for the committee.

Senate Executive Departments and Administration

March 6, 2019

2019-0870s

04/01

#### Amendment to SB 308-FN-A

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

1 Purpose and Findings. The general court finds that:

I. New Hampshire's health care workforce is the foundation of our health care system, but the residents of New Hampshire will go without necessary care if the cracks in the foundation are not repaired. The state has made great strides through significant investments in the health care infrastructure to increase mental health and substance use disorder treatment capacity and promote integrated care delivery. These investments, however, do not address one fundamental workforce challenge: New Hampshire does not have the workforce to meet either the current health care needs of our residents or the state's goal of truly integrating primary care, behavioral health, substance use disorder treatment, and oral health. New Hampshire's health care workforce shortage hinders the state's economic potential, causes a rationing of necessary care, and adds health care costs systemwide.

II. The state of New Hampshire shall address the health care workforce shortage through programs designed to incent students to seek health care degrees and remain in New Hampshire upon graduation; remove career-advancement barriers for our dedicated direct care providers; and equip health care organizations with the tools necessary to secure skilled clinicians.

III. It is the intent of the general court to recognize the application of telemedicine for clinically appropriate services and settings, including when such services are delivered from a distant site without in-person contact between the individual and provider.

2 Department of Health and Human Services; Medicaid Provider Rate Increases. The commissioner of the department of health and human services shall increase all Medicaid provider rates by 5 percent in the fiscal year ending June 30, 2020 and an additional 7 percent in the fiscal year ending June 30, 2021. The commissioner shall make the necessary adjustments to the medical rate setting data book and direct the actuary and managed care organizations to pass through the increased funding to rates. Nothing in this section shall be construed to alter the traditional method of establishing the county contribution for Medicaid federal medical assistance percentage.

3 Commissioner of Health and Human Services; State Office of Rural Health. Amend RSA 126-A:5, XVIII-a(a) to read as follows:

XVIII-a.(a) The state office of rural health (SORH) established in paragraph XVIII ~~[may]~~ **shall** receive and collect data regarding surveys completed by participating licensees pursuant to RSA 317-A:12-a, RSA 318:5-b, RSA 326-B:9-a, RSA 328-D:10-a, RSA 328-F:11-a, RSA 329:9-f, RSA 329-B:10-a, RSA 330-A:10-a, and RSA 330-C:9-a.

4 Commissioner of Health and Human Services; State Office of Rural Health. Amend RSA 126-A:5, XVIII-a(e) to read as follows:

(e) On or before ~~[November 1, 2017]~~ **December 1, 2019**, and annually thereafter, the SORH shall make a written report to the speaker of the house of representatives, the senate president, the governor, the oversight committee on health and human services established under RSA 126-A:13, the chairs of the house and senate executive departments and administration committees, the chairs of the house and senate policy committee having jurisdiction over health and human services, and the commission on primary care workforce issues established by RSA 126-T:1. The report shall include, but not be limited to, aggregate data and information on current and projected primary workforce needs and the participation rate on surveys completed pursuant to this paragraph. This report shall be incorporated into the report required pursuant to RSA 126-A:5, XVIII(c).

5 Dentists and Dentistry; Examinations and Licensing. Amend RSA 317-A:12-a to read as follows:

317-A:12-a Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

6 Pharmacists and Pharmacies; Completion of Survey. Amend RSA 318:5-b to read as follows:

318:5-b Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

7 Nurse Practice Act; Completion of Survey. Amend RSA 326-B:9-a to read as follows:

326-B:9-a Completion of Survey; Rulemaking.

I. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, for APRNs only requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this paragraph shall not be a condition of licensure.]~~

II. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, for RNs and LPNs only requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the National Council of State Boards of Nursing regarding minimum data sets. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this paragraph shall not be a condition of licensure.]~~

8 Physician Assistant; Completion of Survey. Amend RSA 328-D:10-a to read as follows:

328-D:10-a Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in

RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

9 Allied Health Professionals; Completion of Survey. Amend RSA 328-F:11-a to read as follows:

328-F:11-a Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

10 Physicians and Surgeons; Completion of Survey. Amend RSA 329:9-f to read as follows:

329:9-f Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

11 Psychologists; Completion of Survey. Amend RSA 329-B:10-a to read as follows:

329-B:10-a Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

12 Mental Health Practice; Completion of Survey. Amend RSA 330-A:10-a to read as follows:

330-A:10-a Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

13 Alcohol and Other Drug Use Professionals; Completion of Survey. Amend RSA 330-C:9-a to read as follows:

330-C:9-a Completion of Survey; Rulemaking. The board ~~[may]~~ **shall** adopt rules, pursuant to RSA 541-A, requiring, as part of the license renewal process, completion by licensees of a survey **or opt-out form** provided by the office of rural health, department of health and human services, for the purpose of collecting data regarding the New Hampshire primary care workforce, pursuant to the commission established in RSA 126-T. Any rules adopted under this section shall provide the licensee with written notice of his or her opportunity to opt-out from participation in the survey. ~~[Participation in the survey under this section shall not be a condition of licensure.]~~

14 Department of Health and Human Services; Income Eligibility for "In and Out Medical Assistance." The commissioner of the department of health and human services shall amend the income eligibility requirement for "in and out medical assistance" defined in section 625 of the department's medical assistance manual as less than or equal to 133 1/3 percent of the section 1931 income limit.

15 State Police; Criminal Records. Amend RSA 106-B:14, I-b to read as follows:

I-b. ***The director shall develop forms and procedures to allow for the online application and processing of criminal record information. The director shall not require a paper application or***

***notarization on any paper or online form prior to the release of any criminal record information authorized under paragraph I. The division shall process and report the results of an online request for criminal record information within 48 hours of receipt of the online request.***

***I-c.*** Any person violating the provisions of this section or any rules adopted under RSA 541-A, shall be guilty of a misdemeanor for each offense.

16 Medicaid Coverage of Telehealth Services. RSA 167:4-d is repealed and reenacted to read as follows:

167:4-d Medicaid Coverage of Telehealth Services.

I. It is the intent of this section to recognize the application of telehealth for covered services provided within the scope of practice of a physician or other health care provider as a method of delivery of medical care by which an individual at an originating site shall receive medical services which are clinically appropriate for delivery through telehealth from a health care provider at a distant site without in-person contact with the provider.

II. In this section:

(a) "Telehealth services" shall have the same meaning as 42 C.F.R. section 410.78, except for 42 C.F.R. section 410.78(b)(4). The use of the term "telemedicine" shall comply with the Centers for Medicare and Medicaid Services requirements governing the aforementioned telehealth services.

(b) "Distant site" means the location of the health care provider delivering services through telemedicine at the time the services are provided.

(c) "Originating site" means the location of the patient, whether or not accompanied by a health care provider, at the time services are provided by a health care provider through telemedicine, including, but not limited to, a health care provider's office, a hospital, or a health care facility, or the patient's home or another nonmedical environment such as a school-based health center, a university-based health center, or the patient's workplace.

(d) "Remote patient monitoring" means the use of electronic technology to remotely monitor a patient's health status through the collection and interpretation of clinical data while the patient remains at an originating site. Remote patient monitoring may or may not take place in real time.

(e) "Store and forward," as it pertains to telemedicine, and as an exception to 42 C.F.R. section 410.78, means the use of asynchronous electronic communications between a patient at an originating site and a health care service provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients. This includes the forwarding and or transfer of stored medical data from the originating site to the distant site through the use of any electronic device that records data in its own storage and forwards its data to the distant site via telecommunication for the purpose of diagnostic and therapeutic assistance.

III.(a) Coverage under this section shall include the use of telehealth or telemedicine for Medicaid-covered services provided within the scope of practice of a physician or non-physician practitioner as a method of delivery of medical care:

(1) Which is an appropriate application of telehealth services provided by physicians and non-physician practitioners, as determined by the department based on the Centers for Medicare and Medicaid Services regulations, with the exception of also including providers as referenced in Administrative Rules He-M 426.08 and 426.09;

(2) By which telemedicine services for primary care, remote patient monitoring and substance use disorder services shall only be covered in the event that the patient has already established care at an originating site via face-to-face in-person service; and

(3) By which an individual shall receive medical services from a physician or non-physician practitioner who is an enrolled Medicaid provider without in-person contact with that provider.

(b) Nothing in this section shall be construed to prohibit the Medicaid program from providing coverage for only those services that are medically necessary and subject to all other terms and conditions of the coverage.

IV. This section shall be conditioned upon review and approval of a state plan amendment submitted by the department to the Centers for Medicare and Medicaid Services.



V. The department shall adopt rules, pursuant to RSA 541-A, necessary to carry out the purposes of this section.

17 New Subparagraph; Rulemaking. Amend RSA 167:3-c by inserting after subparagraph XIV the following new subparagraph:

XV. Telehealth services under RSA 167:4-d.

18 New Paragraphs; New Hampshire Telemedicine Act. Amend RSA 415-J:2 by inserting after paragraph II-a the following new paragraphs:

II-b. "Remote patient monitoring" means the use of electronic technology to remotely monitor a patient's health status through the collection and interpretation of clinical data while the patient remains at an originating site. Remote patient monitoring may or may not take place in real time.

II-c. "Store and forward," as it pertains to telemedicine, means the use of asynchronous electronic communications between a patient at an originating site and a health care service provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients. This includes the forwarding and or transfer of stored medical data from the originating site to the distant site through the use of any electronic device that records data in its own storage and forwards its data to the distant site via telecommunication for the purpose of diagnostic and therapeutic assistance.

19 New Hampshire Telemedicine Act; Coverage for Telemedicine Services. Amend RSA 415-J:3, I to read as follows:

I. It is the intent of the general court to recognize the application of telemedicine for covered services provided within the scope of practice of a physician or other health care provider as a method of delivery of medical care by which an individual at an originating site shall receive medical services which are clinically appropriate for delivery through telemedicine from a health care provider at a distant site without in-person contact with the provider. ***For the purposes of this chapter, covered services include remote patient monitoring and store and forward.***

20 Department of Health and Human Services; Rural Health and Primary Care Section; Positions and Programs Established.

I. The department of health and human services, bureau of public health services, rural health and primary care section shall, within 90 days of the effective date of this section, issue a request for proposals to contract with an organization to establish programs designed to improve care and access to care, particularly in rural and underserved areas of this state, and to enhance the health and public health workforce in New Hampshire. Such programs may include engaging under-represented populations in the health care professions in middle school and high school, offering health professions students opportunities to experience learning in rural or medically underserved regions of New Hampshire designed to encourage participants to settle and work in these regions, and enriching the standard health curriculum by providing health professions students training in aspects of health care such as integration of behavioral health and primary care, social determinants of health, cultural competency, interprofessional team-based care, and addressing the challenges associated with substance misuse.

II. There is established within the department of health and human services, division of public health services, rural health and primary care section, 2 full-time, unclassified positions. The salary for such positions shall be as set forth in RSA 94:1-a, provided that the salary for such positions shall be determined after assessment and review of the appropriate temporary letter grade allocation in RSA 94:1-a, I(b) for the positions which shall be conducted pursuant to RSA 94:1-d and RSA 14:14-c.

III. The department of health and human services, division of public health services, rural health and primary care section shall, within 90 days of the effective date of this section, issue a request for proposals to retain the services of an organization specializing in the recruitment and retention of clinicians in medically underserved areas for the purpose of creating a national outreach campaign designed to recruit qualified clinicians to New Hampshire.

IV. The department of health and human services, division of public health services, rural health and primary care section shall contract with organizations located within the state for the purpose of creating and expanding community-based advanced training which shall include, but is not limited to, nurse practitioner fellowship programs, formal mentoring and precepting programs, and training in community-based



ambulatory care settings such as community health centers. Each program shall be accredited or eligible for accreditation by a nationally-recognized accreditation agency and officially affiliated with a postsecondary educational institution.

