



January 5, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Senator Wheeler.

Dear Lord, in this season of new beginnings, help us to approach our responsibilities with renewed vigor, with new hope, with new love for one another, compassion and understanding, always remembering that we are here to do the people's business. Amen.

Senator Roberge led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

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Carol Pletcher, Chief of Staff - Administration

Donna Morin, Administrator to Leadership

Margaret Fitz, Receptionist/Secretary

DEMOCRATIC LEADERSHIP STAFF

Marlene Taylor, Executive Secretary/Administrator

REPUBLICAN LEADERSHIP STAFF

Doreen Sumner, Executive Secretary/Administrator

COMMUNICATIONS DIRECTOR

Michael Colby

LEGAL COUNSEL

Edward Damon

CLERK'S STAFF

Ann Daniels, Calendar Clerk

Brenda Mento, Journal Clerk

Robert A. Gagne, Senate Recorder

Edward Hebert, Status Information Technician

Rosalie Brooks-Patch, Secretarial Supervisor

COMMITTEE STAFF

Secretaries: Laurel Gallant-Hanlon, Merideth Chandler, Linda Brosseau,

Anna Maria Tsorvas, Zita-Maria Wescott, Carolyn Carey, Jennifer Ruffing,

Jillian Mason

COMMITTEE RESEARCH

June Goulson, Director

Carolyn Johnson

Elaine Rapp

Susan Clogston

FINANCE & CAPITAL BUDGET COMMITTEE

Patricia Waldvogel, Administrative Assistant

Angela Richardson, Executive Secretary

LEGISLATIVE AIDES

Michael Kitch
 Jonathan Page
 Shannon Gorrell
 Megan Konys
 Susan Duncan
 Jennifer Lenz

RESOLUTION

Senator J. King moved that the Rules of the 1999 session be the rules of the 2000 session, and that these rules may be amended by majority vote for the next three legislative days.

Adopted.

INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 300-CACR 38 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

00-2724

SB 300, establishing a committee to study the administrative functions and procedures of the state court system. (Sen. Brown, Dist 17; Sen. Roberge, Dist 9: **Judiciary**)

00-2722

SB 301, relative to prohibiting the department of resources and economic development from selling to or making leases with certain entities on state park or state forest lands without prior approval by the general court. (Sen. Fernald, Dist 11; Sen. Cohen, Dist 24: **Internal Affairs**)

00-2715

SB 302, relative to certain employment requirements for liquor licenses. (Sen. Below, Dist 5: **Ways and Means**)

00-2713

SB 303, relative to campaign contributions by corporations. (Sen. Below, Dist 5; Sen. Russman, Dist 19; Sen. Trombly, Dist 7: **Executive Departments and Administration**)

00-2711

SB 304-LOCAL, relative to emergency meetings in towns and school districts. (Sen. Russman, Dist 19: **Public Affairs**)

00-2709

SB 305, relative to payments to defeat eviction for nonpayment of rent. (Sen. Johnson, Dist 3; Sen. Disnard, Dist 8: **Judiciary**)

00-2708

SB 306, relative to landlord access to a tenant's premises. (Sen. Johnson, Dist 3; Sen. Disnard, Dist 8: **Public Affairs**)

00-2704

SB 307, relative to biosolids. (Sen. Johnson, Dist 3: **Environment**)

00-2702

SB 308, relative to the adoption of a minor child by the natural grandparents. (Sen. Gordon, Dist 2; Rep. Wood, Belk 7: **Judiciary**)

00-2697

SB 309, relative to the criteria for awarding or modifying alimony. (Sen. Disnard, Dist 8: **Judiciary**)

00-2689

SB 310, relative to New Hampshire state-chartered banks. (Sen. Fraser, Dist 4; Sen. Wheeler, Dist 21; Rep. K. Herman, Hills 13; Rep. T. Reardon, Merr 23: **Banks**)

00-2683

SB 311, relative to the recovery of public assistance. (Sen. J. King, Dist 18: **Public Institutions, Health and Human Services**)

00-2641

SB 312, relative to fluoride. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Rep. Emerton, Hills 7; Rep. Copenhaver, Graf 10: **Public Affairs**)

00-2640

SB 313, establishing a commission to study the relationship between postsecondary education and recipients of temporary assistance to needy families. (Sen. Wheeler, Dist 21; Sen. McCarley, Dist 6; Sen. Larsen, Dist 15; Rep. Durham, Hills 22; Rep. M. Fuller Clark, Rock 36; Rep. Copenhaver, Graf 10: **Education**)

00-2638

SB 314, establishing a committee to study the feasibility of driver education programs by correspondence schools. (Sen. J. King, Dist 18; Rep. Stritch, Rock 5: **Transportation**)

00-2636

SB 315, changing the form for writs of execution. (Sen. Fernald, Dist 11; Sen. Russman, Dist 19; Sen. Gordon, Dist 2: **Judiciary**)

00-2634

SB 316, relative to "most favored nation" or "equally favored nation" provisions in insurance provider contracts. (Sen. Fraser, Dist 4: **Insurance**)

00-2633

SB 317, allowing driver education correspondence courses to be accepted and approved by the department of safety. (Sen. Krueger, Dist 16; Sen. Brown, Dist 17; Sen. Roberge, Dist 9; Sen. Francoeur, Dist 14: **Transportation**)

00-2644

SB 318-FN, relative to proposed joint maintenance agreements. (Sen. Fraser, Dist 4: **Education**)

00-2774

SB 319, relative to interstate school districts. (Sen. Gordon, Dist 2: **Education**)

00-2629

SB 320, relative to ballot counting in cooperative school districts. (Sen. Krueger, Dist 16; Sen. Johnson, Dist 3; Sen. Roberge, Dist 9: **Education**)

00-2630

SB 321, relative to a pupil's right to learn. (Rep. Krueger, Dist 16: **Education**)

00-2642

SB 322, extending the needle exchange pilot program. (Sen. Trombly, Dist 7; Sen. Wheeler, Dist 21; Rep. Copenhaver, Graf 10; Rep. C. Kane, Rock 23; Rep. M. Fuller Clark, Rock 36; Rep. Konys, Hills 33; Rep. O'Keefe, Rock 21: **Public Institutions, Health and Human Services**)

00-2643

SB 323, relative to certificate of need applicants. (Sen. Squires, Dist 12: **Public Institutions, Health and Human Services**)

00-2679

SB 324, relative to personal care services and providers. (Sen. F. King, Dist 1: **Public Institutions, Health and Human Services**)

00-2645

SB 325, relative to denial, revocation or suspension of a child care provider license, permit or registration for a felony conviction. (Sen. Gordon, Dist 2: **Public Institutions, Health and Human Services**)

00-2605

SB 326, eliminating the joint health council. (Sen. Krueger, Dist 16; Sen. Wheeler, Dist 21; Rep. Copenhaver, Graf 10: **Public Institutions, Health and Human Services**)

00-2686

SB 327, relative to responsibility of the employee and perjury under worker's compensation. (Sen. Fraser, Dist 4; Rep. Daniels, Hills 13: **Insurance**)

00-2631

SB 328, making corrections to statutory references in certain fish and game laws and adding a rulemaking provision. (Sen. Disnard, Dist 8; Rep. Abbott, Rock 19: **Wildlife and Recreation**)

00-2628

SB 329, relative to the display of tobacco products. (Sen. Squires, Dist 12; Sen. Fernald, Dist 11; Rep. Almy, Graf 14; Rep. Pilliod, Belk 3: **Public Affairs**)

00-2343

SB 330, establishing a committee to study the impact of water withdrawals on instream flows. (Sen. Russman, Dist 19; Sen. Cohen, Dist 24; Sen. Wheeler, Dist 21; Sen. D'Allesandro, Dist 20; Sen. Pignatelli, Dist 13; Sen. McCarley, Dist 6; Rep. Blanchard, Rock 33; Rep. Spang, Straf 8; Rep. Bradley, Carr 8; Rep. O'Connell, Hills 13; Rep. Richardson, Ches 12: **Environment**)

00-2342

SB 331, requiring a report from the public utilities commission and the department of environmental services evaluating whether existing regulatory structures encourage or discourage regional cooperation for water resources management and water conservation. (Sen. Russman, Dist 19; Sen. Cohen, Dist 24; Sen. Wheeler, Dist 21; Sen. Below, Dist 5; Rep. Blanchard, Rock 33; Rep. Bradley, Carr 8; Rep. Norelli, Rock 31; Rep. O'Connell, Hills 13; Rep. Richardson, Ches 12: **Environment**)

00-2306

SB 332, relative to risk-based capital for health organizations. (Sen. Fraser, Dist 4; Sen. Squires, Dist 12; Sen. Russman, Dist 19; Rep. Francoeur, Rock 22: **Insurance**)

00-2219

SB 333, relative to signs for churches. (Sen. Roberge, Dist 9; Rep. Rowe, Hills 14: **Transportation**)

00-2167

SB 334, relative to credit unemployment insurance. (Sen. Fraser, Dist 4: **Insurance**)

00-2144

SB 335, allowing physicians to make a report when a person is unfit to drive a motor vehicle. (Sen. Pignatelli, Dist 13; Sen. Fernald, Dist 11; Sen. Below, Dist 5; Sen. Squires, Dist 12; Sen. Russman, Dist 19; Rep. Estabrook, Straf 8; Rep. Pilliod, Belk 3; Rep. Robb-Theroux, Sull 9: **Transportation**)

00-2100

SB 336, relative to the issuance of fire permits. (Sen. Trombly, Dist 7; Rep. K. Marshall, Merr 4; Rep. Dyer, Hills 8; Rep. Chase, Merr 7: **Public Affairs**)

00-2081

SB 337-FN, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance. (Sen. Roberge, Dist 9; Rep. Bradley, Carr 8: **Transportation**)

00-2763

SB 338, relative to trustee process. (Sen. Gordon, Dist 2; Sen. Wheeler, Dist 21; Sen. McCarley, Dist 6; Rep. Keans, Straf 16; Rep. J. Pratt, Ches 2; Rep. Withee, Hills 15: **Judiciary**)

00-2762

SB 339-FN, relative to conducting a feasibility study of various alternatives to enhance safety at the traffic circle in the city of Portsmouth, and making an appropriation therefor. (Sen. Cohen, Dist 24; Sen. McCarley, Dist 6; Rep. Calawa, Hills 17; Rep. Shultis, Rock 33; Rep. M. Fuller Clark, Rock 36; Rep. Blanchard, Rock 33; Rep. Vaughn, Rock 35: **Transportation**)

00-2759

SB 340, extending the reporting date of the committee to study the problems and possible regulation of outdoor lighting. (Sen. Larsen, Dist 15; Sen. Cohen, Dist 24; Sen. Krueger, Dist 16; Sen. Russman, Dist 19; Rep. Griffin, Rock 27; Rep. Gagnon, Hills 48: **Environment**)

00-2743

SB 341, extending the reporting date of the committee to study the licensure of radiographers and radiologic technologists. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Sen. Krueger, Dist 16; Rep. Goulet, Hills 15; Rep. Stickney, Rock 26; Rep. Virtue, Merr 9: **Public Institutions, Health and Human Services**)

00-2739

SB 342, extending the reporting date of the committee studying the impact of federal welfare reform on the cities and towns of New Hampshire. (Sen. D'Allesandro, Dist 20: **Public Institutions, Health and Human Services**)

00-2674

SB 343, relative to disclosures concerning sexual offenders in sales of real property. (Sen. Klemm, Dist 22; Rep. Clegg, Hills 23: **Judiciary**)

00-2670

SB 344, relative to appointment of housing consumers to housing authority boards. (Sen. Cohen, Dist 24; Sen. Hollingworth, Dist 23; Rep. M. Fuller Clark, Rock 36: **Public Affairs**)

00-2663

SB 345, relative to real estate transfers. (Sen. Gordon, Dist 2: **Executive Departments and Administration**)

00-2659

SB 346, relative to court appearances by certain business owners. (Sen. D'Allesandro, Dist 20: **Judiciary**)

00-2657

SB 347-LOCAL, relative to the contributory retirement system of the city of Manchester. (Sen. D'Allesandro, Dist 20: **Public Affairs**)

00-2653

SB 348, extending the committee to study the establishment of a permit system for vessels registered in another state temporarily using the waters of New Hampshire. (Sen. Johnson, Dist 3; Sen. Fraser, Dist 4; Sen. Cohen, Dist 24; Rep. Bartlett, Belk 6; Rep. Peter Cote, Hills 32; Rep. Boriso, Belk 1; Rep. Dickinson, Carr 2: **Transportation**)

00-2651

SB 349, relative to the sale of the marital residence or other real property in a domestic proceeding. (Sen. Roberge, Dist 9; Sen. Brown, Dist 17: **Judiciary**)

00-2164

SB 350, adding business development to the law governing industrial development authorities. (Sen. F. King, Dist 1; Rep. Woodward, Coos 7; Rep. Gallus, Coos 7; Rep. Glines, Coos 6: **Energy and Economic Development**)