21 Governor's Scholarship Program; Health Care Scholarships. The office of strategic initiatives shall conduct a survey of the health care programs of study offered at postsecondary educational institutions or training programs in the state to determine how the funds appropriated in section 23 of this act should be distributed to ensure the development and enhancement of health care programs of study at postsecondary educational institutions and training programs and the financial solvency of the governor's scholarship program.

22 Appropriations; Department of Health and Human Services; Rural Health and Primary Care Section.

I. Area Health Education Centers. The sum of \$1,500,000 for the fiscal year ending June 30, 2020 and the sum of \$1,500,000 for the fiscal year ending June 30, 2021 are hereby appropriated to the department of health and human services, division of public health services, rural health and primary care section for the purpose set forth in paragraph I of section 20 of this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

II. State Loan Repayment Program. The sum of \$3,250,000 for the fiscal year ending June 30, 2020 and the sum of \$3,250,000 for the fiscal year ending June 30, 2021 are hereby appropriated to the department of health and human services, division of public health services, rural health and primary care section to accounting unit 05-95-90-901010-7965, line 103, Contracts for Op Services, and to fund one of the positions established in paragraph II of section 20 of this act. This appropriation shall be nonlapsing. Of this appropriation, the sums of \$750,000 for the fiscal year ending June 30, 2020 and \$750,000 for the fiscal year ending June 30, 2021 shall be expended by clinicians solely to deliver mental health and substance use disorder treatment services in Carroll, Cheshire, and Coos counties. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

III. Primary Care Workforce Program. The sum of \$120,000 for the fiscal year ending June 30, 2020 and the sum of \$120,000 for the fiscal year ending June 30, 2021 are hereby appropriated to the department of health and human services, division of public health services, rural health and primary care section, for the purpose of funding one of the positions established in paragraph II of section 20 of this act. The commissioner of the department of health and human services may use up to \$20,000 of the appropriation in each fiscal year towards the upgrade of an existing position in the rural health and primary care section. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

IV. Workforce Recruitment, Advertising, and Marketing. The sum of \$250,000 for the fiscal year ending June 30, 2020 and the sum of \$250,000 for the fiscal year ending June 30, 2021 are hereby appropriated to the department of health and human services, division of public health services, rural health and primary care section for the purpose described in paragraph III of section 20 of this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

V. Advanced Training Program. The sum of \$2,000,000 for the biennium ending June 30, 2021 is hereby appropriated to the department of health and human services, division of public health services, rural health and primary care section for the purposes established in paragraph IV of section 20 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

23 Appropriation; Governor's Scholarship Program. The sum of \$5,000,000 for the fiscal year ending June 30, 2020 and the sum of \$5,000,000 for the fiscal year ending June 30, 2021 are hereby appropriated to the governor's scholarship fund established in RSA 4-C:34 for the purpose of granting health care scholarships to students pursuant to the governor's scholarship program established in RSA 4-C:32 and to distribute funds to postsecondary educational institutions as provided in section 21 of this act. From these sums, the office of strategic initiatives shall disburse up to \$1,250,000 in each fiscal year as scholarships through the governor's scholarship program for the educational costs of eligible students majoring in an approved health care course of study at a postsecondary institution. In order to be eligible to receive the governor's scholarship money for an approved health care course of study, a scholarship applicant shall agree to remain employed in this state in a health care-related field for a minimum of 36 months after graduation from the postsecondary educational institution or training program. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

24 Effective Date. This act shall take effect July 1, 2019.

2019-0870s

## AMENDED ANALYSIS

This bill:

- I. Increases the Medicaid provider rates.
- II. Requires certain health care professionals to complete a survey or an opt-out form for collecting data on the primary care workforce.
- III. Requires the department of health and human services to amend the income standard used for eligibility for the “in and out” medical assistance policy.
- IV. Permits the department of safety to contract with a private agency to process background check applications, and requires the department to accept and process background check applications online.
- V. Amends the definitions and services covered through telemedicine.
- VI. Makes appropriations to the department of health and human services, rural health and primary care section to establish new positions and programs to develop and enhance the state’s healthcare workforce.
- VII. Makes an appropriation to the governor’s scholarship program for scholarships to students majoring in a health care field and to postsecondary educational institutions to develop and enhance programs of study offered in health care.

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

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

## FINANCE

SB 14-FN, relative to child welfare.

Ought to Pass, Vote 5-0. Senator Feltes for the committee.

Senator Feltes offered a Floor Amendment.

Sen. Feltes, Dist 15

Sen. Bradley, Dist 3

March 11, 2019

2019-0930s

05/10

## Floor Amendment to SB 14-FN

Amend the bill by replacing section 5 with the following:

5 Home and Community-Based Behavioral Health Services for Children; Mobile Crisis Response and Stabilization Services Included. Amend RSA 167:3-1 to read as follows:

167:3-1 Home and Community-Based Behavioral Health Services for Children.

**I.** The department shall establish a Medicaid home and community-based behavioral health services program for children with severe emotional disturbances whose service needs cannot be met through traditional behavioral health services. The department may establish such services through a state plan amendment as provided in Section 1915(i) of the Social Security Act or a waiver under other provisions of the Act, **as needed**. If the department proceeds with a waiver, it shall not limit the geographic availability of services.

**II.** Such services shall include the following services or their functional equivalent:

- (a) Wraparound care coordination.
- (b) Wraparound participation.
- (c) In-home respite care.
- (d) Out-of-home respite care.
- (e) Customizable goods and services.
- (f) Family peer support.
- (g) Youth peer support.

***III. Mobile crisis response and stabilization services for children under 21 shall be provided and delivered using system of care values and principles in compliance with RSA 135-F.***

***(a) The department shall contract with one or more third-party entities to ensure that all children in the state under 21 years of age have access to mobile crisis response and stabilization services, that such services are available with a response time of no more than one hour, and that such services are available in every part of the state.***

***(b) The department shall ensure the development of a performance measurement system for monitoring quality and access to mobile crisis response and stabilization services.***

***(c) All providers of mobile crisis response and stabilization services shall coordinate with the child's wraparound care coordinator, primary care physician, and any other care management program or other behavioral health providers providing services to the youth throughout the delivery of the service.***

Amend the introductory paragraph of RSA 170-G:1, V-a as inserted by section 14 of the bill by replacing it with the following:

V-a. "Evidence-based practice" means a practice that has been recognized as supported by research evidence by an evidence-based clearinghouse, such as the California Evidence-Based Clearinghouse for Child Welfare and the Title IV-E Prevention Services Clearinghouse. Other acceptable evidence-based practices shall include practices and programs evaluated using research which utilizes methods that meet high scientific standards. Acceptable methods shall include:

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

Recess. Out of recess.

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

A roll call was requested by Senator Bradley, seconded by Senator Giuda.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Reagan, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

The following Senators voted No: (None)

Roll Call, Yeas: 24 - Nays: 0. Adopted, bill ordered to Third Reading.

SB 15-FN-A, making an appropriation to the affordable housing fund.

Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

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

SB 83-FN-A, increasing funding for the New Hampshire innovation research center and making an appropriation therefor.

Ought to Pass, Vote 4-2. Senator Feltes for the committee.

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

Senator Feltes moved to Lay on the Table SB 83-FN. Adopted.

SB 84-FN-A, making appropriations to the department of health and human services for homeless services expansion.

Ought to Pass with Amendment, Vote 6-0. Senator Rosenwald for the committee.

Senate Finance

March 5, 2019

2019-0815s

05/10

Amendment to SB 84-FN-A

Amend the bill by replacing section 1 with the following:

1 Appropriation; Department of Health and Human Services; Homeless Services.

I. The sum of \$5,049,000 for the biennium ending June 30, 2021, is hereby appropriated to the department of health and human services for the purpose of expanding homeless services in the state. Of the amount appropriated:

(a) \$2,000,000 shall be available for the purpose of providing eviction prevention assistance.

(b) \$2,000,000 shall be available for the purpose of providing homeless services case management.

(c) \$1,000,000 shall be available for the purpose of providing rapid-rehousing for youth between 18 and 24 years of age and Temporary Assistance to Needy Families (TANF) eligible families.

(d) \$49,000 shall be available for the purpose of funding a business systems analyst position in the department of health and human services, division of economic and housing stability, bureau of housing supports.

II. The appropriation made in this section shall be in addition to any other funds appropriated to the department. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. Notwithstanding RSA 14:30-a, VI, the department is authorized, without prior approval of the fiscal committee of the general court, to accept and expend any matching federal funds available for the position established in subparagraph I(d).

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

Recess. Out of recess.

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted.

Senator Feltes moved to Lay on the Table SB 84-FN-A. Adopted.

SB 107-FN, relative to extended foster care under the child protection act.  
Ought to Pass, Vote 6-0. Senator Kahn for the committee.

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

Senator Feltes moved to Lay on the Table SB 107-FN. Adopted.

SB 133-FN, relative to the definition of emergency vehicles.  
Ought to Pass, Vote 6-0. Senator D'Allesandro for the committee.

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

SB 169, relative to recovery of expenditures from the drinking water and groundwater trust fund.  
Re-refer to Committee, Vote 4-2. Senator Feltes for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Failed.

Senator Morse moved Ought to Pass.

Senator Morse offered a Floor Amendment.

Sen. Morse, Dist 22

Sen. Feltes, Dist 15

March 12, 2019

2019-1011s

08/10

#### Floor Amendment to SB 169

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

1 Hazardous Waste clean Up; Civil Actions; Cost Recovery. Amend RSA 147-B:10, III(a) to read as follows:

(a) The attorney general may institute an action before the superior court for the county in which the facility is located against any person liable pursuant to paragraph I of this section to recover all costs incurred by the state. Costs recovered under this section shall be deposited into the fund ***except that costs recovered to offset expenditures made from the drinking water and groundwater trust fund established in RSA 6-D:1 shall be deposited into the drinking water and groundwater trust fund.***

2 New Section; Deposits to Drinking Water and Groundwater Trust Fund. Amend RSA 485-F by inserting after section 5 the following new section:

485-F:6 Deposits to Drinking Water and Groundwater Trust Fund. Any money received by the state related to the contamination of drinking water or groundwater, other than fees, fines, penalties, oil or hazardous waste cost recovery, or any other money already allocated to a specified fund, shall be deposited into the drinking water and groundwater trust fund. This paragraph shall not be construed to limit any damages otherwise awarded in a related private cause of action.

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

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

SB 170-FN-A, making an appropriation to fund the cross border drug interdiction program. Inexpedient to Legislate, Vote 6-0. Senator Reagan for the committee.

Senator Reagan moved to Lay on the Table SB 170-FN-A. Adopted.

SB 171-FN-A, appropriating money to remove lead from drinking water pipes in schools. Re-refer to Committee, Vote 5-1. Senator Feltes for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

SB 202-FN-A, establishing a stormwater management and flood resilience fund within the department of environmental services and making an appropriation to the fund. Ought to Pass, Vote 4-2. Senator D'Allesandro for the committee.

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

Senator D'Allesandro moved to Lay on the Table SB 202-FN-A. Adopted.

SB 240-FN, relative to reciprocal toll collection. Ought to Pass, Vote 6-0. Senator Giuda for the committee.

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

SB 249-FN, including the legislature as a public employer under the public employee labor relations act. Ought to Pass, Vote 4-2. Senator Rosenwald for the committee.

Recess. Out of recess.

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

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to Third Reading.

SB 303-FN, relative to state aid to school districts. Ought to Pass, Vote 6-0. Senator Kahn for the committee.

Recess. Out of recess.

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

Senator Feltes moved to Lay on the Table SB 303-FN. Adopted.

#### HEALTH AND HUMAN SERVICES

SB 236-FN-A, making an appropriation to the department of health and human services for the purposes of upgrades to substance use disorder treatment facilities. Ought to Pass with Amendment, Vote 5-0. Senator Fuller Clark for the committee.

Health and Human Services

March 6, 2019

2019-0842s

01/04

#### Amendment to SB 236-FN-A

Amend the bill by replacing section 1 with the following:

1 Appropriation. The sum of \$5,000,000 for the biennium ending June 30, 2021 is hereby appropriated to the department of health and human services for the purposes of upgrading existing substance use disorder treatment and recovery housing facilities and creating new substance use disorder treatment and recovery housing facilities. Funds appropriated under this section shall be used for upgrading or renovating existing facilities to ensure compliance with fire code and safety standards; expanding existing facilities to increase



service capacity; and developing new substance use disorder treatment and recovery housing facilities. Facilities receiving funds under this section shall be in compliance with any state rules associated with the operation of such programs. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. Funds appropriated in this section shall be nonlapsing.

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

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 260-FN, relative to a program for prescription drug costs for certain seniors and making an appropriation therefor.

Ought to Pass with Amendment, Vote 4-1. Senator Chandley for the committee.

Health and Human Services

March 6, 2019

2019-0836s

05/01

#### Amendment to SB 260-FN

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

AN ACT establishing the New Hampshire pharmaceutical assistance pilot program for seniors and making an appropriation therefor.

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

1 Statement of Purpose. The purpose of this act is to assist lower income seniors with prescription drug costs when they reach the coverage limit for prescription drugs under the Medicare Part D program. Since most Medicare drug plans have a coverage gap, often called the “donut hole,” the general court finds that there is a need for a state assistance plan to supplement or wrap around the benefit available under the federal program to ensure that low income seniors retain access to necessary medication during this gap in coverage.

2 New Subdivision; Department of Health and Human Services; New Hampshire Pharmaceutical Assistance Pilot Program for Seniors. Amend RSA 126-A by inserting after section 77 the following new subdivision:

#### New Hampshire Pharmaceutical Assistance Pilot Program for Seniors

126-A:78 New Hampshire Pharmaceutical Assistance Pilot Program for Seniors.

I. The commissioner of the department of health and human services shall establish a prescription drug assistance pilot program for seniors. The purpose of the pilot program shall be to wraparound or supplement the federal prescription drug benefit under Medicare Part D by paying the out-of-pocket costs for prescription drugs for eligible individuals who have reached the coverage gap, known as the donut hole, under Medicare Part D. The pilot program shall be the payer of last resort and shall cover all out-of-pocket prescription drug costs for which assistance is not otherwise available in the coverage gap, known as the donut hole. The pilot program shall be available to the first 1,000 individuals age 65 or older who apply for such assistance, who have a gross annual household income of 300 percent or less of the federal poverty level, and who otherwise meet the eligibility criteria established by the department. Assistance shall be available under the pilot program from January 1, 2020 to January 1, 2021. The commissioner shall make available an online application, a telephone number for applications and questions, and shall provide written applications upon request. Applications shall include information on income, household size, Medicare Part D enrollment and coverage information, the prescription drugs for which assistance is sought, the age of the applicant, and the location of the applicant. On or before November 1, 2019, the commissioner shall adopt rules, under RSA 541-A, relative to pilot program enrollment, administration, and evaluation.

II. On or before March 1, 2021, the commissioner of the department of health and human services shall submit an evaluation report of the pilot program to the senate president, the speaker of the house of representatives, the governor, the senate finance committee, the house finance committee, the senate health and human services committee, and the house health, human services and elderly affairs committee. The report shall include information regarding the number of applications, age and location of applicants, prescription drugs for which assistance was provided, costs per eligible applicant, likely costs per non-eligible applicant, and descriptions regarding applicant ineligibility.

3 Appropriation; Department of Health and Human Services. For the purpose of funding the prescription drug assistance pilot program for seniors established in section 2 of this act, the sum of \$1 for fiscal year ending June 30, 2019, is hereby appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Effective Date. This act shall take effect 30 days after its passage.

2019-0836s

#### AMENDED ANALYSIS

This bill establishes the New Hampshire pharmaceutical assistance pilot program for seniors, a one year pilot program to pay out-of-pocket prescription drug costs for eligible seniors who have reached the gap in standard Medicare Part D coverage. The bill also makes an appropriation to the department of health and human services to fund the pilot program.

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

Senator Bradley offered a Floor Amendment.

Sen. Bradley, Dist 3

March 12, 2019

2019-0972s

05/04

#### Floor Amendment to SB 260-FN

Amend RSA 126-A:78, I as inserted by section 2 of the bill by replacing it with the following:

I. The commissioner of the department of health and human services shall establish a prescription drug assistance pilot program for seniors. The purpose of the pilot program shall be to wraparound or supplement the federal prescription drug benefit under Medicare Part D by paying the out-of-pocket costs for prescription drugs for eligible individuals who have reached the coverage gap, known as the donut hole, under Medicare Part D. The pilot program shall be the payer of last resort and shall cover all out-of-pocket prescription drug costs for which assistance is not otherwise available in the coverage gap, known as the donut hole. The pilot program shall be available to the first 1,000 individuals age 65 or older who apply for such assistance, who have a gross annual household income of 200 percent or less of the federal poverty level, and who otherwise meet the eligibility criteria established by the department. Assistance shall be available under the pilot program from January 1, 2020 to January 1, 2021. The commissioner shall make available an online application, a telephone number for applications and questions, and shall provide written applications upon request. Applications shall include information on income, household size, Medicare Part D enrollment and coverage information, the prescription drugs for which assistance is sought, the age of the applicant, and the location of the applicant. On or before November 1, 2019, the commissioner shall adopt rules, under RSA 541-A, relative to pilot program enrollment, administration, and evaluation.

Recess. Out of recess.

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

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 290-FN, relative to the New Hampshire granite advantage health care program.

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

Health and Human Services

March 6, 2019

2019-0834s

01/05

#### Amendment to SB 290-FN

Amend the introductory subparagraph of RSA 126-AA:2, III(a) as inserted by section 3 of the bill by replacing it with the following:

III.(a) Newly eligible adults who are unemployed shall be eligible to receive benefits under this paragraph if the commissioner finds that the individual is engaging in at least 100 hours per month based on an average of 25 hours per week in one or more work or other community engagement activities, ***including self-employment***, as follows:

Amend RSA 126-AA:2, III(a)(11)-(12) as inserted by section 3 of the bill by replacing them with the following:

(11) ~~[Caregiver services for a nondependent relative or other person with a disabling medical or developmental condition.]~~

(12) Participation in substance use disorder treatment **or recovery activities and/or mental illness treatment.**

**(12) Travel to and from a health care treatment appointment and the appointment itself for the beneficiary or a dependent child or a relative for whom the beneficiary is a caretaker.**

Amend RSA 126-AA:2, III(d)(4) as inserted by section 3 of the bill by replacing it with the following:

(4) A custodial parent or caretaker of a dependent child ~~[under 6 years of age]~~ **under 13 years of age** or a child with developmental disabilities who is residing with the parent or caretaker; provided that the exemption shall only apply to one parent or caretaker in the case of a 2-parent household **where responsibility for the child the exemption is based on is shared by the 2 parents or caretakers.**

Amend RSA 126-AA:2, III(d) as inserted by section 3 of the bill by deleting subparagraph (12).

Amend the bill by replacing sections 6 and 7 with the following:

6 New Hampshire Granite Advantage Health Care Program; New Hampshire Granite Advantage Health Care Trust Fund. Amend RSA 126-AA:3, I(f) and (g) to read as follows:

(f) Funds recovered or returnable to the fund that were originally spent on the cost of coverage of the granite advantage health care program; ~~and]~~

(g) Gifts, grants, and donations; **and**

**(h) General funds if both of the following conditions are met:**

**(1) General funds shall be the payment source of last resort; and**

**(2) The commissioner determines that the federal match rate of 90 percent is met.**

7 New Hampshire Granite Advantage Health Care Program; Commission to Evaluate the Effectiveness and Future of the New Hampshire Granite Advantage Health Care Program. Amend RSA 126-AA:4, II to read as follows:

II.(a) The commission shall evaluate the effectiveness and future of the program. Specifically the commission shall:

(1) Review the program's financial metrics.

(2) Review the program's product offerings.

(3) Review the program's impact on insurance premiums for individuals and small businesses.

(4) Make recommendations for future program modifications, including, but not limited to whether the program is the most cost-effective model for the long term versus a return to private market managed care.

(5) Evaluate non-general fund funding options for longer term continuation of the program, including options to accept funding from the federal government allowing a self-administered program.

(6) Review up-to-date information regarding changes in the level of uncompensated care through shared information from the department, the department of revenue administration, the insurance department, and provider organizations and the program's impact on insurance premium tax revenues and Medicaid enhancement tax revenue.

(7) Review the granite workforce pilot program.

(8) Evaluate reimbursement rates to determine if they are sufficient to ensure access to and provider capacity for all behavioral health services.

(9) Review the number of people who are found ineligible or who are dropped from the rolls of the program because of the work requirement **and determine whether the age of beneficiaries subject to the requirement should be changed. The commission shall issue any recommendation for change by December 1, 2019.**

**(10) Review the reasons beneficiaries are found ineligible or are dropped from the rolls of the program and determine if the number of required hours should be changed. The commission shall issue any recommendation for change by December 1, 2019.**

**(11)** Review the program's provider reimbursement rates and overall financing structure to ensure it is able to provide a stable provider network and sustainable funding mechanism that serves patients, communities, and the state of New Hampshire.

(b) Any funding solutions recommended by the commission shall not include the use of new general funds.

(c) The commission shall solicit information from any person or entity the commission deems relevant to its study.

(d) The commission shall make a recommendation on or by ~~February~~ **June** 1, 2019 to the commissioner concerning recommended monitoring and evaluation requirements for work and community engagement requirements, including a draft of proposed metrics for quarterly and annual reporting, including suggested costs and benefits evaluations.

2019-0834s

#### AMENDED ANALYSIS

This bill makes various changes to the New Hampshire granite advantage health care program, some of which include:

I. Allowing general funds to be used for the program.

II. Clarifies which beneficiaries may be subject to the work and community engagement requirement.

III. Adding exemptions for certain persons from the community engagement requirement.

IV. Adding circumstances for the elimination of the community engagement requirement.

The question is on the adoption of the Committee Amendment.

A roll call was requested by Senator Giuda, seconded by Senator Bradley.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

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

A roll call was requested by Senator Morse, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 291-FN, removing juvenile patients from the New Hampshire hospital to the Sununu Youth Services Center. Ought to Pass with Amendment, Vote 5-0. Senator Bradley for the committee.

Health and Human Services

March 6, 2019

2019-0832s

05/04

#### Amendment to SB 291-FN

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

AN ACT relative to the construction of new mental health facilities.

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

1 Department of Health and Human Services; Construction of New Mental Health Facilities.

I. The commissioner of the department of health and human services, in consultation and in collaboration with the attorney general, the commissioner of the department of corrections, and the commissioner of the department of administrative services, shall administer the development and implementation of plans for the following:

(a) Establishing a new 60 bed forensic psychiatric hospital; and

(b) Establishing 40 additional transitional beds for forensic patients and or patients with complex behavioral health conditions.

II. The commissioner of the department of health and human services, in consultation and in collaboration with the attorney general, and the commissioner of the department of administrative services, shall administer the development and implementation of plans for the following:

(a) Establishing a new treatment facility for children who are in need of acute inpatient psychiatric treatment; and

(b) Repurposing of the children's unit at New Hampshire hospital for adult beds upon completion and readiness of the new treatment facility for children established in this paragraph.

III. The plans for establishing a new 60 bed forensic psychiatric hospital and 40 additional transitional beds for forensic patients and or patients with complex behavioral health conditions shall be completed by November 1, 2019, and such facilities shall be operational by June 1, 2021.

IV. The plans for development of a new treatment facility for children who are in need of acute inpatient psychiatric treatment and for repurposing of the children's unit at New Hampshire hospital for adult beds shall be completed by June 1, 2020, and such facility shall be operational by June 1, 2021.

V. All contracts and projects set forth in paragraphs I and II, and plans and specifications therefor, shall be awarded in accordance with the provisions of RSA 21-I.