00-2308

SB 351, making certain changes in the laws relative to fraternal benefit societies and health service corporations. (Sen. Fraser, Dist 4; Sen. J. King, Dist 18; Sen. D'Allesandro, Dist 20: **Insurance**)

00-2286

SB 352, repealing the equipment challenge grant program within the New Hampshire community-technical colleges. (Sen. Johnson, Dist 3: **Education**)

00-2635

SB 353, relative to sales of insurance by financial institutions. (Sen. Fraser, Dist 4: **Insurance**)

00-2666

SB 354, relative to an exemption from the seat belt law for passengers in motor vehicles in parades. (Sen. Gordon, Dist 2: **Transportation**)

00-2668

SB 355, relative to name changes for criminal offenders. (Sen. Gordon, Dist 2: **Judiciary**)

00-2676

SB 356, extending the committee to study and identify or establish the duties of the fish and game commission. (Sen. Disnard, Dist 8; Sen. Trombly, Dist 7; Sen. Krueger, Dist 16; Rep. Blaisdell, Ches 9; Rep. Carlson, Hills 19; Rep. B. McKinney, Rock 29: **Wildlife and Recreation**)

99-1058

SB 357, extending the reporting date of the study committee reviewing field activities conducted by the department of health and human services in investigating reports of abuse and neglect. (Sen. Gordon, Dist. 2; Sen. Wheeler, Dist. 21: **Public Institutions, Health and Human Services**)

00-2733

SB 358, relative to court reporting services. (Sen. Gordon, Dist 2; Sen. Pignatelli, Dist 13: **Judiciary**)

00-2684

SB 359, establishing a committee to study the issues relative to manufactured housing parks in New Hampshire. (Sen. Fraser, Dist 4: **Executive Departments and Administration**)

00-2656

SB 360, adopting a pupil safety and violence prevention act. (Sen. Trombly, Dist 7; Sen. Larsen, Dist 15; Rep. Buckley, Hills 44: **Education**)

00-2156

SB 361, authorizing citizen suits to assure enforcement of New Hampshire's environmental statutes. (Sen. Russman, Dist 19; Sen. Below, Dist 5; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Pignatelli, Dist 13; Sen. Wheeler, Dist 21; Rep. Keans, Straf 16; Rep. M. Fuller Clark, Rock 36; Rep. J. Wall, Straf 9; Rep. J. Phinizy, Sull 7: **Judiciary**)

00-2650

SB 362, relative to the length of buses and single unit vehicles. (Sen. F. King, Dist 1; Sen. Johnson, Dist 3; Sen. Brown, Dist 17; Sen. J. King, Dist 18; Rep. Glines, Coos 6; Rep. Woodward, Coos 7; Rep. J. Flanders, Rock 18; Rep. Scanlan, Graf 11; Rep. Guay, Coos 6: **Transportation**)

00-2610

SB 363, relative to the sale of malt beverages. (Sen. Gordon, Dist 2: **Ways and Means**)

00-2609

SB 364, relative to benefits for permanent bodily losses under worker's compensation. (Sen. Gordon, Dist 2; Sen. McCarley, Dist 6; Rep. Bridle, Rock 22; Rep. Kelley, Rock 22: **Insurance**)

00-2607

SB 365-LOCAL, relative to the adoption of bonds or notes in certain school districts and municipalities. (Sen. Krueger, Dist 16; Sen. Brown, Dist 17; Sen. Johnson, Dist 3; Sen. Francoeur, Dist 14; Sen. Roberge, Dist 9: **Education**)

00-2606

SB 366-FN, requiring an external financial audit of the university system of New Hampshire when the university system requests an appropriation that exceeds the prior appropriation by more than one percent. (Sen. Krueger, Dist 16; Sen. Brown, Dist 17; Sen. Roberge, Dist 9; Sen. Francoeur, Dist 14: **Education**)

00-2512

SB 367, establishing a prescription drug access study committee. (Sen. Hollingworth, Dist. 23; Sen. J. King, Dist 18; Sen. Pignatelli, Dist 13; Sen. Johnson, Dist 3; Sen. Larsen, Dist 15; Sen. Roberge, Dist 9: **Public Institutions, Health and Human Services**)

00-2473

SB 368, relative to insurance fraud. (Sen. Francoeur, Dist 14; Rep. Kenney, Carr 6: **Insurance**)

00-2472

SB 369, establishing a committee to conduct a study on the need for standards to protect health information privacy. (Sen. Wheeler, Dist 21; Rep. M. Fuller Clark, Rock 36; Rep. Taylor, Straf 11: **Insurance**)

00-2264

SB 370, relative to reflectors on bicycle pedals. (Sen. Larsen, Dist 15: **Wildlife and Recreation**)

00-2263

SB 371-FN, relative to staffing of state police vehicles patrolling highways at night. (Sen. Trombly, Dist 7: **Transportation**)

00-2259

SB 372, relative to certain engineering businesses. (Sen. Hollingworth, Dist 23: **Executive Departments and Administration**)

00-2217

SB 373-FN, directing the public water access advisory board to prepare a report relating to the types of public access and recreational uses appropriate to different types of public bodies of water. (Sen. Wheeler, Dist 21; Rep. Russman, Dist 19; Sen. Cohen, Dist 24; Sen. McCarley, Dist 6; Rep. Spang, Straf 8; Rep. Blanchard, Rock 33; Rep. Dickinson, Carr 2; Rep. M. Fuller Clark, Rock 36: **Environment**)

00-2624

SB 374, establishing a committee to study growth expansion and regional planning laws. (Sen. Trombly, Dist 7; Rep. M. Fuller Clark, Rock 36; Rep. Virtue, Merr 9; Rep. Bouchard, Merr 22: **Energy and Economic Development**)

00-2623

SB 375, relative to motor vehicle dealerships. (Sen. F. King, Dist 1; Rep. Taylor, Straf 11: **Transportation**)

00-2627

SB 376, relative to the jurisdiction of the public utilities commission to determine consequential damages. (Sen. Disnard, Dist 8; Rep. Guay, Coos 6: **Energy and Economic Development**)

00-2166

SB 377, relative to peer support programs within the department of health and human services. (Sen. F. King, Dist 1; Rep. P. Dowling, Rock 13: **Public Institutions, Health and Human Services**)

00-2608

SB 378, relative to Article 9 of the Uniform Commercial Code. (Sen. Gordon, Dist 2: **Executive Departments and Administration**)

00-2655

SB 379-FN, relative to lottery scratch tickets. (Sen. Klemm, Dist 22; Sen. D'Allesandro, Dist 20; Sen. McCarley, Dist 6: **Ways and Means**)

00-2699

SB 380-FN-A, relative to improvements to South Fruit Street and Industrial Drive at the New Hampshire state hospital campus in the city of Concord and making an appropriation therefor. (Sen. Larsen, Dist 15; Rep. Fraser, Merr 21; Rep. Bouchard, Merr 22; Rep. Poulin, Merr 14: **Capital Budget**)

00-2714

SB 381-FN, relative to registration fees for off-highway recreation vehicles. (Sen. Below, Dist 5; Sen. Gordon, Dist 2; Rep. Roberts, Ches 4; Rep. M. Whalley, Merr 5: **Transportation**)

00-2716

SB 382, relative to appeals of release or detention orders. (Sen. Russman, Dist 19; Sen. Gordon, Dist 2; Sen. Cohen, Dist 24; Sen. Fernald, Dist 11; Sen. Wheeler, Dist 21; Sen. J. King, Dist 18; Sen. D'Allesandro, Dist 20; Sen. McCarley, Dist 6; Rep. Christie, Rock 22: **Judiciary**)

00-2143

SB 383, requiring managed care organizations and the department of health and human services to pay health care providers in a timely manner. (Sen. Pignatelli, Dist 13; Sen. J. King, Dist 18; Sen. Below, Dist 5; Sen. Brown, Dist 17; Sen. Cohen, Dist 24; Sen. Disnard, Dist 8; Sen. Fernald, Dist 11; Sen. Gordon, Dist 2; Sen. Hollingworth, Dist 23; Sen. F. King, Dist 1; Sen. Larsen, Dist 15; Sen. McCarley, Dist 6; Sen. Roberge, Dist 9; Sen. Russman, Dist 19; Sen. Trombly, Dist 7; Sen. Wheeler, Dist 21; Rep. Avery, Ches 8; Rep. M. Fuller Clark, Rock 36; Rep. Leishman, Hills 13; Rep. Robb-Theroux, Sull 9: **Public Institutions, Health and Human Services**)

00-2621

SB 384, establishing a committee to study pretreatment programs for reducing pollutant levels in sewage sludge. (Sen. Wheeler, Dist 21; Sen. Russman, Dist 19; Sen. Cohen, Dist 24; Sen. Below, Dist 5; Sen. Fernald, Dist 11; Rep. Robb-Theroux, Sull 9; Rep. Martin, Hills 34: **Environment**)

00-2626

SB 385-LOCAL, relative to fees for copies of checklists. (Sen. Trombly, Dist 7: **Public Affairs**)

00-2661

SB 386-FN-LOCAL, relative to names on birth certificates and affidavits of paternity. (Sen. Gordon, Dist 2: **Judiciary**)

00-2068

SB 387-FN-LOCAL, relative to proposed toll booths in the city of Nashua and relative to alternatives to the statewide toll booth system. (Sen. Pignatelli, Dist 13; Sen. Squires, Dist 12; Sen. Francoeur, Dist 14; Sen. Cohen, Dist 24; Rep. Konys, Hills 33; Rep. Lasky, Hills 33; Rep. Dawe, Hills 33; Rep. Arthur, Hills 18; Rep. Lozeau, Hills 30: **Transportation**)

00-2155

SB 388-FN-LOCAL, assessing a surcharge on waste disposed at solid waste landfills and incinerators. (Sen. Russman, Dist 19; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Wheeler, Dist 21; Rep. Gilmore, Straf 11: **Environment**)

00-2225

SB 389-FN, relative to medical benefits for group II members of the retirement system. (Sen. J. King, Dist 18; Sen. Klemm, Dist 22; Sen. Disnard, Dist 8; Rep. Dyer, Hills 8; Rep. Dwyer, Hills 42: **Insurance**)

00-2227

SB 390-FN, relative to vested deferred retirement benefits for group II members. (Sen. J. King, Dist 18; Rep. Dyer, Hills 8: **Insurance**)

00-2250

SB 391-FN, relative to criminal background checks for health care workers. (Sen. F. King, Dist 1: **Public Institutions, Health and Human Services**)

00-2285

SB 392-FN, relative to the use of nonlapsed funds by the regional community-technical colleges. (Sen. Johnson, Dist 3: **Education**)

00-2307

SB 393, relative to single producer licensing. (Sen. Fraser, Dist 4; Rep. Francoeur, Rock 22: **Insurance**)

00-2309

SB 394-FN, making miscellaneous changes in the insurance laws. (Sen. Fraser, Dist 4: **Insurance**)

00-2327

SB 395-FN-LOCAL, relative to creditable service for eligibility by retired teachers for payment of medical benefits. (Sen. Squires, Dist 12; Sen. Russman, Dist 19: **Insurance**)

00-2344

SB 396-FN-A-LOCAL, assessing a fee on water withdrawn for commercial purposes from water supply sources in the state and establishing a public water supply land protection fund. (Sen. Russman, Dist 19; Sen. Wheeler, Dist 21; Sen. Below, Dist 5; Sen. McCarley, Dist 6; Sen. D'Allesandro, Dist 20; Rep. Blanchard, Rock 33; Rep. Norelli, Rock 31; Rep. O'Connell, Hills 13; Rep. Cooney, Rock 26; Rep. Richardson, Ches 12: **Environment**)

00-2357

SB 397-FN-A-LOCAL, making an appropriation from the education trust fund for certain alternative kindergarten programs. (Sen. McCarley, Dist 6; Sen. Wheeler, Dist 21; Rep. Heon, Hills 1: **Education**)

00-2486

SB 398-FN, relative to public boat access on Lake Sunapee. (Sen. Disnard, Dist 8; Rep. R. Nowe, Rock 3; Rep. Abbott, Rock 19: **Transportation**)

00-2496

SB 399-FN-A, making an appropriation to the fish and game department for the purposes of the wildlife damage control program. (Sen. Trombly, Dist 7; Sen. Disnard, Dist 8; Sen. Larsen, Dist 15; Sen. Wheeler, Dist 21; Sen. D'Allesandro, Dist 20; Rep. J. Phinizy, Sull 7: **Wildlife and Recreation**)

00-2497

SB 400-LOCAL, relative to access to emergency medical and trauma services. (Sen. Trombly, Dist 7: **Public Institutions, Health and Human Services**)

00-2545

SB 401-FN-A-LOCAL, establishing the New Hampshire land and community heritage investment program and making an appropriation therefor. (Sen. Russman, Dist 19; Sen. Larsen, Dist 15; Sen. Klemm, Dist 22; Sen. Johnson, Dist 3; Sen. Below, Dist 5; Rep. Torr, Straf 12; Rep. M. Fuller Clark, Rock 36; Rep. Burling, Sull 1; Rep. Musler, Straf 6; Rep. Scanlan, Graf 11: **Environment**)