VI. In preparation for the operation of the new facilities established pursuant to paragraphs I and II, the commissioner of the department of health and human services, in consultation and collaboration with the attorney general, the commissioner of the department of corrections, and the commissioner of the department of administrative services, shall recommend proposed legislation for any changes to statutes or administrative rules that are deemed necessary for the transition of patients to and the operation of the new facilities. In developing such recommendations, and the plans and deadlines required in paragraphs I through IV, the commissioner of the department of health human services shall solicit input from public and private stakeholders as the commissioner deems necessary and appropriate. The commissioner of the department of health human services shall submit the plans required in paragraphs I and II and recommendations required by this paragraph to the governor, the speaker of the house, and the president of the senate no later than November 1, 2019.

2 Effective Date. This act shall take effect July 1, 2019.

2019-0832s

#### AMENDED ANALYSIS

This bill directs the department of health and human services to develop and implement plans to establish a new forensic psychiatric hospital, additional transitional beds for forensic patients or patients with complex behavioral health conditions, and a new acute inpatient psychiatric treatment facility for children.

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

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 292-FN, relative to implementation of the new mental health 10-year plan.  
Ought to Pass with Amendment, Vote 5-0. Senator Sherman for the committee.

Health and Human Services

March 6, 2019

2019-0837s

01/04

#### Amendment to SB 292-FN

Amend RSA 126-A:5, XXXIII as inserted by section 1 of the bill by replacing it with the following:



XXXIII. When New Hampshire's 10-year mental health plan of 2018 is finalized, the commissioner shall, within 6 months of the finalization of the plan, submit a report containing the priorities for implementation of the plan to the oversight committee on health and human services, established under RSA 126-A:13, the chairpersons of the house and senate policy committees with jurisdiction over health and human services matters, the president of the senate, the speaker of the house of representatives, and the governor. The commissioner shall thereafter submit an annual report on the status of implementation of the 10-year mental health plan, including but not limited to unmet benchmarks and recommendation for any necessary barrier resolution to the oversight committee on health and human services, established under RSA 126-A:13, and the chairpersons of the house and senate policy committees with jurisdiction over health and human services matters. The annual report shall include any recommendations by the commissioner for legislation as needed or appropriate in achieving important benchmarks in fully implementing the 10-year mental health plan.

2019-0837s

#### AMENDED ANALYSIS

This bill requires the commissioner to submit a report containing the priorities for implementation of New Hampshire's 10-year mental health plan of 2018 within 6 months of finalization of the plan to the oversight committee on health and human services, the president of the senate, the speaker of the house of representatives, and the governor. This bill also requires the commissioner to submit an annual report thereafter relative to the status of fully implementing the 10-year mental health plan.

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

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

Recess. Out of recess.

SB 293-FN, relative to federally qualified health care centers and rural health centers reimbursement. Ought to Pass, Vote 3-2. Senator Chandley for the committee.

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

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

#### JUDICIARY

SB 91, relative to the release of a defendant pending trial.

Inexpedient to Legislate, Vote 3-2. Senator Hennessey for the committee.

Senator Feltes moved to Lay on the Table SB 91. Adopted.

SB 262-FN, relative to the violation of a property interest in abandoned personal materials. Ought to Pass with Amendment, Vote 4-1. Senator Hennessey for the committee.

Senate Judiciary

March 5, 2019

2019-0823s

10/04

#### Amendment to SB 262-FN

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

AN ACT relative to the property interest in abandoned personal materials.

Amend RSA 644:23 as inserted by section 1 of the bill by replacing it with the following:

644:23 Property Interest in Abandoned Personal Materials.

I. In this section:

(a) "Abandoned personal materials" means physical items owned, possessed or used by an individual and abandoned intentionally or unintentionally in private or public places.

(b) "Government" means the federal government, the state government, and its political subdivisions, and state and municipal agencies and departments, including employees, agents, and contractors.

(c) "Individual" means a living human being.

(d) "Informational content" includes an individual's name, date or place of birth, social security number, address, employment history, credit history, financial information, account numbers, cellular telephone numbers, voice over Internet protocol or landline telephone numbers, biometric identifiers, including fingerprints, facial photographs, or images, retinal scans, DNA/RNA, genetic sequences, the content of messages, and other identifying data.

II.(a) The informational content contained in or on abandoned personal material is the property of the individual to whom it pertains regardless of its abandonment.

(b) Subject to the exceptions in paragraph III, no government shall acquire, collect, retain, or use that informational content. Nothing in this section shall prevent or exclude law enforcement, pursuant to existing legal authority, from taking physical possession of property containing abandoned personal material.

(c) Informational content obtained in violation of this section shall not be admissible in a criminal, civil, administrative, or other proceeding, except as proof of a violation of this section.

III. Notwithstanding the provisions of paragraph II, nothing in this section shall limit the acquisition, collection, retention, or use of the informational content of abandoned personal materials:

(a) Pursuant to a warrant supported by probable cause pursuant to Part I, Art. 19 of the New Hampshire constitution or a judicially recognized exception to the warrant requirement;

(b) By a law enforcement agency at a crime scene or through examination and analysis of such crime scene materials by forensic laboratories; or

(c) By the judicial branch or any state regulatory or other agency within the branch's or agency's statutory adjudicatory or regulatory function.

IV. If the government acquires, collects, retains, or uses the informational content pursuant to paragraph III, directly or indirectly, it shall acquire, collect, retain, or use such informational content only for the specific purpose for which it was acquired, collected, or retained.

V. If federal law preempts any provision of this section, such provision shall not apply to the federal government.

2019-0823s

#### AMENDED ANALYSIS

This bill establishes a property interest in abandoned personal materials and procedures for government concerning such materials.

The question is on the adoption of the Committee Amendment.

A roll call was requested by Senator Birdsell, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, French, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, Ward, Dietsch, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

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

A roll call was requested by Senator Carson.

Senator Carson withdrew her request for a roll call.

Recess. Out of recess.

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

A roll call was requested by Senator Carson, seconded by Senator Giuda.

The following Senators voted Yes: Watters, Hennessey, French, Kahn, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, Ward, Dietsch, Chandley, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 13 - Nays: 11. Adopted, bill ordered to Third Reading.

SB 294-FN-A-L, relative to placement costs for juvenile diversion programs.  
Ought to Pass with Amendment, Vote 5-0. Senator Levesque for the committee.

Senate Judiciary

March 5, 2019

2019-0799s

05/04

#### Amendment to SB 294-FN-A-LOCAL

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

AN ACT relative to juvenile diversion programs and making an appropriation therefor.

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

2 Appropriation; Department of Health and Human Services; Juvenile Diversion Programs. The sum of \$300,000 annually, for the biennium ending June 30, 2021, is hereby appropriated to the department of health and human services for distribution to juvenile diversion programs developed and maintained by municipalities, counties, and non-governmental organizations pursuant to RSA 170-G:4, XXI, as inserted by section 1 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

2019-0799s

#### AMENDED ANALYSIS

This bill provides for the transfer of funds from the department of health and human services to municipalities, counties, and nongovernmental organizations to encourage the development of local juvenile diversion programs. The bill also makes an appropriation to the department for this purpose.

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

Senator Hennessey offered a Floor Amendment.

Sen. Hennessey, Dist 5

March 13, 2019

2019-1035s

05/04

#### Floor Amendment to SB 294-FN-A-LOCAL

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

AN ACT relative to juvenile diversion programs.

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Services for Children, Youth and Families; Department of Health and Human Services Funding for Juvenile Diversion Programs. Amend RSA 170-G:4 by inserting after paragraph XX the following new paragraph:

XXI. Encourage cities, towns, counties, and non-governmental organizations to develop and maintain court-approved diversion programs for juveniles. The amount to be distributed to the diversion programs shall be not more than \$600,000 for the biennium ending June 30, 2021, from which the sum of \$30,000 shall be reserved for newly approved programs, with the remainder divided equally among existing, approved programs that make application for such funding. The judicial branch family division shall establish requirements for court-approved diversion programs under this section and RSA 169-B:10.

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

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

A roll call was requested by Senator Giuda, seconded by Senator Birdsell.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Reagan, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

The following Senators voted No: (None)

Roll Call, Yeas: 24 - Nays: 0. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 311-FN, relative to annulment of criminal records.

Ought to Pass with Amendment, Vote 4-1. Senator Levesque for the committee.

Senate Judiciary

March 5, 2019

2019-0796s

04/06

#### Amendment to SB 311-FN

Amend the bill by replacing section 2 with the following:

2 New Paragraphs; Annulment of Criminal Records. Amend RSA 651:5 by inserting after paragraph III the following new paragraphs:

III-a. A person who was less than 25 years of age at the time of the commission of any drug-related crime for which he or she was convicted may petition for annulment of the record of arrest, conviction, and sentence pursuant to this section or when the person reaches 23 years of age, whichever is earlier. This paragraph shall not apply to the conviction for an offense listed in paragraph V.

III-b. Without relieving any requirement to pay restitution, no period of time in paragraph III shall be extended because of unmet restitution payments if a petitioner demonstrates that he or she is indigent. The court shall keep the petitioner's docket open for purposes of restitution payments.

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-4 to read as 5-6, respectively:

3 New Subparagraph; Annulment of Criminal Records. Amend RSA 651:5, XIII by inserting after subparagraph (h) the following new subparagraph:

(i) Felonious domestic violence under RSA 631:2-b.

4 Annulment of Criminal Records. Amend RSA 651:5, III(c)-(i) to read as follows:

(c) For a class A misdemeanor except as provided in subparagraphs (f) ~~[and]~~, (i), **(j), and (k)**, 3 years.

(d) For a class B felony except as provided in subparagraphs (g) ~~[and (i)]~~, **(h), (j), and (k)**, 5 years.

(e) For a class A felony, except as provided in ~~[subparagraph (i)]~~ **subparagraphs (j) and (k)**, 10 years.

(f) For sexual assault under RSA 632-A:4, 10 years.

(g) For felony indecent exposure or lewdness under RSA 645:1, II, 10 years.

~~(h)(1) [For any misdemeanor where the victim was, at the time of the offense, a family or household member or intimate partner as those terms are defined in RSA 173-B:1, 3 years.]~~ **For any misdemeanor not charged as a domestic violence crime where the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, 3 years.**

**(2) For any second degree assault pursuant to RSA 631:2 where the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, 10 years.**

**(i) For any domestic violence misdemeanor under RSA 631:2-b, 10 years.**

**(j) For a class A misdemeanor or felony offense under RSA 318-B:26, II, 2 years.**

**(k) For any first-time class A misdemeanor or any felony offense under RSA 318-B:26, II, upon completion of the terms and conditions of the sentence.**

2019-0796s

#### AMENDED ANALYSIS

This bill provides for annulment of a criminal record without payment of a fee in certain cases, specifies the waiting period for annulment in cases involving domestic violence offenses, certain first-time offenses, or the defendant was under 20 years of age at the time of a drug-related offense. The bill also reduces the waiting period for annulment of a conviction for driving or operating under the influence of a controlled drug or intoxicating liquor.

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

Recess. Out of recess.

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

A roll call was requested by Senator Carson, seconded by Senator French.

The following Senators voted Yes: Watters, Hennessey, French, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, Reagan, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, Ward, Carson, Birdsell, Morse.

Roll Call, Yeas: 16 - Nays: 8. Adopted, bill ordered to Third Reading.

SB 312-FN, relative to medical monitoring for exposure to toxic substances.

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

Senate Judiciary

March 5, 2019

2019-0798s

08/05

#### Amendment to SB 312-FN

Amend RSA 125-T:1-5 as inserted by section 1 of the bill by replacing it with the following:

125-T:1 Definitions. In this chapter:

I. "Establishment" means any premises used for the purpose of carrying on or exercising any trade, business, vocation, commercial or charitable activity, or governmental function.