00-2611

SB 402-FN, relative to employee reimbursement for work-related expenses. (Sen. Gordon, Dist 2: **Public Affairs**)

00-2613

SB 403-FN-A, making an appropriation to the department of agriculture, markets, and food for the inspection of apiaries and honeybee swarms. (Sen. Disnard, Dist 8; Rep. McGuirk, Ches 1; Rep. J. Phinizy, Sull 7; Rep. J. Pratt, Ches 2: **Finance**)

00-2615

SB 404-FN, relative to costs in utility proceedings. (Sen. D'Allesandro, Dist 20: **Executive Departments and Administration**)

00-2616

SB 405-FN-A-LOCAL, relative to greyhound racing. (Sen. Wheeler, Dist 21; Sen. Roberge, Dist 9: **Ways and Means**)

00-2617

SB 406-FN-LOCAL, clarifying water pollution control restrictions. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24: **Environment**)

00-2618

SB 407-FN-LOCAL, relative to dog licensure. (Sen. Wheeler, Dist 21; Sen. D'Allesandro, Dist 20; Sen. Roberge, Dist 9; Rep. Babson, Carr 5; Rep. J. Phinizy, Sull 7: **Public Affairs**)

00-2619

SB 408, relative to an animal owner's right to choose animal care. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Sen. Roberge, Dist 9; Sen. Hollingworth, Dist 23; Rep. Burnham, Ches 8; Rep. Taylor, Straf 11; Rep. M. Fuller Clark, Rock 36; Rep. Weatherspoon, Rock 20; Rep. Keans, Straf 16: **Executive Departments and Administration**)

00-2620

SB 409-FN, relative to health insurance coverage of qualified clinical trials. (Sen. Wheeler, Dist 21; Sen. Russman, Dist 19; Rep. C. Moore, Merr 19: **Insurance**)

00-2625

SB 410-FN-LOCAL, relative to payment for overtime by salaried employees. (Sen. Trombly, Dist 7: **Internal Affairs**)

00-2637

SB 411-FN, establishing the New Hampshire returnable beverage container law. (Sen. Fernald, Dist 11; Sen. Below, Dist 5; Sen. Russman, Dist 19: **Ways and Means**)

00-2646

SB 412-FN, adopting the "Court Integrity and Attorney's Independence Act." (Sen. Roberge, Dist 9; Sen. Brown, Dist 17; Rep. Bickford, Straf 1: **Judiciary**)

00-2647

SB 413-FN, relative to confidentiality of addresses for victims of domestic violence, stalking, or sexual assault. (Sen. Wheeler, Dist 21; Sen. Cohen, Dist 24; Sen. Larsen, Dist 15; Rep. J. Wall, Straf 9; Rep. Keans, Straf 16; Rep. Gilmore, Straf 11; Rep. Taylor, Straf 11: **Judiciary**)

00-2652

SB 414-FN, reorganizing the divisions of the department of corrections. (Sen. F. King, Dist 1: **Executive Departments and Administration**)

00-2654

SB 415-FN-LOCAL, relative to payment of group health insurance premiums for eligible retired members of the retirement system. (Sen. Klemm, Dist 22; Sen. Hollingworth, Dist 23; Sen. McCarley, Dist 6; Rep. Burling, Sull 1; Rep. Torr, Straf 12: **Insurance**)

00-2658

SB 416-FN, relative to licensure of dietitians. (Sen. D'Allesandro, Dist 20; Sen. Brown, Dist 17; Sen. Trombly, Dist 7; Rep. O'Neil, Rock 22; Rep. Burkush, Hills 45: **Executive Departments and Administration**)

00-2662

SB 417-FN-LOCAL, allowing a beneficiary of an optional allowance under the New Hampshire retirement system to renounce his or her benefits. (Sen. Gordon, Dist 2: **Insurance**)

00-2664

SB 418, relative to liquor liability insurance coverage. (Sen. Gordon, Dist 2: **Judiciary**)

00-2671

SB 419-FN, establishing the crime of negligent storage of a firearm. (Sen. Cohen, Dist 24; Sen. Squires, Dist 12; Sen. Larsen, Dist 15; Sen. Fernald, Dist 11; Rep. Konys, Hills 33; Rep. MacNeil, Graf 7; Rep. M. Fuller Clark, Rock 36: **Judiciary**)

00-2672

SB 420-FN, increasing the penalty for cruelty to animals taking place in front of children. (Sen. Cohen, Dist 24; Sen. Brown, Dist 17; Rep. J. Brown, Straf 17; Rep. Hansen, Hills 2; Rep. O'Keefe, Rock 21: **Judiciary**)

00-2675

SB 421-FN-A, establishing a child day care program credit against the business profits tax. (Sen. Larsen, Dist 15; Sen. D'Allesandro, Dist 20; Sen. Trombly, Dist 7; Sen. Hollingworth, Dist 23; Sen. Brown, Dist 17; Sen. Cohen, Dist 24; Rep. Gile, Merr 16; Rep. Estabrook, Straf 8; Rep. Wallner, Merr 24; Rep. Keans, Straf 6: **Ways and Means**)

00-2677

SB 422-FN, relative to the housing security guarantee loan program. (Sen. D'Allesandro, Dist 20; Rep. Konys, Hills 33: **Public Institutions, Health and Human Services**)

00-2680

SB 423-FN-LOCAL, relative to the New Hampshire state flag. (Sen. D'Allesandro, Dist 20: **Internal Affairs**)

00-2681

SB 424, relative to controlled substances used for terminally ill persons. (Sen. Wheeler, Dist 21; Rep. Wendelboe, Belk 2: **Public Institutions, Health and Human Services**)

00-2682

SB 425-FN, relative to the private activity bond limit. (Sen. D'Allesandro, Dist 20: **Banks**)

00-2685

SB 426-FN, relative to boat dealers and repairers. (Sen. Fraser, Dist 4: **Transportation**)

00-2690

SB 427-FN, banning the sale or transfer of "Saturday night specials." (Sen. Cohen, Dist 24; Sen. Larsen, Dist 15; Rep. M. Fuller Clark, Rock 36; Rep. Konys, Hills 33: **Judiciary**)

00-2691

SB 428-FN-A, relative to the development of certain public health initiatives and making an appropriation therefor. (Sen. McCarley, Dist 6; Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Sen. Russman, Dist 19; Rep. Emerton, Hills 7; Rep. M. Fuller Clark, Rock 36; Rep. Taylor, Straf 11: **Public Institutions, Health and Human Services**)

00-2692

SB 429-FN, relative to claims before the state commission for human rights. (Sen. McCarley, Dist 6; Sen. Cohen, Dist 24; Rep. Keans, Straf 16; Rep. J. Brown, Straf 17: **Judiciary**)

00-2694

SB 430-FN-A, authorizing the sweepstakes commission to allow electronic bingo games. (Sen. Cohen, Dist 24; Sen. Disnard, Dist 8; Rep. Buckley, Hills 44: **Ways and Means**)

00-2696

SB 431, relative to certain secondary vocational education programs. (Sen. Larsen, Dist 15; Sen. Gordon, Dist 2; Sen. McCarley, Dist 6; Sen. J. King, Dist 18; Sen. D'Allesandro, Dist 20; Sen. Hollingworth, Dist 23; Rep. O'Hearn, Hills 26; Rep. Bradley, Carr 8; Rep. Yeaton, Merr 10: **Education**)

00-2700

SB 432-FN-A, relative to state assistance for teachers applying for national board certification, and making an appropriation therefor. (Sen. Larsen, Dist 15; Sen. McCarley, Dist 6; Sen. Wheeler, Dist 21; Sen. Disnard, Dist 8; Sen. Hollingworth, Dist 23; Rep. Yeaton, Merr 10; Rep. Estabrook, Straf 8; Rep. Gile, Merr 16: **Education**)

00-2701

SB 433, relative to the age at which a minor may purchase or possess handguns and ammunition. (Sen. Larsen, Dist 15; Sen. Cohen, Dist 24: **Judiciary**)

00-2703

SB 434-FN-LOCAL, exempting the town of Tilton from hazardous waste cleanup fund fees associated with the removal of the municipal target range. (Sen. Gordon, Dist 2; Rep. Bartlett, Belk 6; Rep. Salatiello, Belk 2; Rep. Wendelboe, Belk 2: **Environment**)

00-2705

SB 435-FN, relative to providing emergency 911 access from on-campus student housing at all postsecondary educational institutions within the state. (Sen. Trombly, Dist 7: **Education**)

00-2707

SB 436-FN, relative to permanent revocation of drivers licenses for causing a fatality or serious injury while driving intoxicated. (Sen. Trombly, Dist 7: **Judiciary**)

00-2710

SB 437-FN, relative to retail selling. (Sen. D'Allesandro, Dist 20; Sen. Klemm, Dist 22: **Executive Departments and Administration**)

00-2717

SB 438-FN, relative to habitual simple assault. (Sen. Russman, Dist 19; Sen. Gordon, Dist 2; Sen. Cohen, Dist 24; Sen. Fernald, Dist 11; Sen. Squires, Dist 12; Sen. Wheeler, Dist 21; Sen. J. King, Dist 18; Sen. Below, Dist 5; Sen. D'Allesandro, Dist 20; Rep. Christie, Rock 22: **Judiciary**)

00-2718

SB 439-FN, relative to motor vehicle offenses resulting in death or serious bodily injury. (Sen. Russman, Dist 19; Sen. Gordon, Dist 2; Sen. Brown, Dist 17; Sen. Cohen, Dist 24; Sen. Fernald, Dist 11; Sen. Squires, Dist 12; Sen. Trombly, Dist 7; Sen. Wheeler, Dist 21; Sen. J. King, Dist 18; Sen. D'Allesandro, Dist 20; Rep. Letourneau, Rock 13; Rep. Christie, Rock 22; Rep. DiFruscia, Rock 27: **Judiciary**)

00-2720

SB 440, relative to after market parts. (Sen. Brown, Dist 17: **Transportation**)

00-2723

SB 441-FN, relative to temporary orders in domestic situations where there has been no finding of abuse. (Sen. Fernald, Dist 11; Sen. McCarley, Dist 6: **Judiciary**)

00-2726

SB 442-FN, establishing an equipment depository and disabled person's employment fund in the department of administrative services. (Sen. Brown, Dist 17: **Executive Departments and Administration**)

00-2744

SB 443-FN, relative to veterinarian reimbursement for the animal population control program. (Sen. Wheeler, Dist 21; Sen. Roberge, Dist 9; Sen. Cohen, Dist 24; Rep. Babson, Carr 5; Rep. J. Phinizy, Sull 7; Rep. Wendelboe, Belk 2: **Executive Departments and Administration**)

00-2747

SB 444-FN, relative to methadone maintenance treatment. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Rep. Chabot, Hills 48; Rep. Flora, Hills 15; Rep. O'Keefe, Rock 21: **Public Institutions, Health and Human Services**)

00-2748

SB 445-FN, establishing an opioid treatment pilot program. (Sen. Wheeler, Dist 21; Sen. Squires, Dist 12; Sen. Russman, Dist 19; Rep. Chabot, Hills 48; Rep. Flora, Hills 15; Rep. O'Keefe, Rock 21; Rep. Taylor, Straf 11: **Public Institutions, Health and Human Services**)

00-2764

SB 446, relative to the integration of information technology at the state, county and municipal levels. (Sen. Below, Dist 5; Sen. Trombly, Dist 7; Rep. Akins, Graf 14; Rep. Lynde, Hills 24; Rep. Guay, Coos 6: **Public Affairs**)

00-2765

SB 447-FN, relative to campaign contributions and expenditures. (Sen. Below, Dist 5; Sen. Larsen, Dist 15; Sen. Trombly, Dist 7; Rep. Splaine, Rock 34; Rep. Flanagan, Rock 14; Rep. F. Davis, Merr 12; Rep. Curran, Hills 9: **Public Affairs**)

00-2766

SB 448, establishing a guardians ad litem board. (Sen. Gordon, Dist 2; Sen. Trombly, Dist 7; Sen. J. King, Dist 18; Rep. P. Dowling, Rock 13; Rep. Lyman, Carr 5; Rep. Ginsburg, Hills 26; Rep. J. Brown, Straf 17; Rep. C. Moore, Merr 19: **Judiciary**)

00-2775

SB 449-FN, clarifying that employees in certain department of health and human services' positions are entitled to certain salaries and raises. (Sen. Larsen, Dist 15; Sen. Trombly, Dist 7; Sen. Cohen, Dist 24; Sen. D'Allesandro, Dist 20; Sen. Fraser, Dist 4: **Public Institutions, Health and Human Services**)

00-2669

SB 450-FN, prohibiting the importation of tobacco products that violate federal law. (Sen. Johnson, Dist 3: **Ways and Means**)

00-2639

SCR 3, A RESOLUTION rescinding the 1979 call for a federal constitutional convention. (Sen. Wheeler, Dist 21; Sen. F. King, Dist 1; Sen. Brown, Dist 17; Sen. Fernald, Dist 11; Sen. D'Allesandro, Dist 20; Sen. Johnson, Dist 3; Sen. Disnard, Dist 8; Sen. Hollingworth, Dist 23; Sen. Larsen, Dist 15; Sen. Cohen, Dist 24; Sen. Trombly, Dist 7; Sen. Below, Dist 5; Sen. McCarley, Dist 6; Sen. Roberge, Dist 9; Sen. Russman, Dist 19; Sen. Klemm, Dist 22; Sen. Fraser, Dist 4; Sen. J. King, Dist 18; Rep. Riley, Ches 7; Rep. Dyer, Hills 8; Rep. Pilliod, Belk 3; Rep. I. Pratt, Ches 5; Rep. Batchelder, Ches 2: **Internal Affairs**)

00-2649

SCR 4, a resolution urging the federal government to establish a post office in the town of Madbury. Sen. Wheeler, Dist 21; Rep. Wall, Straf 9; Rep. N. Kaen, Straf 7; **Internal Affairs**)

00-2154

CACR 38, Relating to: the use of highway fund revenues.. Providing that: an amount not to exceed 9 percent of highway revenues shall be used to maintain and improve New Hampshire's rail infrastructure. (Sen. Russman, Dist 19; Sen. McCarley, Dist 6; Sen. Cohen, Dist 24; Sen. Below, Dist 5; Sen. D'Allesandro, Dist 20; Sen. Pignatelli, Dist 13; Sen. Wheeler, Dist 21; Rep. G. Katsakiores, Rock 13; Rep. M. Fuller Clark, Rock 36 :**Transportation**)

MOTION TO VACATE

Senator McCarley moved to vacate **SB 435**, relative to providing emergency 911 access from on-campus student housing at all postsecondary educational institutions within the state, from Education Committee to the Executive Departments and Administration Committee.