II. "Exposure" means ingestion, inhalation, contact with skin or eyes, or any other physical contact.

III. "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

IV. "Hazardous or toxic substance" means any chemical or biological substance that satisfies one or more of the following:

(a) The substance is listed on the United States Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensations and Liability Act, or section 112(r) of the Clean Air Act.

(b) The substance is defined as a hazardous or toxic substance under New Hampshire law.

(c) Testing has produced evidence recognized by the National Institute for Occupational Safety and Health or the United States Environmental Protection Agency, that the substance poses acute or chronic health hazards.

(d) The department of health and human services has issued a public health advisory for the substance.

(e) The department of environmental services has designated the substance as hazardous waste.

(f) Exposure to the substance can be shown by expert testimony to increase the risk of developing a latent disease.

V. "Large facility" means a facility:

(a) Where 10 or more full-time employees have been employed at any one time; or

(b)(1) Where an activity within the Standard Industrial Classification code of 20 through 39 is conducted or was conducted; and

(2) That is or was owned or operated by a person who, when all facilities or establishments that the person owns or controls are aggregated, has employed 500 employees at any one time.

VI. "Release" means any intentional or unintentional, permitted or unpermitted act or omission that allows a toxic or hazardous substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located.



125-T:2 Claim Established. The need for a person to undergo continued medical monitoring shall be a form of damage and compensable claim under New Hampshire law and is a logical extension of pre-existing case law both in New Hampshire and other jurisdictions.

125-T:3 Elements of Claim. In order to prove a claim for medical monitoring the plaintiff shall demonstrate by a preponderance of the evidence that:

I. The defendant released a hazardous or toxic substance from a large facility.

II. The plaintiff was exposed to the hazardous or toxic substance as a result of reckless or negligent conduct by the defendant.

III. The plaintiff now suffers from an increased risk of illness, disease, or latent disease. The plaintiff does not need to prove that the latent disease is certain or likely to develop as a result of the exposure.

IV. This increased risk makes the need for periodic examinations reasonably necessary.

V. Medical tests exist to detect the latent disease.

125-T:4 Calculation of Damages. Damages shall be equal to the cost of reasonably necessary periodic examinations. The costs and necessity of such examinations may be proven by expert testimony.

125-T:5 Statute of Limitations.

I. Medical monitoring claims shall be made within 3 years of the discovery of exposure. The date of actual exposure is immaterial to an analysis of the statute of limitations for medical monitoring claims.

II. A person who can prove the need for medical monitoring on or after the effective date of this section may make such claim to the extent it is not barred by the statute of limitations in paragraph I.

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

Senator Chandley moved Rerefer to Committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

SB 314-FN, relative to release of a defendant pending trial.

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

Senate Judiciary

March 5, 2019

2019-0797s

04/05

#### Amendment to SB 314-FN

Amend the bill by inserting after section 6 the following and renumbering the original section 7 to read as 8:

7 New Subparagraph; Bail and Recognizances; Release of Defendant Pending Trial. Amend RSA 597:2, III by inserting after subparagraph (f) the following new subparagraph:

(g) If the court determines by clear and convincing evidence that a person has 3 or more failures to appear within the past 5 years when charged with a felony, there shall be a rebuttable presumption that release will not reasonably assure the appearance of the person as required.

Senator Hennessey moved to Lay on the Table SB 314-FN. Adopted.

SB 317-FN, prohibiting sanctuary jurisdictions in New Hampshire.

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

Senate Judiciary

March 5, 2019

2019-0794s

05/04

#### Amendment to SB 317-FN

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

AN ACT establishing a study commission on the relationship between federal and state immigration laws.

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

1 New Subdivision; Immigration Study Commission. Amend RSA 124 by inserting after section 19 the following new subdivision:

Immigration Study Commission

124:20 Immigration Study Commission.

I. There is established a commission to study the relationship between federal and state immigration laws, including ways to incentivize legal immigration to alleviate New Hampshire's workforce challenges.

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

- (a) The governor, or designee.
- (b) One member of the senate, appointed by the president of the senate.
- (c) Two members of the house of representatives, appointed by the speaker of the house of representatives.
- (d) The commissioner of the department of business and economic affairs, or designee.
- (e) The commissioner of the department of natural and cultural resources, or designee.
- (f) The director of homeland security and emergency management, department of safety, or designee.
- (g) One representative of the New Hampshire Association of Counties, appointed by the association.
- (h) One representative of the Business and Industry Association, appointed by the association.
- (i) One representative of the New Hampshire chapter of Americans for Prosperity, appointed by that organization.
- (j) One representative of the New Hampshire chapter of the American Friends Service Committee, appointed by that organization.
- (k) One representative of the New Hampshire Council of Churches, appointed by that organization.
- (l) One representative of the New Hampshire Association of Chiefs of Police, appointed by the association.
- (m) One representative of the New Hampshire chapter of the American Civil Liberties Union, appointed by that organization.

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

IV. The commission may solicit information from any person or entity the commission deems relevant to its study.

V. The commission shall study the relationship between federal and state immigration laws. The commission shall also study ways to incentivize legal immigration to alleviate New Hampshire's workforce challenges.

VI. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the senate member. The first meeting of the commission shall be held within 30 days of the effective date of this section. Six members of the commission shall constitute a quorum.

VII. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2019.

2 Repeal. RSA 124:20, relative to the immigration study commission, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect November 20, 2019.

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

2019-0794s

AMENDED ANALYSIS

This bill establishes a commission to study the relationship between federal and state immigration laws, including ways to incentivize legal immigration to alleviate New Hampshire's workforce challenges.

Senator Hennessey moved to Lay on the Table SB 317-FN.

A roll call was requested by Senator Giuda, seconded by Senator Birdsell.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

#### TRANSPORTATION

SB 52-FN, relative to certain department of transportation projects.

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

Senate Transportation

March 6, 2019

2019-0840s

06/08

#### Amendment to SB 52-FN

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

AN ACT requiring the department of transportation to install a traffic light in the town of Conway.

Amend the bill by deleting sections 2 and 3 and renumbering the original section 4 to read as 2.

2019-0840s

#### AMENDED ANALYSIS

This bill requires the department of transportation to install a traffic light in the town of Conway.

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

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

SB 216-FN, establishing an automated vehicle testing and deployment commission and an automated vehicle testing pilot program, and providing requirements for automated vehicle deployment.

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

Senate Transportation

March 6, 2019

2019-0827s

11/06

#### Amendment to SB 216-FN

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

AN ACT requiring the New Hampshire transportation council to conduct a review of automated vehicle testing and deployment, establishing an automated vehicle testing pilot program, and providing requirements for automated vehicle deployment.

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

1 New Paragraphs; New Hampshire Transportation Council; Duties. Amend RSA 238-A:3 by inserting after paragraph III the following new paragraphs:

IV. Prepare the state for automated vehicle technologies on public roadways by:

(a) Following developments in the testing and deployment of automated vehicle technologies, including both federal and state laws, regulations, and guidance on the subject.

(b) Identifying all agencies with jurisdiction to support the testing and deployment of automated vehicles.

(c) Considering avenues to encourage the development of automated and connected vehicle technologies and their component hardware and software in New Hampshire, and consult with both universities and business entities in the sector to support innovation and development in automated vehicle technologies.

(d) Examining ways for state agencies and for automated vehicle manufacturers to inform residents on automated vehicle technologies, including the potential for increased safety, enhanced mobility, more efficient land use, expanded roadway capacity, reduced environmental impact, and any potential risks.

(e) Reviewing existing state statutes and administrative rules and identify existing statutes or rules that may affect or impede the testing and deployment of automated vehicles, including but not limited to existing laws pertaining to vehicle registration and titling, vehicle insurance requirements, the use of arbitration requirements, including pre-dispute arbitration requirements in contracts in the transportation sector, drivers' licenses, and general rules of the road.

(f) Soliciting input from representatives of:

- (1) New Hampshire colleges and universities.
- (2) Disability communities.
- (3) Elder communities.
- (4) Public transportation providers.
- (5) Automated and connected vehicle manufacturers.
- (6) Automated and connected vehicle technology suppliers.
- (7) Automobile dealers.
- (8) The trucking industry.
- (9) Attorneys with expertise in motor vehicle liability.
- (10) Consulting engineers from the American Council of Engineering Companies of New Hampshire.
- (11) Urban planning professionals.
- (12) Any other relevant actors with expertise or interest in automated and connected vehicle technologies.

V. After completing its review of automated vehicle technologies pursuant to paragraph IV, prepare a report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2020. The council shall provide subsequent reports by November 1 annually thereafter. Such reports shall include a summary of council activities during the reporting period, and may include recommendations for legislative and regulatory consideration.

2 New Subparagraphs; New Hampshire Transportation Council; Membership. Amend RSA 238-A:4, I by inserting after subparagraph (i) the following new subparagraphs:

- (j) The director of the office of strategic initiatives, or designee.
- (k) The commissioner of the department of insurance, or designee.

3 New Subdivision; Automated Vehicle Testing and Deployment Pilot Program. Amend RSA 265 by inserting after section 161 the following new subdivision:

#### Automated Vehicle Testing and Deployment Pilot Program

##### 265:162 Automated Vehicle Testing Pilot Program and Deployment Requirements.

I. The department of safety, division of motor vehicles, shall establish a pilot program to test automated vehicle technologies on public roads within the state. The pilot program shall commence 90 days following the effective date of this section.

II. The following words and phrases, when used in this subdivision, shall have the following meanings unless the context clearly indicates otherwise:

- (a) "Automated driving system" means the hardware and software that are collectively capable of performing all aspects of the dynamic driving task within its operational design domain, if any, including achieving a minimal risk condition, without any intervention or supervision by a conventional human driver.
- (b) "ADS-equipped vehicle" means a vehicle equipped with an automated driving system.
- (c) "Conventional human driver" means a natural person who manually engages in-vehicle braking, accelerating, steering, and transmission gear selection input devices in order to operate a vehicle.

(d) “Driverless capable vehicle” means a vehicle equipped with an automated driving system capable of performing all aspects of the dynamic driving task within its operational design domain, if any, including achieving a minimal risk condition, without any intervention or supervision by a conventional human driver.

(e) “Driverless operation” means a mode of ADS-equipped vehicle operation in which either no on-board user is present, or in which on-board users who are present are not conventional human drivers.

(f) “Dynamic driving task” means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within its specific operational design domain, if any, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints.

(g) “Minimal risk condition” means a reasonably safe state to which an automated driving system brings an ADS-equipped vehicle upon experiencing a performance-relevant failure of the vehicle’s automated driving system that renders the automated driving system unable to perform the entire dynamic driving task, such as bringing the vehicle to a complete stop and activating the hazard lamps.

(h) “On-demand driverless capable vehicle network” means a transportation service network that uses a software application or other digital means to dispatch driverless capable vehicles for purposes of transporting persons or goods, including for-hire transportation, transportation for compensation, and public transportation.

(i) “Operational design domain” means a description of the specific operating domain in which an automated driving system is designed to properly operate, including but not limited to roadway types, speed range, environmental conditions such as weather or time of day, and other domain constraints.

(j) “Test driver” means a trained employee, contractor, or other person who is acting as an agent of the testing entity while operating the testing entity’s ADS-equipped vehicles that are part of the automated vehicle testing pilot program.

(k) “Testing entity” means an individual, company, college or university, nonprofit, or other organization involved with the design or testing of automated vehicle technologies.

III.(a) A testing entity may test ADS-equipped vehicles on public roadways of this state only if the testing entity has been approved for testing by the department after submitting the information required pursuant to this section.

(b) A testing entity seeking to test ADS-equipped vehicles in this state shall provide notice to the department, upon forms furnished by the department for that purpose, of its intent to participate in the automated vehicle testing pilot program. Such forms shall be accompanied by the following information:

(1) The name and business address of the testing entity intending to test ADS-equipped vehicles on state roadways.

(2) The name, phone number, email address, and physical address in state, if present, of lead staff contact for the testing entity with oversight of the testing project.