Adopted.

MOTION TO VACATE

Senator Below moved to vacate **SB 411**, establishing the New Hampshire returnable beverage container law, from the Ways and Means Committee to the Environment Committee.

Adopted.

MOTION TO VACATE

Senator Disnard moved to vacate **SB 398**, relative to public boat access on Lake Sunapee, from the Transportation Committee to the Wildlife and Recreation Committee.

Adopted.

HOUSE MESSAGE

The House of Representatives has referred for Interim study the following entitled Senate Bills sent down from the Senate:

SB 85, including the judiciary as a public employer under the public employee labor relations act.

SB 88, relative to penalties for third driving while intoxicated offenses.

HOUSE MESSAGE

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

SB 11-FN-A, relative to the filing fee for securities in a combined prospectus offered for sale in New Hampshire by a mutual fund.

SB 94, relative to absentee voter affidavits.

SB 137-FN, relative to use of social security numbers in child support enforcement and in the issuance of driver's licenses.

SB 207, relative to authorizing bonds for the construction and renovation of regional vocational education centers.

SB 208-FN, establishing a "parents as scholars" program.

SB 216-FN, allowing veterans the right to purchase credit in the retirement system for certain service in the armed forces.

CACR 16, relating to establishing a restricted education trust fund; establishing a maximum rate on an income tax, and dedicating income tax revenues to education. Providing an education trust fund be established, that revenues from a state-run lottery and revenues from the imposition of an income tax shall be deposited into the education trust fund, and that the moneys in such trust fund shall be used exclusively to provide relief from local school property taxes and to fund the state's duty to cherish the interest of public schools under Article 83, Part 2 of the New Hampshire constitution, and shall not be transferred or diverted to any other purpose.

CACR 17, relating to the states responsibility to provide to all citizens the opportunity for a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision, provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state or the political subdivision in which they are imposed.

ANNOUNCEMENTS

SENATOR KRUEGER (RULE #44): I rise with a degree of sadness because, not on a personal note, but sadness related to what I believe is the courageous note that the Senate took despite many people's position on two CACR's. CACR 16 & 17. If you recall, one was related to capping the income tax, designating the income tax etc., and the other one related to putting out before the voters, the issue of responsibility of the legislature to set policy and funding in the area of education. Those two CACR's were defeated by the House this morning. I guess it was important to me to stand before you and thank all of the people that supported those two. Because I believe that we, as a body, despite how we felt about specific solutions, felt that we had in fact, given the people of the state of New Hampshire the opportunity to be heard. The fact that we have come to pass when certainly the House is well aware of the fact that there was no guarantee that any other constitutional amendment generated by the House, at this time, has even the slightest possibility of passage, I believe, is sad. I think that this body needs to know that I requested throughout the month of December, the opportunity to work with the House Finance Committee, who for some strange reason, had control over these CACR's. Even as late as this morning, I tried very hard to get them out there to the people, at least to the degree that they could have been tabled, they could have been left out there, they could have been worked on, they could have massaged, if there was a technical problem. It could have been worked out. That is not to be. I thank everyone who supported one or both of those. For those of you that did not, I respect where you came from as well. I am proud to stand amongst the other 23 Senators, and know that we tried our very best to put out before the people, the solution to the Claremont problem. I thank you all very, very much.

RESOLUTION

Senator Cohen moved that the Senate be in recess for the sole purpose of introduction of bills, referring bills to committee, scheduling of hearings, enrolled bill reports and amendments, and that when we adjourn we adjourn to January 13, 2000 at 10:00 a.m.

Adopted.

In recess.

Out of Recess.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, January 13, 2000 at 10:00 a.m.

Adopted.

Adjournment.

January 13, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by David P. Jones, Senate Guest Chaplain.

Good morning! I am sorry that I missed you last week, but just when you were starting, I had a funeral and I hate to tell you, but funerals always trump the Senate.

As you go about your business in this old room, remember all the historic things that have taken place here. May the choices each of you make while you are here over the next few months and the ways you treat one another in the process make this room even more distinguished. And in the midst of it all, never confuse your strategy with your tactics. TACTICS involve the mechanics, the maneuvers and the practicalities of your various political positions. They must be fluid and flexible and adaptable, for if they are not, you and your positions are doomed to legislative extinction. STRATEGY, however, is something else. Your strategy, your overall driving passion, which reveals the architecture of your vision and the floor plan of your values. It needs to be clear, consistent and something for which you will sacrifice your political life. In every matter you will confront here, not to mention in all of life, wisdom lies in being able to know which issues are tactical and which ones are strategic. Help each other out with that, and remember to sit lightly in those leather chairs, for they do not belong to you; they belong to the rest of us who never sit in them.

Lord of the grand design, give to each of us the wisdom to see the strategic floor plan of Your loving desires for us. Grant us also the knowledge necessary to implement that plan with tactical maneuvers that will both honor You and will respect the dignity of every person we are called to serve.
Amen.

Senator Eaton led the Pledge of Allegiance.

ANNOUNCEMENTS

SENATOR D'ALLESANDRO (RULE #44): I would like to speak to my fellow Senators about the passing of Doris Grandmaison. Doris, as all of you know, worked around this State House for at least the last 20 years. When I first came to state government, Doris was that very, very small frail woman who always had a smile on her face, and who would always go out of her way to service anybody in this State House. She was constantly cleaning up and putting things here and there, dusting off your desk and leaving a little something on your desk, sometimes to give you that little extra energy that you needed to carry on the process. We brought Doris in here last session, and Doris was fighting cancer. She fought a very, very long battle and suffered tremendously during this situation. Doris is one of the little people who, as the reverend said, never sat in these chairs, but really owned the chair. Doris gave so much to each and every one of us in her daily life. It just seems to me that a person like Doris dies every day, they are just the kind of hard working people that make up America. Hard working, diligent people, who give and give all of their lives. I hope that we remember Doris in that fashion. She was just a wonderful lady who wanted to do good things for people and never really cared about getting good things done for herself. She was a wonderful, wonderful lady who took a personal interest in me the day that I walked into this State House. I think that her passing just lets me know about the fine nature of life, that being, that you can make an impact on somebody's life by just being a good person, and Doris Grandmaison did that to me, and I am sure to everybody in this room. So please remember the repose of her soul in your prayers and let's try to be better people because of the experience of being associated with Doris Grandmaison. Thank you, Madame President.

SENATOR FERNALD (RULE #44): I meant to say this on our last session, but I forgot, but it is not too late. I want to say that the Fernald family enjoyed my break from the Senate over the holidays, but you were not far from our minds, and I brought some proof. My daugh-

ter Katie is in the first grade, and she brought home a piece of school work that says, "On the Mayflower going to the new world I will need:" and then she drew what she would need and labeled it. She is practical, but she is not when it comes to the Mayflower, because she stated that she was going to "bring her house, her cars, her friend Alex, her dad, a trunk full of clothing, and the state Senate with the governor in it." And there is a drawing, and the governor is drawn in there. I will pass it around so that you can all look at it. Some of you also have portraits, although you are not labeled, but you can try and figure out who you are.

HOUSE MESSAGE

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

SB 71, prohibiting the use of MTBE as an additive in gasoline.

SB 134-FN, relative to medicaid reimbursement rates and dental care.

SB 205-FN, expanding medical coverage to pay dental assistance for adults on medicaid.

HOUSE MESSAGE

The House of Representatives has referred for Interim Study the following entitled Senate Bills sent down from the Senate:

SB 52, requiring insurance coverage for infertility treatments.

COMMITTEE REPORTS

HB 75, changing the number required for a quorum on the commission for human rights. Executive Departments and Administration Committee. Vote 5-0. Ought to pass, Senator Brown for the committee.

SENATOR BROWN: Not long ago the membership of the Commission for Human Rights was increased from five to seven members. At the time, the membership was five members, the number necessary for a quorum was three. This bill raises the quorum requirement to four, to reflect the increased membership of the commission. The bill allows the commission to charge reasonable fees for materials and programs that they provide. It also allows complainants to appeal to the Superior Court when complaints are dismissed, and allows complainants to represent themselves, or have representation at appeals. Currently, if an order is not enforced, the commission must appeal to the Superior Court to have the order enforced. This bill allows parties other than the commission to go to court to seek the enforcement of orders. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 448, relative to the board of dental examiners and the regulation of dentists and dental hygienists. Executive Departments and Administration Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: The committee heard testimony that it has been quite some time since the dental practice act had been reviewed and

updated. This bill does that and it makes corrections to references to adjudicate proceedings and disciplinary proceedings that require such all important things that dentists display their license, or hygienists display their license on the wall. It is a housekeeping bill and was passed with the unanimous support of the committee, and ask your vote on it.

Adopted.

Ordered to third reading.

HB 553- FN-A, establishing a commission on the status of men. Executive Departments and Administration Committee. Vote 5-0. Ought to pass with amendment, Senator Larsen for the committee.

2000-3034s

05/10

Amendment to HB 553-FN-A

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

AN ACT establishing a committee to study the status of men.

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

1 Committee Established. There is established a committee to study the status of men in the state.

2 Membership and Compensation.

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

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

(b) Three members of the senate, appointed by the president of the senate.

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 receive input from interested parties, and shall study but not be limited to the following:

I. Examining issues and effects of cultural biases and stereotyping beginning with childhood experiences and progress in public schools, and extending to include a study of male suicide and adult concerns such as family relations, promoting education and policies which bring fathers and children closer together.

II. Studying health problems unique to men or which predominantly affect men, and making appropriate recommendations.

III. Promoting initiatives and programs that will enable men to develop career skills and continue their education so that they become productive and responsible citizens.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house 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 speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2001.

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

2000-3034s

AMENDED ANALYSIS

This bill establishes a study committee to address the status of men in the state. The committee will address various issues of concern to men, including health problems unique to them, and personal development needs.

SENATOR LARSEN: The Executive Departments and Administration Committee, after reviewing the Commission on the Status of Men, revised it with an amendment that you will find in your Senate Calendar to make it a study committee. The preview of the study committee is identical to what the House had sought in having the commission set up that that would be ...there are very real issues related to stereotyping of young boys. There are very real issues relating to health concerns for men, but to establish a commission immediately, that was not funded, we felt, was unwise at this point. A study committee allows for the legislature to have staffing for the committee that is studying these issues, to have legislative staffing, and to present their argument after two years, whether there in fact should be a full commission on the status of men. We believe that this is wise and an incremental step that sets up a committee. We encourage you to join the Executive Departments and Administration Committee in voting yes in establishing a study committee.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

SB 136-FN, allowing certain state employees to take paid leave to participate in disaster relief service work. Executive Departments and Administration Committee. Vote 4-1. Inexpedient to Legislate, Senator Cohen for the committee.

Senator Cohen moved to have **SB 136-FN**, allowing certain state employees to take paid leave to participate in disaster relief service work, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 136-FN, allowing certain state employees to take paid leave to participate in disaster relief service work.

SB 181-FN, relative to the licensure of geologists. Executive Departments and Administration Committee. Vote 5-0. Ought to pass with amendment, Senator Cohen for the committee.

1999-2043s

10/09

Amendment to SB 181-FN

Amend RSA 310-A:118 as inserted by section 3 of the bill by replacing it with the following:

310-A:118 Definitions. In this subdivision:

I. "Board" means the board of professional geologists.

II. "Business organization" means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust, or other form of organization; organized for gain or profit, carrying on any business activity within the state.

III. "Geology" means the science dealing with the study of the earth, its origin, history, physical features and content; the investigation and

interpretation of the earth's constituents including, but not limited to, its rocks, unconsolidated materials, minerals, solids, fluids, and gases, and of the natural and induced processes and forces acting on the earth; the geologic mapping of the earth's constituents and features, and the results of various processes and forces that have acted on the earth; and the geological application of the information derived from such study in the furtherance of the health, safety and welfare of the public and the environment.

IV. "Licensed professional geologist" means a person who, by reason of advanced knowledge of geology and the supporting physical and life sciences, acquired by education and experience, is technically and legally qualified to engage in the practice of geology as defined in this section and has successfully passed the examination as may be required in this subdivision and who is licensed by the board or otherwise authorized by this subdivision to engage in the practice of the profession of geology.

V. "Practice of the profession of geology" or "practice of geology" means the performance of work defined as geology in this subdivision including, but not limited to researching, investigating, consulting, geological mapping, describing the natural processes that act upon the earth's materials, predicting the probable occurrence of natural resources, predicting and locating natural or man-induced phenomena which may be useful or hazardous to mankind recognizing, determining and evaluating geological factors, and the inspection and performance of geological work and the responsible supervision thereof in furtherance of the health, safety, and welfare of the public and the environment. The term shall not include the application of geologic information in the identification or determination of engineered solutions to protect the health, safety, and welfare of the public and the environment. The term shall not include the practice of engineering, land surveying, architecture, soil science or wetland science for which separate licensure or certification is required.

VI. "Responsible charge of work" means the independent control, supervision and direction of work requiring the use of initiative, skill, and judgment.

Amend the section heading of RSA 310-A:121 as inserted by section 3 of the bill by replacing it with the following:

310-A:121 Rulemaking; Fees.

Amend RSA 310-A:124 and RSA 310-A:125 as inserted by section 3 of the bill by replacing them with the following:

310-A:124 Licensure No person shall practice professional geology or represent oneself as a professional geologist who is not licensed by the board or whose license expired, or was canceled, suspended or revoked, except as otherwise provided in this subdivision. Licensure to practice geology shall not be required until after the one-year period set forth in RSA 310-A:125, II has ended.

310-A:125 Requirements for Licensure as a Professional Geologist.

I.(a) Applicants for licensure as a professional geologist shall meet the ethical standards set forth in this subdivision and shall have committed no misconduct as set forth in RSA 310-A:133, II. In addition, each applicant shall have a bachelor's degree in geology or a bachelor's degree in a related field which included 30 credit hours or 45 quarter hours in geology from an accredited 4-year college, or a master's or doctoral degree from an accredited graduate program in geology, including but not limited to degrees or credit hours in geochemistry, geohydrology, geomorphology, geophysics, groundwater geology, hydrogeology, hydrology, marine geology, mineralogy, mining geology, paleontology, petrog-

raphy/petrology, sedimentology/stratigraphy/historical geology, or water resources studies; and shall present evidence suitable to the board of at least 5 years of experience in the practice of geology, of which at least 3 years must have been under the supervision of a licensed professional geologist or a geologist who otherwise meets the requirements of a licensed professional geologist as determined by the board. Applicants meeting these ethics, education and experience requirements shall be eligible to sit for an examination to be administered by the board. Unless otherwise provided, applicants shall take the examination and receive a passing score.

(b) Experience in the practice of geology, obtained before the expiration of the period described in paragraph II of this section, may count towards the experience in the practice of geology under the supervision of a professional geologist required in subparagraph I(a) of this section if the supervising geologist met the education and experience qualifications of paragraph II at the time of the relevant experience. For purposes of this section, experience in the practice of geology does not include routine sampling, laboratory work or geological drafting.

(c) A completed academic year of graduate study in geology may be applied either towards a year of the experience requirement of this section up to a total maximum of 2 years, or to the education requirement of this section, but not both.

(d) A completed academic year of college or graduate level teaching in geology may be applied towards a year of the experience requirement of this section.

II. Following the effective date of the initial adoption by the board of rules under RSA 541-A, the board may issue licenses without examination to applicants whose applications for licensure have been received during a one-year period following the effective date of adoption of rules and who either meet the education and experience requirements of subparagraph I(a) of this section, or who provide evidence satisfactory to the board of knowledge and experience equivalent to such requirements.

III. Whenever information presented in an application for licensure or renewal is determined by the board to be incomplete or insufficient, the board may require additional information as necessary to determine if the application requirements of this section have been met.

Amend RSA 310-A:127 as inserted by section 3 of the bill by replacing it with the following:

310-A:127 Continuing Education. Evidence satisfactory to the board of the completion in each biennial renewal period of a minimum of 24 hours of continuing education shall be required for license renewal. The board shall identify the types of educational courses and activities that would further the professional competence of licensees. In general, the continuing education credits shall be determined on the basis of one credit for each contact hour of course instruction or professional development activity actually attended by a licensee.

Amend RSA 310-A:132 as inserted by section 3 of the bill by inserting after paragraph III the following new paragraph:

IV. If the renewal fee is not submitted within one year of the expiration date, an application for reinstatement shall be required and approved by the board to reinstate the license.

Amend RSA 310-A:133, I(b) as inserted by section 3 of the bill by replacing it with the following:

(b) Upon complaint of any person which charges that a person licensed by the board has committed misconduct under paragraphs II or III and which specifies the grounds therefor.

Amend RSA 310-A:135, V as inserted by section 3 of the bill by replacing it with the following:

V. If, after such hearing, the board finds that a violation has occurred, the board may:

(a) Reprimand, suspend, refuse to renew, or revoke any license or authorization to practice granted under this subdivision.

(b) Require a person to participate in a program of continuing education in the area or areas in which the person has been found deficient.

(c) Require a person to practice under direct supervision of a licensed professional geologist for a period of time specified by the board.

(d) Levy civil penalties for violations.

Amend RSA 310-A:139 as inserted by section 3 of the bill by replacing it with the following:

310-A:139 Exemptions; Practice of Professional Engineering.

I. Nothing in this subdivision shall be construed to prevent or affect:

(a) The practice of officers and employees of the government of the United States or the state while engaged within this state in the practice of geology for the federal government or the state.

(b) Work customarily performed by archeologists, chemists, geographers, or oceanographers, providing such work does not include the design and execution of geological investigation, being in responsible charge of geological work, or the drawing of geological conclusions and recommendations.

(c) The practice of engineering by a licensed engineer, the practice of architecture by a licensed architect, the practice of forestry by a licensed forester, the practice of land surveying by a licensed land surveyor, the practice of soil science by a certified soil scientist, or the practice of wetland science by a certified wetland scientist.

(d) The practice of geology by any person under the direct supervision and control of a professional geologist, provided such work does not include being in responsible charge of final geological reports or decisions.

(e) The practice of geology by any person in the employ of academic or research institutions, agencies of federal or state government, and not-for-profit research institutions.

II. Professional engineers, when engaged in the lawful practice of professional engineering under RSA 310-A, shall not be precluded from performing work which is defined in this subdivision as within the practice of the profession of geology, nor by a requirement that such work be performed by a professional geologist.

Amend the bill by replacing section 4 with the following:

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

SENATOR COHEN: This bill establishes a board of professional geologists that will regulate the practice of geologists. The bill was originally referred to allow all parties concerned to work toward agreement on the language of the bill. The bill as amended before us today, represents a final product arrived at after six months of meetings between the geologists, engineers and the department of Environmental Services and other interested parties. The committee recommends that this bill be ought to pass as amended.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

SB 202-FN, relative to collective bargaining rights of public employees. Executive Departments and Administration Committee. Vote 4-1. Interim Study, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Senate Bill 202 would have clarified procedures relative to collective bargaining with respect to public employees. The committee believes that because of the complexity of the changes proposed in SB 202. Also, because of the uncertainty of the effects that those changes would have on public employers as well as employees. The committee recommends rereferring the bill to committee.

Committee report of Interim Study is adopted.

SB 226-FN, relative to the real estate practice act and the powers and duties of the real estate commission.. Executive Departments and Administration Committee. Vote 4-0. Ought to pass with amendment, Senator D'Allesandro for the committee.

1999-2022s

10/01

Amendment to SB 226-FN

Amend the bill by replacing section 2 with the following:

2 Exempted Classes. Amend RSA 331-A:4 to read as follows:

331-A:4 Exempted Classes. The provisions of this chapter shall not apply to:

I. An owner, builder or tenant of real estate or to [his] regular employees with respect to property owned or leased by [him] **the owner, builder; or tenant**, or to a prospective purchaser or tenant of real estate or to [his] regular employees with respect to property sought to be acquired or leased by [him;] **the purchaser or tenant;** [or]

II. [to] An attorney in fact [~~under a duly executed power of attorney authorizing the consummation of a real estate transaction;~~];

III. [to] An attorney at law in the performance of [his] duties as an attorney[;]; [or]

IV. [to] An auctioneer selling at public auction[;]; [or]

V. [to] A public official in the conduct of [his] official duties[;]; [or]

VI. [to] A person or [his] **the person's** regular employees while such person is acting as a receiver, trustee, administrator, executor, conservator, guardian, or fiduciary, or while acting under court order, or while acting under the authority of a will, trust instrument, or other recorded instrument containing a power of sale[;]; [or]

VII. [to] Any person owning or operating a park, including [his] **the person's** regular employees, in which manufactured housing to be sold or leased is located, who may, for a fee or commission or other valuable consideration, list, sell, purchase, exchange or lease such manufactured housing without a license of a broker or salesman; **or**

VIII. A corporate consultant who receives a fee from a client based on site searching services rendered in accordance with a written contract, rather than on the completion of any particular transaction and who does not hold himself or herself out as a real estate broker; Amend the bill by replacing sections 4 and 5 with the following:

4 Qualifications; Age of Applicant. Amend RSA 331-A:10, I to read as follows:

I. Has attained the age of [majority] **18 for salesperson applicant.**

5 New Paragraph; Qualifications for Licensure; Course of Study. Amend RSA 331-A:10 by inserting after paragraph I the following new paragraph:

I-a. Has successfully completed an appropriate preparatory program of study in real estate practice, which has been approved by the commission. Salesperson applicants must show proof of completion of a 40 hour course of study, broker applicants must show proof of completion of 120

credit hour course of study. Applicants who are licensed in states which have previously entered into licensing reciprocity agreements with New Hampshire may waive the course requirements and apply for licensure as provided in RSA 331-A:22. Applicants licensed in other states may satisfy the course requirement by showing proof of completion of an appropriate course of study which has been approved by the commission of that state, and which involved a number of classroom hours equal to, or greater than, the New Hampshire requirement.

Amend the bill by replacing section 9 with the following:

9 New Paragraph; Escrow Accounts; Business or Personal Funds. Amend RSA 331-A:13 by inserting after paragraph VI the following new paragraph:

VII. A broker may deposit business or personal funds into an escrow account to cover service charges only, assessed to the account by the bank or depository where the account is located or to maintain a minimum balance in the account as required by the regulations of the bank or depository.

Amend the bill by replacing section 11 with the following:

11 New Paragraphs; Supervision of Real Estate Office. Amend RSA 331-A:16 by inserting after paragraph III the following new paragraphs:

IV.(a) All advertisements by an associate broker or salesperson shall include the regular business name and telephone number of the firm with which that person is associated, or the business name and telephone number of the employing broker in a prominent manner. These requirements shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

(b) With the exception of business cards, any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or electronic mail address of an individual salesperson or associate broker, or a team of such licensees, shall also include the name and telephone number of the employing broker or brokerage firm through which the advertising licensees operate. All such advertising shall contain language identifying each number included in the advertising.

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

25 Effective Date. This act shall take effect 60 days after its passage.
1999-2022s

AMENDED ANALYSIS

This bill makes various changes to the real estate practice act and adds new requirements and new exemptions for persons regulated by the real estate commission. This bill also establishes standards for advertising. Senator D'Allesandro moved to recommit.

Adopted.

SB 226-FN is recommitted to the Executive Departments and Administration Committee.

SB 96, relative to pre-approval of payment of medical services by worker's compensation insurers. Insurance Committee. Vote 5-0. Inexpedient to Legislate, Senator Wheeler for the committee.

SENATOR WHEELER: Senate Bill 96 was designed to allow an injured worker to request pre-approval of payment for medical services under the worker's compensation law. Currently, the worker's compensation

carriers reimburse for medical care rather than paying for services in advance. This bill was introduced out of concern that medical providers may not perform a service for a person under the worker's compensation law without some guarantee or pre-approval of payment. Last May the Senate voted to rerefer this bill so that we could have time to determine whether a problem really exists in the area. The Insurance Committee now recommends that this bill be found inexpedient to legislate as we were unable to find that there is in fact a significant problem. Thank you.