(3) Identification information about the vehicles to be used in testing, including the make, model, and license plate numbers.

(4) A description of the operating design domain in which the ADS-equipped vehicle has been designed to operate, including limitations on the types of roadways, weather, time of day, or geographic locations, if any.

(5) The geographic areas within the state in which the entity plans to test ADS-equipped vehicles.

(6) A copy of the testing entity’s Voluntary Safety Self-Assessment as defined by the U.S. Department of Transportation’s Federal Automated Vehicles Policy or a detailed summary of the types of safety training given to test drivers, including copies of any documentation or illustration provided.

(7) Proof of the testing entity’s financial ability to satisfy judgment for damages for personal injury or property damage of at least \$5 million, which may be in the form of an issued insurance policy, a bond, or other financial instrument.

(8) Acknowledgment, via official form furnished by the department, that:

(A) The ADS-equipped vehicle is in compliance with all applicable federal laws and regulations, or has an exemption under federal law.



(B) The ADS-equipped vehicle is designed to comply with all traffic and motor vehicle safety laws and regulations of this state that govern the performance of the dynamic driving task, unless an exemption has been granted by the department.

(C) The automated driving system has been tested in controlled conditions and has demonstrated functionality ready to test on public roads.

(D) The ADS-equipped vehicle shall only be operated or monitored by trained employees, or other authorized persons as agents of the testing entity who have received instruction on the safe operation of vehicle systems.

(E) The ADS-equipped vehicle test driver holds a valid driver's license that is recognized by the state as affording the individual the privilege of legally operating a motor vehicle on state roadways.

IV. Upon receipt of the information detailed in paragraph III, the department shall:

(a) Review the materials as submitted and, if necessary, request in writing any further information needed to support the application. A testing entity shall not be required to release information that may be proprietary or confidential business information. If the department requests further information, the petitioner shall submit such information or provide a satisfactory explanation of any omission from the materials within 15 business days of the request. Within 15 business days of receipt of the additional information, the department shall review and respond, either with an additional request for information or with the acknowledgment that all questions have been satisfactorily answered.

(b) Collect an annual fee of \$500 from each testing entity participating in the automated vehicle testing pilot program.

V. A testing entity in the automated vehicle testing pilot program may operate an ADS-equipped vehicle without a test driver or conventional human driver in the vehicle, provided that:

(a) A testing entity that wishes to test an ADS-equipped vehicle without a test driver or conventional human driver in the vehicle shall first provide notice to the department of its intention to proceed with such testing. Such notice shall include:

(1) An acknowledgment by the testing entity that the ADS-equipped vehicles in the automated vehicle testing pilot program are capable of achieving a minimal risk condition if a malfunction of the automated driving system occurs that renders that system unable to perform the entire dynamic driving task within its intended operational design domain, if any.

(2) A copy of the testing entity's emergency response guide, including information on how to instruct law enforcement, fire, and emergency medical personnel on safe interaction with the vehicle in emergency and traffic enforcement situations.

(b) The department shall distribute any emergency response guide received pursuant to subparagraph (a)(2) to all law enforcement, fire, and emergency response personnel with jurisdiction over the geographic area in the vicinity of the test entity's stated testing area.

VI.(a) The department may suspend or refuse a testing entity's ability to participate in the pilot program if it finds that:

(1) The testing entity's ADS-equipped vehicle had a significant or recurring failure to comply with the rules of the road of this state or any other state that presented an undue risk to public safety.

(2) The testing company submitted a material misstatement on the materials submitted to the department.

(b) If the department suspends or refuses to renew a testing entity's ability to test, the department shall provide written notice to the testing entity within 48 hours, detailing the grounds that led to the department's actions, as well as specific actions available to the testing entity to cure.

VII. The department shall provide regular updates on the automated vehicle testing pilot program to the New Hampshire transportation council established under RSA 238-A:2.

VIII.(a) Operation on the public roads of this state of an ADS-equipped vehicle capable of performing the entire dynamic driving task within its operational design domain while a conventional human driver is present is lawful under RSA 263, RSA 264, RSA 265, and RSA 266.

(b) The automated driving system, while engaged, shall be designed to operate within its operational design domain in compliance with all applicable traffic and motor vehicle safety laws and regulations of this state that specifically govern the performance of the dynamic driving task, unless an exemption has been granted by the department. Any such operation shall materially comply as well with the applicable traffic and motor vehicle safety laws and regulations of this state.

IX. A driverless capable vehicle may operate on the public roads of this state without a conventional human driver, provided that the vehicle meets the following conditions:

(a) The vehicle is capable of achieving a minimal risk condition if a malfunction of the automated driving system occurs that renders that system unable to perform the entire dynamic driving task within its intended operational design domain, if any;

(b) While in driverless operation, the vehicle is capable of operating in compliance with all applicable traffic and motor vehicle safety laws and regulations of this state that govern the performance of the dynamic driving task, unless an exemption has been granted by the department. Any such operation shall materially comply as well with the applicable traffic and motor vehicle safety laws and regulations of this state;

(c) The vehicle is in compliance with all federal laws and regulations or has an exemption under federal law; and

(d) Prior to such operation, the owner or the manufacturer of such a vehicle shall have submitted proof of financial responsibility satisfactory to the department that the driverless vehicle is covered by insurance or proof of self-insurance that satisfies the requirements of RSA 264.

X.(a) A person may operate an on-demand driverless capable vehicle network, provided that driverless vehicles utilized in such a network comply with the requirements of paragraph IX. Such a network may provide transportation of persons or goods, including:

(1) For-hire transportation;

(2) Public transportation; and

(3) Transportation for multiple passengers who agree to share the ride in whole or in part.

(b) An on-demand driverless capable vehicle network may connect passengers to driverless capable vehicles either exclusively or as part of a digital network that also connects passengers to human drivers who provide transportation services, consistent with applicable law, in vehicles that are not driverless capable vehicles.

XI. RSA 264:25 shall not apply to an ADS-equipped vehicle operating without a conventional human driver in the event of a crash involving the vehicle, provided the vehicle owner, or a person on behalf of the vehicle owner, promptly contacts a law enforcement agency to report the crash or provided the vehicle has the capability of alerting a law enforcement agency to the crash.

XII. Before an ADS-equipped vehicle may operate on public roads in this state, an owner of such a vehicle shall submit proof of financial responsibility satisfactory to the department that the ADS-equipped vehicle is covered by insurance or proof of self-insurance that satisfies the requirements of RSA 264.

XIII.(a) The automated vehicle testing pilot program, ADS-equipped vehicles, and automated driving systems generally, are governed exclusively by this subdivision. The department is the sole and exclusive state agency that may implement the provisions of this subdivision.

(b) No state or local entity may impose any additional requirements specific to the operation of the automated vehicle testing pilot program, ADS-equipped vehicles, on-demand driverless capable vehicle network, or automated driving systems generally.

(c) No state or local entity may impose a tax, fee, or other requirement on the operation of the automated vehicle testing pilot program, ADS-equipped vehicles, on-demand driverless capable vehicle network, or automated driving systems generally, where such tax, fee, or other requirement relates specifically to the operation of ADS-equipped vehicles.

XIV. Subject to paragraph VIII, no motor vehicle laws of this state shall be construed so as to require a conventional human driver to operate an ADS-equipped vehicle, and the automated driving system, when engaged, shall be deemed to fulfill any physical acts required of a conventional human driver to perform the dynamic driving task.

4 Effective Date.

I. RSA 265:162, I-VIII, and XI through XIV, as inserted by section 3 of this act shall take effect September 1, 2019.

II. RSA 265:162, IX and X, as inserted by section 3 of this act shall take effect July 1, 2021.

III. 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 motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5).

SB 217, marking the Lafayette Trail in New Hampshire.

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

Senate Transportation

March 6, 2019

2019-0825s

04/05

Amendment to SB 217

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

1 Designation of the Lafayette Trail.

I. Pursuant to RSA 4:43, the following portions of the following state ways shall be designated and known as the Lafayette Trail:

(a) 1825 Tour.

(1) That portion of New Hampshire Route 28 beginning in the town of Salem at the Massachusetts state line northerly to the intersection with New Hampshire Route 28 Bypass and Island Pond Road in the town of Derry.

(2) Continuing on that portion of New Hampshire Route 28 Bypass northerly to the intersection with U.S. Route 3 in the town of Hooksett.

(3) Continuing on that portion of U.S. Route 3 northerly to the intersection with Pleasant Street in the town of Hooksett where it continues as Main Street in the town of Allenstown.

(4) Continuing on that portion of Main Street to the intersection with Main Street in the town of Pembroke.

(5) Continuing on that portion of Main Street to the intersection with U.S. Route 3 in the town of Pembroke.

(6) Continuing on that portion of U.S. Route 3 to the intersection with U.S. Route 202 and New Hampshire Route 9 in the city of Concord.

(7) That portion of New Hampshire Route 9 beginning in the town of Concord at the intersection with U.S. Route 3 easterly through the towns of Pembroke, Chichester, and Epsom to the intersection with U.S. Route 4, U.S. Route 202, and New Hampshire Route 43 in the town of Northwood.

(8) Continuing on that portion of U.S. Route 4 easterly to the interchange with Old Concord Turnpike/Main Street in Durham.

(9) Continuing on that portion of Main Street through the campus of the University of New Hampshire and town of Durham to the intersection with New Hampshire Route 108.

(10) Continuing on that portion of New Hampshire Route 108 northerly to the intersection with New Hampshire Route 4 in the City of Dover.

(11) Continuing on that portion of New Hampshire Route 4 beginning in the city of Dover northeasterly to the Maine state line.

(12) That portion of state highway Route 202 beginning in the town of Concord at the intersection with U.S. Route 3 continuing westerly to the intersection with New Hampshire Route 103 in the town of Hopkinton.

(13) Continuing on that portion of New Hampshire Route 103 beginning in the town of Hopkinton westerly through the towns of Warner, Bradford, Newbury, and Newport to the intersection with New Hampshire Route 12A in the town of Claremont.

(14) Continuing on that portion of New Hampshire Route 12A northerly to the intersection with Bridge Street in the town of Cornish.

(15) Continuing on that portion of Bridge Street via the Cornish-Windsor covered bridge westerly to the Vermont state line.

(b) 1824 Tour.

(1) That portion of U.S. Route 1 beginning in the town of Seabrook at the Massachusetts state line continuing northerly through the towns of Hampton Falls, Hampton, North Hampton, and Rye to Market Square in the City of Portsmouth, including that portion of Pleasant Street between State Street and Congress Street.

(2) That portion of New Hampshire Route 151 northerly through the town of North Hampton to the intersection with New Hampshire Route 33 and Portsmouth Avenue in the Town of Greenland.

(3) Continuing on that portion of Portsmouth Avenue easterly to the intersection with New Hampshire Route 33 in the town of Greenland.

(4) Continuing on that portion of New Hampshire Route 33 easterly to the intersection with U.S. Route 1 in the City of Portsmouth.

(5) That portion of Market Street beginning in the City of Portsmouth at the intersection with U.S. Route 1 (Congress Street) continuing westerly to the intersection with U.S. Route 1 Bypass.

(6) Continuing on that portion of U.S. Route 1 Bypass northerly to the Maine state line.

II. The commissioner of the department of transportation may erect and maintain suitable signage or other markers at or near each portion of the Lafayette Trail. Such signage or markers shall bear the Lafayette Trail logo used by the American Friends of Lafayette. The cost of design, construction, maintenance, and installation of any signage, replacement signage, or other markers authorized in this act shall not be a charge to the state. However, the design, construction, and installation of any signage or other markers authorized under this act shall be approved by the department of transportation.

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

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

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

SB 275-FN, requiring that all of the state's motor vehicles will be zero emissions vehicles by the year 2039. Ought to Pass with Amendment, Vote 5-0. Senator Watters for the committee.