Committee report of inexpedient to legislate is adopted.

SCR 2, urging the President and Congress to strengthen the finances of Social Security. Insurance Committee. Vote 5-0. Inexpedient to Legislate, Senator Wheeler for the committee.

SENATOR WHEELER: Madame President and members of the Senate, I rise in favor of the committee report of inexpedient to legislate for SCR 2. The Senate voted in May to rerefer SCR 2 while we were waiting for House action on a similar resolution. At that time, HCR 10 was progressing from the House to the Senate. HCR 10 is a resolution requesting Congress to give priority to preserving Social Security and ensuring that it continues as universal and mandatory for all workers. HCR 10 passed both chambers in 1999; therefore, there is no need to keep SCR 2 alive; therefore, I recommend that we find it inexpedient to legislate. I do have copies of HCR 10 if anyone wishes to be reminded of the exact language. Thank you very much.

Committee report of inexpedient to legislate is adopted.

Senator Larsen is in opposition to the motion inexpedient to legislate on SCR 2.

HB 228, clarifying permissible political expenditures. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

Senator Trombly moved to have **HB 228**, clarifying permissible political expenditures, laid on the table.

Adopted.

LAI D ON THE TABLE

HB 228, clarifying permissible political expenditures.

HB 251, relative to official ballot procedures. Public Affairs Committee. Vote 4-2. Ought to Pass, Senator Disnard for the committee.

Senator Disnard moved to recommit.

Adopted.

HB 251 is recommitted to the Public Affairs Committee.

HB 366, repealing the requirement that persons filing for a primary on the last day of the filing period do so in person. Public Affairs Committee. Vote 4-2. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This is a piece of election law reform that affects both parties. Currently in statute, this is the only eight hour period that requires a candidate for office to file in person. Under the law you can file by mail or someone can file on your behalf, except for on the last day of the filing period. This corrects that. It will help both parties in the recruitment of candidates. The committee weighed the arguments and it was deemed that it is best for democracy to encourage the greatest

number of people to run, although not against me, but to run as soon as possible and to make it easier for them to file. So we ask that you support this legislation.

Recess.

Out of Recess.

SENATOR KRUEGER: I rise in opposition to the committee report on this particular bill. I think that if you really think about the tradition of 50 years that we have honored here in the state of New Hampshire, you realize that there was a reason for this. The reason for this to remain that you must appear in person on the last day of filing was just so that there would be no...and I know that no one in this room would ever be guilty of it, nor anyone who would work for our respected parties would be guilty of it, but it certainly discourages mischievousness. What I would think the action to make sure that the original bill stayed in place would do is to insure that the fact, that on the very last day of filing, that someone wouldn't be there with a slue of paper looking to see, on both sides of the aisle, while this person is running there, therefore, let's shuffle this around, because this will make a better opposition match. I feel, and I have spoken to the secretary of state at great length about this. What he finds, and I would have a tendency to agree with him, is that Mary Jones who thought that she was running in this regard, all of a sudden has been placed, maybe by a state or local chair of a party in another race, because it looks like a better win. She wakes up the next morning and she finds out that she is in a race that maybe she is not quite so excited about. I feel very strongly that we ought to leave a law on the books that has served this state well. I don't think that it discourages anyone. You have all the way up to the very last day to have someone else present your paperwork. We are saying this because if Mary, again, the day before finds herself in the wrong race, she has 24 hours to pull her paperwork back and maybe change her mind, or appear as a candidate in another race. I would encourage my fellow Senators to think about this very carefully and to keep the responsibility where it has been, and to uphold the election laws as we have had them. They seem to have worked.

SENATOR TROMBLY: Senator Krueger, don't you think that it is far more important for democracy that the people be given a choice on the ballot? That if one party is without a candidate and on the last day of filing, someone comes forward and agrees to file? And perhaps that person is willing to file because the only person on the ballot is not acceptable to them; therefore, they want to offer the voters a clear choice in November or September...that is by far much more important that the people have a choice when they face the ballot in November?

SENATOR KRUEGER: I would certainly agree with you. The only problem that I have answering your question would be that I think that we live in the days of trains, planes and automobiles and telephones. I would think that if this were determined that there was going to be a problem, certainly it would be known the day before. Certainly if I were chairing the party, I would know where there were holes, and I would certainly encourage Mary Smith and John Jones to show up that very last day. I think that the offices that we hold are very powerful, and I don't think that any one of us, you or me, or anyone in this room take them very lightly, and the fact that someone couldn't physically be there might, but I hate to say this, but might be an indication that a) that they wouldn't be avail-

able that day, and that itself could impose a problem, or possibly that party chair...who else would prefer to be there with these people to sign the paperwork, should be able to find somebody else. So I think quite frankly it is a lame argument.

SENATOR TROMBLY: I just want to be absolutely clear on your opposition on this bill. You feel that it is more important that the parties be allowed to play the politics before the last day, and that it is more important that a candidate not face an opponent because, for instance, let's say that I am the only candidate for state Senate in District 7 on the last day, and someone who may oppose my views, who works out of town and can't make it in person, it is more important that that person not be able to file and that the voters not have a choice, that I not be forced to explain my voting record because you are afraid of this mythical hypothetical? I just want to be clear that that is what your position is?

SENATOR KRUEGER: No, that is not my position. I feel that I am not afraid of anything. What I would encourage, however, that if you are the only person on the ballot, the day before, that I would suspect that anyone with half an interest, would make sure that either they would hand someone their paperwork the day before, or they would show up themselves on the very last day. I don't think that is a lot to ask if that person, who you identified, is so incredibly opposed to your views.

SENATOR GORDON: I rise to speak very briefly and I do so with some trepidation only because I know I perhaps risk exposing myself to the cross examination of attorney Trombly. I think that when in fact you do sign up for office there are certain expectations, and one of those expectations, as we all know, is that when the Senate meets, that you be here. Part of being a proper representative is that you show up where you have to be. We have a sign up period, which is a substantial link. And people understand that they have a responsibility that they have to sign up in that period of time. I think that it is important to continue the policy which has been developed in regard to requiring candidates on the last day to sign up in person, with this specific policy of avoiding the situation where people basically make a last minute determination and then have their names signed up by political operatives. I don't think that is good public policy, and I think that the policy that we have in place is more than adequate. I frankly don't think that it discourages well qualified people who intend to show up in the Senate from serving in these positions. I would hope that we continue the policy as it currently exists and find that this proposed legislation, as well intended as it may be, inexpedient to legislate.

SENATOR BELOW: Senator Gordon, would you believe that the current statute that this would repeal 655:16 requires "any person that files for the primary on the last day of the filing period to do so in person before the secretary of state as opposed to their local town office." However, that "this excepting that this requirement shall not apply to the filling of vacancies by party committees." So that the committee could still do it remotely, but the person instead of doing it at their town clerk's office has to travel to Concord to file.

SENATOR GORDON: I understand that.

SENATOR BELOW: Okay, thank you.

Recess.

Out of Recess.

SENATOR FERNALD: As you all know I am a lawyer and I am old enough to remember the days as a lawyer when you had a business deal, or a real estate deal that was closing, and everybody got together around one table and everyone signed papers and shook hands, exchanged keys, all that kind of stuff. But I am young enough to see that the world is changing. It is frequent now, to have deals where you never see the other side **TAPE CHANGE** mail by express mail, overnight. Often times people do a deal and they send a fax signature and they say that the original will follow by mail. Everybody takes everybody else at their word. The whole process works, and we don't need to get together and do this face to face, hand to hand thing. This bill, I think, makes sense. There are parts of this state, for example, Senator Fred King's district, Senator Gordon's district, that are a great distance from Concord, and so to require someone to drive to Concord to put their name on the primary ballot means four hours of driving, maybe five hours of driving, and I don't think that it makes sense. It particularly doesn't make sense where the party can do it without producing the candidate, but if the candidate is acting on their own and wishes to be on the ballot, they have to come here. I do not see the benefit of maintaining this current system, and I might add that I don't see the benefit of maintaining the inconsistency and logical inconsistency of the current system. Let's let democracy reign. Let people run and let's have elections. I don't see why we should have some requirement like this that gets in the way.

SENATOR F. KING: Would you think that maybe if we are going to make this change that we ought to have the ability of the parties to file on the last day out of there also?

SENATOR FERNALD: Well actually, what this bill does is, it takes out the section entirely. It states that you don't have to appear in person if you are a candidate and it also takes out the reference to the party, but I guess the party could send in nomination papers, send a messenger down or whatever, have the papers delivered here, which they can do now, and that would remain.

SENATOR F. KING: But if you want to change the system, why don't we let people...if you really want to shoot democracy, I don't think that the parties should...

SENATOR FERNALD: There is a whole different section on...

SENATOR F. KING: My question is instead of changing it, the thought that crosses in my mind, why don't we just take the parties out of it and let the people do it themselves? That would be the real democratic way to do it.

SENATOR FERNALD: So you are suggesting that the party would not be allowed to fill vacancies?

SENATOR F. KING: Never.

SENATOR FERNALD: Well...

SENATOR F. KING: Would you support that?

SENATOR FERNALD: I haven't given it any thought. We have a session coming up. You can introduce the bill, and I will give it consideration.

SENATOR F. KING: We can put it onto this bill.

SENATOR FERNALD: Well we are on a kind of short timeframe here. Do you want to table this and think about it on February 4th?

SENATOR F. KING: No. I just raised the question. I thought that you may be interested in doing that. That is what happens to me every time. It sounds great to me.

SENATOR COHEN: Very briefly. We all recognize that democracy is not the most efficient system of government. We know what the most efficient system of government is, and frankly, we don't want that. I think that we represent the people, and we should be bending over backwards to do what we can to enable people to participate in this process. I recognize the number of votes that there are, but I would hope that we would pass this and do a service to our constituents that way, and have more democracy and not less.

Question is on the motion of ought to pass.

A roll call was requested by Senator Francoeur.

Seconded by Senator Trombly.

The following Senators voted Yes: Below, McCarley, Trombly, Disnard, Fernald, Larsen, J. King, D'Allesandro, Wheeler, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Krueger, Brown, Russman, Klemm.

Yeas: 10 - Nays: 12

Motion failed.

Senator Francoeur moved inexpedient to legislate.

Question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Trombly.

Seconded by Senator Francoeur.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Krueger, Brown, Russman, Klemm.

The following Senators voted No: Below, McCarley, Trombly, Disnard, Fernald, Larsen, J. King, D'Allesandro, Wheeler, Cohen.

Yeas: 12 - Nays: 10

Adopted.

HB 366 is inexpedient to legislate.

HB 422, relative to advertising by rent-to-own businesses. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator Krueger for the committee.

1999-2269s

03/09

Amendment to HB 422

Amend RSA 358-P:5, I as inserted by section 1 of the bill by replacing it with the following:

I. If an advertisement for a rent-to-own agreement refers to or states the dollar amount of [~~a periodic payment for a specific~~] *an initial, periodic, or final payment or offers a free initial, periodic, or final payment for any* item and refers to or states the right to acquire ownership of the item, then for such item the advertisement shall also clearly and conspicuously state the following:

(a) That the transaction advertised is a rent-to-own agreement.

(b) The total number and total amount of periodic payments necessary to acquire ownership *of the item or a representative sample of the total number and total amount of periodic payments for each category of items in the advertisement.*

(c) That the consumer acquires no ownership rights unless the total amount necessary to acquire ownership is paid.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect January 1, 2001.

1999-2269s

AMENDED ANALYSIS

This bill expands the restrictions on advertising by rent-to-own businesses to include advertisements that refer to a dollar amount of an initial, periodic, or final payment or offer a free initial, periodic, or final payment. This bill also permits such advertisements to include representative samples of total payments instead of total payments for each item advertised.

SENATOR KRUEGER: House Bill 422 is an important piece of consumer legislation. As amended by the Public Affairs Committee, it requires rent-to-own businesses to provide somewhere in their literature, representative samples of what a particular category would cost when paid over the full term of the contract. It is important to note that the intent of the Public Affairs Committee in adopting this legislation is to understand that the section of the bill which refers to "representative sample" means at least one item per category. In this case, a "category" refers to items such as electronic equipment, furniture, jewelry, appliances and things of that nature. The Public Affairs Committee agrees that this legislation is an important first step in providing the public with accurate information on which to base a decision to purchase rent-to-own and asks you to please support the motion of ought to pass as amended. Thank you very much.

Amendment adopted.

Ordered to third reading.

SB 84, relative to eligibility for welfare benefits. Public Institutions, Health and Human Services Committee. Vote 4-0. Inexpedient to Legislate, Senator Krueger for the committee.

SENATOR KRUEGER: Madame President, I rise in support of the committee recommendation of inexpedient to legislate for SB 84. The bill required that if an individual had collective public assistance in another state, the period during which the benefits were conferred would be subtracted from the maximum eligibility period available in the state of New Hampshire for that individual. The committee certainly was in agreement that this was a practice that we did not encourage...the follow-up and the addition of welfare benefits to people that are moving across the border; but it seems that the state is already following this practice, therefore, making SB 84 unnecessary legislation. I urge my colleagues to vote SB 84 inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HJR 6, encouraging the revitalization of the northern rail line from Concord to Lebanon. Transportation Committee. Vote 6-0. Ought to pass with amendment, Senator Below for the committee.