Senate Transportation  
March 6, 2019  
2019-0830s  
05/08

#### Amendment to SB 275-FN

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

2 State Facility Energy Cost Reduction; Vehicle Definitions. RSA 21-I:19-g, III-a is repealed and reenacted to read as follows:

III-a. In this section:

(a) "Light duty truck" means a land vehicle which has a gross vehicle weight rating of up to 10,000 pounds and which does not fall within the definition of a passenger vehicle as defined in subparagraph (b).

(b) "Passenger vehicle" means a land vehicle manufactured primarily for use in the transportation of not more than 10 people.

3 Fleet Efficiency and Redistribution; Definition of Motor Vehicle. RSA 21-I:19-i, II(b) is repealed and reenacted to read as follows:

(b) "Motor vehicle" means a passenger vehicle or light duty truck as defined by RSA 21-I:19-g.

4 New Section; Zero Emissions Vehicles. Amend RSA 21-I by inserting after section 19-j the following new section:

21-I:19-k Zero Emissions.

I. The intent of this section is that all state purchased and leased vehicles shall be the lowest emission vehicles available, to the extent feasible and practicable, and that all purchased or leased vehicles shall be zero emission vehicles by 2041, to the extent feasible and practicable.

II. In this section, the term "zero emissions vehicle" or ZEV means a vehicle that emits no exhaust gas from the on-board source of power, such as an electric vehicle powered solely by a battery or by the use of a hydrogen fuel cell.

III. Notwithstanding any provision in RSA 21-I:19-i, the department of administrative services shall establish procedures intended to ensure that to the maximum extent feasible, and consistent with the ability of vehicles to perform their intended functions, all the state's motor vehicles will be ZEVs by the year 2041. The procedures shall be subject to the approval of the ZEV 2041 committee established in paragraph VI. These procedures shall not be subject to the rulemaking requirements of RSA 541-A, but shall be binding on all state officials and state agencies.

IV. By 2026, all new leases or purchases of light duty trucks or passenger vehicles as defined in RSA 21-I:19-g shall be ZEVs and by 2031 any new leases or purchase of trucks and other vehicles in excess for 10,000 pounds in weight shall be ZEVs.

V. Any agency or department of the state that purchases, leases, or otherwise acquires or currently operates a motor vehicle shall develop a plan to transition its vehicles entirely to ZEVs, to the extent feasible for particular vehicles and vehicle classes by 2041. Agencies and departments shall consult with the ZEV 2041 committee established in paragraph VI in developing such feasibility plans and such plans shall only be adopted with the approval of the committee. Transition plans shall be developed by all state agencies and departments for submission to the office of strategic initiatives by June 30, 2020 and revised and submitted every 2 years thereafter until all of the state's motor vehicles are ZEVs. Such plans shall be predicated upon the adequacy of funding and shall take the existence of adequate funding into account. If ZEV vehicles are not determined to be a feasible option for a particular vehicle acquisition, or for a class of vehicles intended for use by emergency response agencies, then the lowest emission vehicle available that is suitable for that purpose may be considered. Agencies and departments shall include funding for this program each biennium in requests for funding in the general court and the capital budget.

VI.(a) There is established the ZEV 2041 committee which shall consult with any agency or department of state that purchase, leases, or otherwise acquires or currently operates motor vehicles in order to transition such vehicles entirely to ZEVs by 2041.

(b) Membership of the committee shall be as follows:

(1) The commissioner of the department of administrative services.

(2) The director of the division of procurement and support services of the department of administrative services.

(3) The commissioner of the department of transportation, or designee.

(4) The commissioner of the department of safety, or designee.

(5) The commissioner of the department of environmental services, or designee.

(c)(1) The committee shall consult with agencies and departments in developing plans to transition such agency or department's vehicles entirely to ZEVs to the extent feasible for particular vehicles and classes by 2041.

(2) Within 90 days of receiving an agency or department's plan to transition the committee shall review and may approve such plans if they comply with this section prior to their adoption by a department or agency. If such plans are not approved the submitting agency or department may revise and resubmit such plan to the committee for approval within 30 days of denial of the initial approval.

5 Participation in Low Carbon Fuel Standards Programs. Amend RSA 21-O:23 to read as follows:



## 21-O:23 Low Carbon Fuel Standards Programs; State Participation.

I. The state of New Hampshire shall not~~[-join,]~~ implement~~[-or participate in]~~ any state, regional, or national low carbon fuel standards program or any similar program that requires quotas, caps, or mandates on any fuels used for transportation, industrial purposes, or home heating without seeking and receiving prior legislative approval.

II. The department of environmental services *and the department of transportation* may engage in regional and national discussions of such programs.

~~III. The department of environmental services shall report all expenses resulting from its discussions to the fiscal committee of the general court on a semi-annual basis.]~~

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

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

Senator Watters offered a Floor Amendment.

Sen. Watters, Dist 4  
March 12, 2019  
2019-0992s  
08/10

## Floor Amendment to SB 275-FN

Amend paragraph II as inserted by section 1 of the bill by replacing it with the following:

II. Eleven mid-Atlantic and northeast states and the District of Columbia have been working collaboratively in the Transportation and Climate Initiative of the Northeast and Mid-Atlantic States to explore and develop policies and programs that can result in greater energy efficiency of regional transportation systems, deployment of clean cars and clean fuels, and yield significant reductions of regional greenhouse gas emissions in the transportation sector.

Amend RSA 21-I:19-g, III-a(b) as inserted by section 2 of the bill by replacing it with the following:

(b) "Passenger vehicle" means a land vehicle that is defined by the department of administrative services' fleet manager as a passenger sedan, sports activity vehicle, sports utility vehicle, or station wagon.

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

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

A roll call was requested by Senator Giuda, seconded by Senator Starr.

The following Senators voted Yes: Watters, Hennessey, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, Birdsell, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Carson, Reagan, Morse.

Roll Call, Yeas: 16 - Nays: 8. Adopted, bill ordered to Third Reading.

## WAYS AND MEANS

SB 93-FN-A, including prepaid communications services as taxable under the communications service tax. Ought to Pass with Amendment, Vote 3-2. Senator D'Allesandro for the committee.

Senate Ways and Means  
March 6, 2019  
2019-0861s  
10/08

## Amendment to SB 93-FN-A

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

AN ACT relative to prepaid wireless telecommunications service and voice over Internet protocol communications under the communications service tax.

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

1 Communications Services Tax; Purpose; Basic Communications Services Deleted. Amend RSA 82-A:1 to read as follows:

82-A:1 Statement of Purpose. It is the intent of the general court to impose a tax on those who use 2-way communications services and to source mobile telecommunications services to the place of primary use. It is also the intent of the general court that Internet access service [~~and basic communications services essential to public health, safety, and welfare~~] shall not be subject to the tax imposed by this chapter.

2 Definitions; Communications Services. Amend the introductory paragraph of RSA 82-A:2, III to read as follows:

III. "Communications services" means services for transmitting, emitting, or receiving signs, signals, writing, images, sounds or intelligence of any nature by any electromagnetic system capable of 2-way communication and includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services and networks, whether leased, rented or owned; channel services; telegraph services; teletypewriter services; cable television; computer exchange services; mobile telecommunications services; **prepaid wireless telecommunications services; VoIP**; facsimile services; specialized mobile radio; stationary 2-way radio; paging services; or any other form, whether stationary, portable or mobile, of 2-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. "Communications services" shall not include:

3 Definitions; Retailer. Amend RSA 82-A:2, X to read as follows:

X. "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this chapter. The department may, in its discretion, upon application, authorize the collection of the tax hereby imposed by any retailer not maintaining a place of business within this state, who, to the satisfaction of the department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all of the gross charges for communications services in this state in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. The permit may be revoked by the department at its discretion. **For purposes of the tax imposed by this chapter on prepaid wireless telecommunications service, "retailer" has the same meaning as "seller."**

4 New Paragraphs; Definitions; Prepaid Wireless Telecommunications Service; VoIP. Amend RSA 82-A:2 by inserting after paragraph XXVI the following new paragraphs:

XXVII. "Prepaid wireless telecommunications service" means "prepaid commercial mobile radio service," as that term is defined in RSA 106-H:2, VIII-b.

XXVIII. "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

XXIX. "Seller" means a person who sells prepaid wireless telecommunications service to another person.

XXX. "Voice over Internet Protocol" or "VoIP" means any service that:

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

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

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

5 Imposition of Tax; Reference Added. Amend RSA 82-A:4 to read as follows:

82-A:4 Imposition of Tax; Interstate Communications Services. Except as provided in RSA 82-A:4-b, **RSA 82-A:4-d and RSA 82-A:4-e**, a tax is imposed upon interstate communications services and private communications services furnished to a person in this state and purchased at retail from a retailer by such person, at the rate of 7 percent of the gross charge when such service purchased on a call-by call basis originates in this state and terminates outside this state or originates outside this state and terminates in this state and the service address is in this state, or when such service purchased on a basis other than a call-by-call basis is provided to a person with a place of primary use in this state or when such private communications services are apportioned to this state in accordance with RSA 82-A:4-c. Provided however, a tax is imposed upon interstate paid calling service furnished to a person in this state and purchased at retail from a retailer by such person, at the rate of 7 percent of the gross charge when the origination point of the communications signal (as first

identified by either (a) the seller's telecommunications system, or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller) is in this state. To prevent actual multi-state taxation of communications services that are subject to taxation under this section, any taxpayer, upon proof that that taxpayer has paid a tax in another state on such services, shall be allowed a credit against the tax imposed in this section to the extent of the amount of such tax properly due and paid in such other state. However, such tax is not imposed on communications services to the extent such services may not, under the Constitution and statutes of the United States, be made the subject of taxation by the state.

6 New Sections; Special Rules for VOIP Services and Prepaid Wireless Telecommunications Service. Amend RSA 82-A by inserting after section 4-c the following new sections:

82-A:4-d Special Rules for VoIP Services. A tax is imposed on intrastate and interstate communications services that are VoIP services provided by a retailer to a person with a place of primary use in this state, regardless of where the VoIP services originate, terminate, or pass through. The tax shall be imposed on the gross charge at the rate specified in RSA 82-A:3 and RSA 82-A:4. No tax shall be imposed on a person whose place of primary use is outside this state.

82-A:4-e Special Rules for Prepaid Wireless Telecommunications Service.

I. A tax is imposed on each retail transaction in this state of intrastate and interstate communications services that are prepaid wireless telecommunications services. The tax shall be imposed on the gross charge at the rate specified in RSA 82-A:3 and 82-A:4.

II. For purposes of paragraph I, a retail transaction is sourced to New Hampshire:

(a) If the retail transaction occurs in person at a seller's location in New Hampshire; or

(b) If subparagraph (a) does not apply, the prepaid wireless telecommunications service is evidenced by a physical item, such as a card, and the purchaser provides a New Hampshire delivery address for such item; or

(c) If subparagraphs (a) and (b) do not apply, the consumer gives a New Hampshire address during the consummation of the sale, including the address associated with the consumer's payment instrument if no other address is available, and the address is not given in bad faith; or

(d) If subparagraphs (a)-(c) do not apply, the consumer's mobile telephone number is associated with a postal zip code, telephone area code, or location within New Hampshire.

III. The tax imposed by this section shall be collected by the seller from the consumer with respect to each retail transaction sourced to New Hampshire, in accordance with RSA 82-A:6; provided, however, the amount of the tax shall be either separately stated on an invoice, receipt, or other similar document that is provided by the seller to the consumer, or otherwise disclosed to the consumer.

IV. If prepaid wireless telecommunications service is sold with one or more other products or services for a single, non-itemized charge, then the tax shall apply to the entire non-itemized charge except as provided in RSA 82-A:2, V(e).

V. If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, non-itemized charge, then the seller may elect not to apply the tax to such transaction. For purposes of this subparagraph, an amount of service denominated as 10 minutes or less, or \$5 or less, is minimal.