2000-3019s

04/10

Amendment to HJR 6

Amend the resolution by replacing the title of the resolution with the following:

A RESOLUTION encouraging the revitalization of the northern rail corridor from Concord to Lebanon and recognizing its interim recreational uses.

Amend the resolution by replacing all after the title with the following:

Whereas, between 1835 and the early 1900's, railroad surveys were completed, charters granted, and construction completed creating over 1,200 miles of corridors of commerce, opening the state of New Hampshire for economic and recreational development, creating many towns and providing sustenance and opportunity for hundreds of thousands of New Hampshire citizens; and

Whereas, the country and the world are experiencing extraordinary growth of new technology rail transportation systems, to convey both freight and passengers in a most environmentally friendly, safe, and economic manner; and

Whereas, the establishment of a balanced multimodal transportation system is necessary to ensure 21st century industrial development, economic vitality, environmental sustainability, and competitive advantage for all residents and businesses; and

Whereas, the northern rail corridor is currently being utilized and enjoyed by many members of the public including snowmobilers, pedestrians, and bicyclists, for recreational purposes with economic benefit to the communities along the corridor; and

Whereas, the revitalization of the northern rail corridor between Concord and Lebanon with rail service would likely promote greater economic growth and development along the corridor and in communities beyond the corridor, and would likely help New Hampshire to achieve optimum economic development into the 21st century; now, therefore, be it

Resolved by the Senate and House of Representatives in General Court convened:

That the northern rail corridor from Concord to Lebanon be revitalized with active rail service and all appropriate industrial and commercial opportunities related thereto be developed in accordance with local master plans; and

That rail carriers, private corporations, state and federal governments, and all other interested parties be encouraged to work cooperatively toward the redevelopment of the northern rail corridor and toward identifying the issues necessary for such redevelopment; and

That it shall be the policy of the state of New Hampshire that the highest and best use of the northern rail corridor shall be to restore the rail line with active rail service, but that until such time as rail restoration is economically feasible, the corridor should be made available as a recreation trail for non-motorized users and snowmobiles; and

That a rail advisory council be organized to advise the commissioner of the department of transportation on railroad policy matters including revitalization of the northern rail line; and

That the recent study conducted by a group of students from the Tuck School of Business at Dartmouth College be utilized in any planning and viability studies associated with the revitalization of the rail line; and

That the house clerk send copies of this resolution to the governor, the speaker of the house, the senate president, the commissioner of the department of transportation, the commissioner of the department of resources and economic development, and the state library.

2000-3019s

AMENDED ANALYSIS

This house joint resolution encourages the revitalization of the northern rail line from Concord to Lebanon and recognizes its interim recreational uses.

SENATOR BELOW: HJR 6 as amended by the committee, continues the statement of New Hampshire's policy regarding the preservation and use of our important rail corridors. The resolution, as amended, states that it shall be the policy of the state of New Hampshire that the highest and best use of the northern rail corridors shall be to restore the rail line with active rail service. As amended, the resolution also recognizes that these corridors, this corridor in particular, is currently being used and enjoyed by many snowmobilers, pedestrians, and bicyclists for recreational uses, and that such use is an appropriate interim use until such time that the state is ready to actively use these corridors for rail service. This recreational use is an important economic benefit for the eight towns along this corridor that are in my Senate district, and the two towns that are in Senator Trombly's district; thus, the resolution also states that until "such time as rail restoration is economically feasible, the corridor should be made available as a recreation trail for non-motorized users and snowmobiles". The Senate Transportation Committee recommends, unanimously, that HJR 6 be voted ought to pass as amended.

Amendment adopted.

Ordered to third reading.

HB 542-FN-A, an act repealing the Legacies and Successions Tax. Ways and Means Committee. Vote 6-0. Ought to pass with amendment, Senator Brown for the committee.

1999-2090s

09/10

Amendment to HB 542-FN-A

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2001.

SENATOR BROWN: I rise in support of the unanimous 6-0 vote from the Ways and Means Committee report of ought to pass as amended on this bill. The average state revenue from this tax that is affected by this bill is about \$25 million per year. The amendment moves the enactment date of this repeal to the next biennium so that there will be no loss of revenue in our current budget cycle. Also, to provide an opportunity for the next legislature to figure out the revenue question. To tax non-linear heirs at 18 percent from dollar one is simply unfair. Many, many constituents came and gave compelling testimony to the committee to this effect. I hope that you will support the committee report of ought to pass as amended. Thank you.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

SB 46-FN, relative to the applicability of mooring permit requirements. Wildlife and Recreation Committee. Vote 2-0. Ought to pass with amendment, Senator Disnard for the committee.

1999-2254s

03/10

Amendment to SB 46-FN

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

2 Navigation; Mooring of Boats on Public Waters; Mooring Areas, Designation; Determination and Assignment. Amend RSA 270:68, I to read as follows:

I. The division shall [~~after consultation with the office of state planning,~~] determine the need and suitable locations, size, and configuration for mooring areas. The director shall designate appropriate mooring areas and assign mooring sites within such designated areas to individuals ***not having legal access over land to such mooring area but*** who meet all other requirements of this subdivision and can demonstrate a need for a site in such area. All designated mooring areas shall be consistent with any existing master plans, zoning ordinances, wetlands conservation district ordinances, and capital improvements programs of the adjacent municipality.

3 New Section; Navigation; Mooring of Boats on Public Waters; Hearings to Require Permits. Amend RSA 270 by inserting after section 72-a the following new section:

270:72-b Hearings.

I. The commissioner of the department of safety shall adopt rules pursuant to RSA 541-A establishing procedures for the public hearing process contained in this section. For the purposes of adopting the initial set of rules required by this section the commissioner shall be authorized to adopt emergency rules as provided in RSA 541-A:18.

II. Any group of 25 or more residents or property owners of a town or towns in which a body of water of less than 500 acres is located may petition the commissioner of the department of safety to require mooring permits on the body of water.

III. The commissioner of the department of safety shall hold a public hearing to determine whether to grant a petition submitted pursuant to paragraph II. In determining whether to grant the petition, the commissioner shall take into consideration the following factors:

(a) The impact of moorings on the environment, the shoreline, and wildlife.

(b) The surface area of the body of water being considered.

(c) The use or uses which have been established on the body of water.

(d) The depth of the water.

(e) The amount of water-borne traffic.

(f) The necessity of ensuring access to and use of the body of water for all individuals and the right of those individuals to appropriate use of the public waters.

(g) Whether a determination is necessary to ensure the safety of persons and property.

IV. The commissioner of the department of safety shall hear all petitions in the vicinity of the body of water under consideration and shall schedule the hearing at a date and time which provides interested individuals with sufficient notice and an opportunity to be heard. If mooring

permits are required on a body of water as a result of a hearing pursuant to this paragraph, the effective date of such requirement shall be no sooner than October 1 of the year in which the order is issued.

V. Any person aggrieved by a decision of the commissioner pursuant to this section may appeal to the commissioner for a review of the record and may appeal from such decision pursuant to RSA 541.

VI. Any mooring requirement on a body of water imposed pursuant to this section shall have the full force and effect as if enacted as law.

VII. The commissioner of the department of safety shall post any body of water on which mooring permits are required pursuant to this section.

4 Applicability.

I. Massabesic Lake is hereby exempted from the mooring permit requirements RSA 270:61, I, as amended by this act.

II. The mooring permit requirements RSA 270:61, I, as amended by this act, shall apply to the following public waters beginning January 1, 2001:

- (a) Ayers Island Dam.
- (b) Alton Power Dam(Wentworth Pond).
- (c) Franklin Pierce Lake.
- (d) Back Lake.
- (e) Lovell Lake.
- (f) McIndoes Reservoir.
- (g) Goose Pond.
- (h) Pine River Pond.
- (i) Pleasant Lake.
- (j) Webster Lake.
- (k) Star Lake.
- (l) Suncook Lakes.

III. The mooring permit requirements RSA 270:61, I, as amended by this act, shall apply to the following public waters beginning January 1, 2002:

- (a) Northwood Lake (Suncook Pond).
- (b) Barnstead Parade Dam.
- (c) Spofford Lake.
- (d) Highland Lake.
- (e) Nubanusit Lake.
- (f) MacDowell Reservoir.
- (g) Great East Lake.
- (h) Pawtuckaway Pond.
- (i) Waukewan Lake.
- (j) Silver Lake.
- (k) Province Lake.
- (l) Comerford Storage Dam.

IV. The mooring permit requirements RSA 270:61, I, as amended by this act, shall apply to the following public waters beginning January 1, 2003:

- (a) Mascoma Lake.
- (b) Bow Lake.
- (c) Second Connecticut Lake.
- (d) Conway Lake.
- (e) Francis Lake.
- (f) Merrymeeting Lake.
- (g) Vernon Dam.
- (h) First Connecticut Lake.

- (i) Wentworth Lake.
- (j) Moore Reservoir.
- (k) Umbagog Lake.

5 Effective Date. This act shall take effect January 1, 2001.

2254s

AMENDED ANALYSIS

This bill applies the mooring permit laws to all state-owned public waters of 500 acres or more, except Massabesic Lake. This bill also establishes a hearings process allowing residents or property owners to petition the commissioner of safety to require mooring permits on other bodies of water.

SENATOR DISNARD: Madame President, with your permission, I would like to defer to Senator Johnson, the prime sponsor.

SENATOR JOHNSON: Thank you, Senator Disnard, for your courtesy. Currently we have six of our largest bodies of water under the permit system for moorings. Cost is \$25 per year and is valid for five years. With the pressure that is occurring on our other bodies of water, I am bringing SB 46 forward. We have found that moorings are being set indiscriminately, and in some cases, are being rented to others. Originally, this bill would have applied to mooring permit laws to all state owned public waters in three phases, beginning with the largest lakes in 2000 and ending with the smallest ponds in 2003. The amendment, which appears on page 9-11 of the Senate Calendar, makes several significant changes to the original bill. First, it applies the mooring permit requirements only to state-owned public waters of 500 acres or more, except for Massabesic Lake, where a mooring program is already working successfully for many years. The requirements are phased-in over a three-year period beginning January 1, 2001, according to the schedule in section 4 of the bill. Second, section 3 of the bill authorizes any group of 25 or more residents or property owners of a town or towns with a body of water of less than 500 acres to petition the Department of Safety to require mooring permits on that body of water. The bill establishes a public hearing process to determine whether a petition should be granted, and specifies the factors that should be considered in reaching a decision. And third, section 2 of the bill requires the director of the Division of Safety Services to designate appropriate mooring areas and assign specific mooring sites to individuals who do not have legal access over the land adjacent to the mooring area. In other words, the bill ensures public access to public waters, subject to the mooring permit requirements. The committee recommends ought to pass as amended. Thank you.

SENATOR F. KING: Senator Johnson, is there a recognized cost to the supervision of this process?

SENATOR JOHNSON: Senator King, I have been assured by the Division of Safety that there will be no additional cost, because the entry to the mooring fees will take care of any administrative costs that they had.

SENATOR F. KING: Just so that I understand the process here, it is going to go into sort of a dedicated fund, or is the money going to go into the general fund? I am not sure how that works.

SENATOR JOHNSON: I believe that the money for the mooring permits, I believe, is money that is dedicated to the Department of Safety.

SENATOR F. KING: Thank you.

Amendment adopted.

Ordered to third reading.

SB 61, relative to the definition of ski craft. Wildlife and Recreation Committee. Vote 5-3. Inexpedient to Legislate, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Senate Bill 61 as introduced, redefined the term "personal watercraft". The redefinition would have resulted in the ban of personal watercraft from over 50 percent of the state's waterways. The bill was strongly opposed at a hearing which was held in Representatives Hall. An amendment to the bill was offered, which would have done three things. 1) Redefine the term "personal watercraft" 2) established a mandatory educational requirement for operators of personal watercraft 3) enact further restrictions on personal watercraft rentals. The Wildlife and Recreation Committee found that a similar proposal in the House was found inexpedient to legislate earlier this year. The majority of the committee believes the issue of safe boating can be better addressed in a bill that is before the Senate Transportation Committee, HB 449, which provides for mandatory education for all boaters, and does not single out one type of craft as proposed in SB 61. I urge the Senate to find SB 61 as inexpedient to legislate. I might further say that I have been working with Senator Johnson, the prime sponsor of SB 61, to come up with a positive solution, whereby everyone becomes educated and where a process is put into place, and we don't single out any one entity, but we require all boaters to receive the proper education. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 144, relative to qualifications for members of the fish and game commission. Wildlife and Recreation Committee. Vote 2-0. Inexpedient to Legislate, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: This bill would authorize the appointment to the Fish and Game Commission of not more than three individuals who have not held a resident fishing, hunting or trapping license for at least 5 of the 10 years immediately prior to their appointment. The current law requires all commissioners to have held a license for at least 5 of the 10 years prior to their appointment. The committee appreciated the intent of the bill, but concluded the current qualifications were appropriate for two major reasons. First, proceeds from license fees fund the department; therefore, it is appropriate to ensure that commissioners represent the license holders by requiring that they are recent license holders. Second, current law requires that all commissioners be "dedicated to the conservation and protection of the state's fish and wildlife resources, and of an environment conducive to the welfare of the same." The committee concluded that this qualification ensures that the perspective of commissioners is not limited to the exclusive interests of sportsmen, but includes the public interests of wildlife management and environmental protection; therefore, the committee recommends SB 144 inexpedient to legislate.