VI. The seller shall be liable to remit all taxes required by this section that are collected from consumers, including all such taxes that the seller is deemed to collect where the amount of the tax has not been separately stated on an invoice, receipt, or other similar document provided by the seller to the consumer, in accordance with RSA 82-A:7.

VII. The prepaid commercial mobile radio service E911 surcharge imposed under RSA 106-H:9, I-a shall not be subject to the tax imposed by this section.

7 Applicability. This act shall apply to taxable periods ending after December 31, 2019.

8 Effective Date. This act shall take effect January 1, 2020.

2019-0861s

#### AMENDED ANALYSIS

This bill clarifies the applicability of the communications services tax to voice over Internet protocol (VoIP) and prepaid wireless telecommunications service.

The question is on the adoption of the Committee Amendment.

A roll call was requested by Senator Giuda, seconded by Senator French.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, Reagan, D'Allesandro, Fuller Clark, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Birdsell, Morse, Morgan.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

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

A roll call was requested by Senator Giuda, seconded by Senator French.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse, Morgan.

Roll Call, Yeas: 13 - Nays: 11. Adopted, bill ordered to Third Reading.

SB 95-FN, establishing a working families property tax refund program.

Re-refer to Committee, Vote 4-1. Senator Morse for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Adopted.

SB 96, establishing a film production incentive fund in the state film office.

Ought to Pass with Amendment, Vote 5-0. Senator D'Allesandro for the committee.

Senate Ways and Means

March 6, 2019

2019-0851s

05/10

#### Amendment to SB 96

Amend RSA 12-O:11-b as inserted by section 1 of the bill by replacing it with the following:

12-O:11-b Film Production Incentive Fund. There is hereby established the film production incentive fund. The fund shall be administered by the state film office in the department of business and economic affairs for the purpose of promoting the film industry and film production in the state of New Hampshire. The state film office may expend the funds to provide incentives for film and digital media to come to New Hampshire and to encourage the use of local talent as provided in RSA 21-Q. The commissioner of the department of business and economic affairs is authorized to accept public and private sector grants, gifts, and donations for deposit in fund. The moneys in the fund shall be nonlapsing.

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

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

SB 134-FN, relative to the administration of the meals and rooms tax.

Ought to Pass, Vote 5-0. Senator Giuda for the committee.

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

SB 135-FN-A, relative to the rates of the business profits tax and the business enterprise tax.

Ought to Pass, Vote 3-2. Senator D'Allesandro for the committee.

Without objection, Senator D'Allesandro moved to call the question.

Senator Morse objects to the motion to call the question.

Senator D'Allesandro withdraws the motion to call the question.

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

A roll call was requested by Senator Morse, seconded by Senator Birdsell.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.  
Roll Call, Yeas: 14 - Nays: 10. Adopted.

Senator Feltes moved to Lay on the Table SB 135-FN-A. Adopted.

SB 243-FN, relative to the low and moderate income homeowners property tax relief program.  
Ought to Pass, Vote 3-2. Senator Feltes for the committee.

Recess. Out of recess.

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

A roll call was requested by Senator Giuda, seconded by Senator Morgan.

The following Senators voted Yes: Starr, Giuda, Bradley, Watters, Hennessey, Gray, French, Ward, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Carson, Feltes, Cavanaugh, Reagan, Birdsell, D'Allesandro, Fuller Clark, Morse, Morgan, Sherman, Soucy.

The following Senators voted No: (None)

Roll Call, Yeas: 24 - Nays: 0. Adopted, bill ordered to the Committee on Finance (Rule 4-5) as recommended by the Finance Chair.

SB 245-FN, relative to fees for simulcast racing.

Re-refer to Committee, Vote 5-0. Senator Dietsch for the committee.

The question is on the adoption of the motion of Rerefer to Committee. Failed.

Senator French moved Ought to Pass.

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

SB 270-FN, establishing a tax credit against the business profits tax for donations to career and technical education centers.

Ought to Pass, Vote 5-0. Senator Giuda for the committee.

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

SB 301-FN-A-L, relative to the rates of the business profits tax and business enterprise tax, and relative to revenue sharing with cities and towns.

Ought to Pass, Vote 3-2. Senator Dietsch for the committee.

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

A roll call was requested by Senator Giuda, seconded by Senator Feltes.

The following Senators voted Yes: Watters, Hennessey, Dietsch, Kahn, Chandley, Levesque, Rosenwald, Feltes, Cavanaugh, D'Allesandro, Fuller Clark, Morgan, Sherman, Soucy.

The following Senators voted No: Starr, Giuda, Bradley, Gray, French, Ward, Carson, Reagan, Birdsell, Morse.

Roll Call, Yeas: 14 - Nays: 10. Adopted.

Senator Feltes moved to Lay on the Table SB 301-FN-A-L. Adopted.

#### CONSENT CALENDAR REPORTS REMOVED

PRESIDENT SOUCY: We are at the conclusion of the regular calendar and will take up the bill that was removed from the consent calendar.

#### EDUCATION AND WORKFORCE DEVELOPMENT

SB 143, relative to administrative costs of state aid for special education.

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

Education and Workforce Development

March 5, 2019

2019-0800s

06/04

#### Amendment to SB 143

Amend RSA 186-C:18, III(a) as inserted by section 1 of the bill by replacing it with the following:

III.(a) The state board of education through the commissioner, department of education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for



whose costs they are responsible, for whom the costs of special education in the fiscal year exceed 3 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. If in any year, the amount appropriated for distribution as special education aid in accordance with this section is insufficient therefor, the appropriation shall be prorated proportionally based on entitlement among the districts entitled to a grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed for court-ordered placements under RSA 186-C:19-b. The state may designate up to \$250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the state board of education, may qualify for emergency assistance for special education costs. ***Of this designated amount, an additional one percent shall be allocated to the department of education for the costs of administering state aid.*** Upon application to the commissioner of education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain children with disabilities, it shall not receive special education aid for those same children with disabilities. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be used to assist school districts in meeting special education cost increases in their special education programs as provided by this paragraph.

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

Senator Kahn offered a Floor Amendment.

Sen. Kahn, Dist 10  
March 13, 2019  
2019-1049s  
06/10

#### Floor Amendment to SB 143

Amend RSA 186-C:18, III(a) as inserted by section 1 of the bill by replacing it with the following:

III.(a) The state board of education through the commissioner, department of education, shall distribute aid available under this paragraph as entitlement to such school districts as have a special education pupil for whose costs they are responsible, for whom the costs of special education in the fiscal year exceed 3 1/2 times the estimated state average expenditure per pupil for the school year preceding the year of distribution. If in any year, the amount appropriated for distribution as special education aid in accordance with this section is insufficient therefor, the appropriation shall be prorated proportionally based on entitlement among the districts entitled to a grant. If there are unexpended funds appropriated under this paragraph at the end of any fiscal year, such funds shall be distributed for court-ordered placements under RSA 186-C:19-b. The state may designate up to \$250,000 of the funds which are appropriated as required by this paragraph, for each fiscal year, to assist those school districts which, under guidelines established by rules of the state board of education, may qualify for emergency assistance for special education costs. ***Based on distributed aid for special education, an additional one percent shall be allocated to the department of education for the costs of administering special education state aid.*** Upon application to the commissioner of education, and approval by the commissioner, such funds may be accepted and expended by school districts in accordance with this chapter; provided, however, that if a school district has received emergency assistance funds for certain children with disabilities, it shall not receive special education aid for those same children with disabilities. If any of the funds designated for emergency assistance under this paragraph are not used for such emergency assistance purposes, the funds shall be used to assist school districts in meeting special education cost increases in their special education programs as provided by this paragraph.

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

The question is on the adoption of the motion of Ought to Pass with Amendment. Adopted, bill ordered to the Committee on Finance (Rule 4-5) as recommended by the Finance Chair.

#### MOTION TO ADJOURN FROM EARLY SESSION

Senator Feltes 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  
LIST OF RULE 6-25'S FOR THE DAY

Senator Giuda: SB 74-FN-A

Senator Soucy: SB 257-FN

ANNOUNCEMENTS

(The Chair recognized Senator Bradley.)

SENATOR BRADLEY: Personal privilege. At the risk of getting shot, I think we owe President Soucy a round of applause for keeping the obstreperous geezers, like me, in control today.

SENATOR WATTERS: A woman's work is never done!

(The Chair recognized Senator D'Allesandro.)

SENATOR D'ALLESANDRO: Thank you, Madam President. Obstreperous geezers. Magnificent! Really, your use of pedagese thrills me. Just a quickie for the members of the Senate. So far as of today, and we didn't do all of it, we have spent \$330 million in the Senate. We've passed \$323 million worth of bills, 38 million have gone over to the House, 22 million is tabled; and 263 million has been transferred to Senate Finance, awaiting action with part of this report was an additional \$7 million. So the Senate Finance Committee has yeoman work to do. I just wanted to point that out for all of you who are in a contributing mode, 330 million would be very helpful. Thank you, Madam President.

PRESIDENT SOUCY: Thank you, Senator D'Allesandro, and I have one announcement to make. I was able to participate last night in the Union Leader 40 Under Forty awards, and Senator Feltes was recognized, as was Alan Raff. And I think they deserve a round of applause for that recognition.

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). Adopted.

LATE SESSION

Third Reading and Final Passage

HB 453, making changes to the membership of the state house bicentennial commission, declaring June 2 - June 8 as New Hampshire State House Bicentennial Week, and declaring June 6 as New Hampshire Legislators' Homecoming Day.

SB 14-FN, relative to child welfare.

SB 15-FN-A, making an appropriation to the affordable housing fund.

SB 22, relative to the construction property tax exemption.

SB 52-FN, requiring the department of transportation to install a traffic light in the town of Conway.

SB 71, relative to the election of delegates to party conventions.

SB 93-FN-A, relative to prepaid wireless telecommunications service and voice over Internet protocol communications under the communications service tax.

SB 96, establishing a film production incentive fund in the state film office.

SB 122-FN, relative to expenditures from the energy efficiency fund.

SB 133-FN, relative to the definition of emergency vehicles.

SB 134-FN, relative to the administration of the meals and rooms tax.

SB 169, relative to recovery of expenditures from the drinking water and groundwater trust fund.

SB 173-FN, relative to criminal history background checks by employers and public agencies.

SB 188, relative to shore lights.

SB 194-FN, relative to the insurance data security law.

SB 217, marking the Lafayette Trail in New Hampshire.

SB 218, relative to duties of the commissioner of transportation regarding air navigation facilities.

SB 219, relative to the disposal of highway or turnpike funded real estate.

SB 226-FN, relative to registration of pharmacy benefit managers, and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.

SB 228-FN, relative to multiple-employer welfare arrangements.

SB 235-FN, relative to sexual harassment complaints in the general court and authorizing an independent human resources professional.

SB 240-FN, relative to reciprocal toll collection.

SB 245-FN, relative to fees for simulcast racing.

SB 249-FN, including the legislature as a public employer under the public employee labor relations act.  
SB 255-FN, relative to dementia training for direct care staff in residential facilities and community-based settings.

SB 257-FN, prohibiting foams containing perfluoroalkyl chemicals for use in fighting fires.

SB 262-FN, relative to the property interest in abandoned personal materials.

SB 270-FN, establishing a tax credit against the business profits tax for donations to career and technical education centers.

SB 271-FN-LOCAL, relative to requiring prevailing wages on state-funded public works projects.

SB 273-FN, establishing a committee to study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses.

SB 275-FN, requiring that all of the state's motor vehicles will be zero emissions vehicles by the year 2039.

SB 279-FN, relative to access to fertility care.

SB 282-FN, relative to suicide prevention education in schools.

SB 284-FN, establishing a statewide, multi-use online energy data platform.

SB 286-FN-LOCAL, relative to aggregation of electric customers by municipalities and counties.

SB 292-FN, relative to implementation of the new mental health 10-year plan.

SB 307-FN, relative to outdoor lighting.

SB 311-FN, relative to annulment of criminal records.

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

Senator Feltes 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.