SENATOR WHEELER: I rise in opposition to the committee report and in support of the original bill for the reason that the Fish and Game Department has repeatedly told us that they do far more than oversee fish and game animals. They have authority for all of the wildlife in the state. They are increasing the size of the deer herd, and they tell us that is for non-hunters and for tourists that just want to come in and look at the deer. They say the same thing about the moose, and about all of the wildlife, that it is more than just for the hunters, trappers and fishermen; therefore, I think that it is important to have all of the interests

of the people of the state represented, on the commission. This is a modest effort and does not require the appointment of anyone who has not held a fishing, hunting or trapping license, but it does allow a person who has spent considerable time in wild areas enjoying wildlife without hunting, fishing or trapping, to be able to sit on the commission and present that point of view. Thank you.

SENATOR F. KING: Senator Wheeler, in your scenario of how this change would operate and you would have different people with different constituencies on the board as opposed to how it is now, would you support if we were to do that, having people who just want to watch animals and hike and do those sort of things, which would allow them to do that? Also, help pay a fee to contribute to the Fish and Game Funds, so that it wouldn't be just hunters, fishermen and trappers supporting this new program? I am talking about a hiking license or something like that?

SENATOR WHEELER: I would have to consider that, Senator King. I hadn't thought about that aspect before. I know that we are talking about having Fish and Game supported through the general fund, but rather through license fees, or having Game Damage supported through the license fees. I am not happy with the current situation of having the budget just come from those license fees, because I think that it does skew the possibility of what they could be doing and maybe should be doing. So I would have to give serious consideration to that, and I am not immediately opposed to it.

SENATOR F. KING: Thank you.

SENATOR COHEN: I would like to respond to Senator Fred King's question. I support that. I think that user fees are a good idea. It is not just the sportsmen, hunters and trappers, that are using the state's resources. It is hikers. It is people who are just observing the wildlife, more than ever. That number is increasing yearly. I think that we need to identify some way to get those user fees, because I think that they are users, and there should be a fee involved. I think that would help the Department of Wildlife, Fish and Game or what have you. I think that would increase the funding to them. I think that is something that we should definitely consider for the future.

SENATOR FERNALD: Senator D'Allesandro, I think that you said in your remarks that the commissioner should be representing the hunters? And Senator Wheeler brought up the point that...as I understand state law, the wildlife belongs to the state. It belongs to all of us. So doesn't it make sense that the commissioners that oversee wildlife would be represent all of us, and that any one of us should be eligible to serve on that commission?

SENATOR D'ALLESANDRO: I think at face value, sure, that makes a lot of sense. The question is, this agency is funded by those who pay license fees and that has been a tradition and in essence, they are funding the situation, so why should people who are not paying the fees be on the commission? I mean, if everybody paid a fee as alluded to by Senator Wheeler and her remarks, then I would say, maybe you open it up, but I think at this point, what is happening is good for the state. It has proven to be good for the state, and I don't see any reason why we should change it.

SENATOR F. KING: Senator Fernald, would you agree with me that the way that the system works now is that the revenue that comes in from the hunters and fishermen has appeared to have done a good job in mak-

ing these other side benefits available to the citizens, because otherwise they wouldn't want to come here to observe the wildlife? It seems like a system that is working. The people that are paying the fee are also paying the fee that is providing these other services, and everybody wins, so why change it? Would you agree that we do have an attractive animal environment here and it brings people here to fish and hunt and to observe wildlife?

SENATOR FERNALD: I guess that my answer to your question is, and I am not sure if it is a direct answer, is that I see a disconnect that we have wildlife that belongs to everybody in the state, and yet, not everybody in the state doesn't have a say. At least in terms of eligibility for this commission. And sort of returning to your earlier question about funding, I could foresee a system where we have programs that are meant to support wildlife for the specific benefit of hunters and fishermen and so forth, like the stocking of trout and reintroduction of a species or something. Then maybe other aspects, and that would be funded by licenses. Other aspects that are as you say, a benefit to everybody, might be funded by the general fund.

SENATOR F. KING: Thank you.

SENATOR GORDON: Senator D'Allesandro, if there were members of the committee that had other interests, and you are familiar with the debates that we have had recently, and maybe if we had some orchard owners on the board, or perhaps some people who may have been subjected to moose damage, don't you think that that would provide more balance in terms of not just how the funds are raised through licenses, which are apparently, seem to be, promoting the development of more wildlife, but also some balance on deciding how these monies would be expended?

SENATOR D'ALLESANDRO: I think that is always a two-edged sword. On the one hand you could say yes and on the other hand you could get a perspective that was anti fish and game and pro the other way, so I think that is certainly an open question at this point. I can't give you a definite yes or no because I think that it is an open question.

SENATOR GORDON: Isn't this a bit unusual situation because we just passed a mooring bill and we don't give just those people who have moorings a decision on how to spend those monies? We have all sorts of fees. We have motor vehicle fees and we don't just give people with cars the right to decide how those fees are funded. I guess that I am trying to understand why it is that we only give people who pay licensing fees the right to decide how to spend those monies?

SENATOR D'ALLESANDRO: Well in this particular situation, Fish and Game is funded by those fees, and that is the only definite answer that I can give to you for your question. It has been a situation where I think, as Senator King has articulated, has worked out very well for everybody in the state. We have a good herd and the hunters, fishermen, as well as the general population that are receiving benefits from it, so if it is working well, 'don't break it' I guess is the correlation.

SENATOR GORDON: I have one more question for you. If I agree with you, and I still know that majority of the board members are going to be people who are promoting Fish and Game and have Fish and Game licenses, why would I be concerned about that?

SENATOR D'ALLESANDRO: I guess that I don't have an answer to that.

SENATOR GORDON: Okay.

SENATOR TROMBLY: Senator D'Allesandro, do you sense, as I sense, that the members of the committee and the outcome of the committee report believe that if you hunt or fish you also don't hike, or that you don't use passive recreation? Would you further believe that maybe when a hunter isn't hunting, that during the non-hunting season, he or she may be a hiker? Is that true?

SENATOR D'ALLESANDRO: That is true.

SENATOR TROMBLY: Thank you.

SENATOR COHEN: Senator Trombly, my question to you is, hiking, appreciating the wildlife that we have here and appreciating the forest and the lands is not limited to those who hunt and fish, why not expand it? Why limit the funds of the Wildlife Department to those, when the majority would still be held by people who hunt or fish, why not expand that and go to user fees?

SENATOR TROMBLY: Thank you for giving me the opportunity to speak on that issue **TAPE CHANGE** litigation and job was to see that wildlife and game flourished in the state. I could not draw the distinction that the interest of the hunter is exclusive from the interest of the hiker. We have heard in this chamber, time and time again, that part of the problem with seeing in this state, relative to game and wildlife, is that it is flourishing, which benefits the passive non-hunter, so they are doing their job. So quite frankly, Senator Cohen, I didn't know that these people could add to what is already being done and therefore, I voted to keep the status quo.

SENATOR COHEN: Well as you say, if it isn't exclusive, why not be inclusive?

SENATOR TROMBLY: Because the problem that you have with that, Senator Cohen, is that if people are already doing a good job, relative to the charge, and the benefits are being gained by the people that you want to add to the board, I think that you must question whether adding them to the board and what they could contribute, versus adding them to the board and what sort of internal processes would then occur, whether that benefit outweighs the good job that they are already doing? My sense is that by adding those people to the board, you could just be taking what is already a very good system and make it a little bit worse. That is why I voted against this legislation.

SENATOR COHEN: Thank you.

SENATOR GORDON: I am going to support the committee report on this particular bill because I don't think that it is the right vehicle, but I do want to say in doing that I do it with some reservations, because I believe that the wildlife of this state belongs to everybody, not just the hunters, not just the fishermen, it belongs to everybody. I believe that there ought to be some greater representation on the part of the board of the Fish and Game Commission, and greater input on how that game is managed. Again, I don't think that this is necessarily the vehicle to do that, but I think that that is something that we have to look at as a matter of policy in the future.

SENATOR WHEELER: In response to the opinions of Senator Fred King and Senator Trombly, that this has been working really well and we shouldn't change it, we have had enough debate in this chamber to indicate that it is not working as well as it should be working. Consider

all of our discussion about crop damage, crop damage from deer, because of the stated policy of the Fish and Game Department to double the size of the herd in ten years. That is having implications for our farmers, our orchardists and for our residents who like to maintain their hedges and ornamental trees. I think that another point of view other than that of increasing the size of the herd for the benefit of hunters, or even of tourists, is an important point of view to have on there. I see no harm in allowing this potential, because I do think that we have a problem. Thank you.

SENATOR FERNALD: Senator Trombly, I think that you said before that you were concerned that adding different people to the commission would result in a lesser outcome for wild life? I am not quite sure how you put it.

SENATOR TROMBLY: Do you want me to tell you what I said or why I said it?

SENATOR FERNALD: No, I want to ask you a question. Do you really believe that adding more points of view to this commission is a bad idea?

SENATOR TROMBLY: I don't think that it is a bad idea, but I don't think that it is a good idea. I don't think that it is a good enough idea to change it from the way that it is. Now let me explain that...

SENATOR FERNALD: If you can...

SENATOR TROMBLY: Here is what I mean, Senator Fernald. The Fish and Game Commission is doing a good job if what you want to do is hike and see wildlife and game. Granted we have had that debate. Senator Wheeler has brought it up that the herd is being managed, if what we are talking about is deer or whatever, to the extent that now it is interfering in other business, agriculture. So if that is happening, then they are doing a good job of getting the deer out there that people like to see, or the moose or whatever it is. So that is a given that they are doing a good job. If you want to add hikers and everyone else to the commission, is that a good idea? Yes, it is not a bad idea. I can't say that it is a bad idea to have a diversion of opinions, but what I had to do in forming this bill is "look, am I going to take a system that is working very well," because obviously it is working because of the amount of herds of wildlife that we have now, and simply just inject into that something that may not be what I felt, would be entirely constructive. Not destructive, but entirely constructive. I didn't reach the level of saying that changing this commission to add those other people is a good enough idea to vote for it. That is why I voted no. I think that the Fish and Game Commission is doing a very good job providing for the benefits of the hunters, fishermen, hiking and even people like me who prefer to be more mobile in the exercise of viewing the beauty of the people of the states by looking at it through the car.

SENATOR FERNALD: I think that my point was, that in a democracy, we like to encourage all voices, because people with different backgrounds may have different objectives and different ideas, and I guess my follow-up question would be, given what you have said, should we restrict membership in the Senate to the Wildlife Committee to those people who fit this criteria?

SENATOR TROMBLY: No. I would restrict members of the Senate in other ways, but I am not certain that I could get that through here. To answer that, Senator Fernald, I think that you missed the point that I tried to make to Senator D'Allesandro. People who hunt are also hikers, as is everybody that you want to add to this board, so you have that point

of view. I don't think that the Fish and Game Commission takes a strict tunnel vision view of their charge. I don't think that they say, "if this is good for the hunter, that is the only thing that we will do, or if this is good for the fishing, this is the only thing that we will do." I think that the people on that board already reflect the view of the people that you want to add. So I didn't know by expanding the commission what the net gain was, so I voted no.

SENATOR GORDON: Senator Trombly, I guess the issue here is there are two separate issues. I think that one involves management of Fish and Game. The other issue involves money.

SENATOR TROMBLY: The management of Fish and Game, you mean the Wildlife and not the bureaucracy?

SENATOR GORDON: No, actually just in terms of the commission itself, because I have a sense that the commission was established with the idea that we wanted to promote Fish and Game, and that Fish and Game has taken on greater responsibilities in terms of having the statutory responsibilities to manage all wildlife in the state at this point in time. So there's that responsibility and I am not sure whether anyone questions whether the current makeup of the commission does that properly, but the issue is the allocation of how it spends money, and that is really what our battles have been about here in the Senate over the last year. How are they going to spend those funds? Wouldn't you think that rather than have a bill where we just decide that we are going to expand the commission by three members with questionable results, particularly since it doesn't represent our majority, and we all do want to promote diversity, but I am not sure that is going to have some type of measurable result; wouldn't it be better to look at a bill that disconnects the finances, in particular, the fees that are charged from the management of the department? That would be a better way to attack this problem than to just simply change the numbers of the members on the board?

SENATOR TROMBLY: I would agree with you, Senator Gordon, on that, but I am not certain that while some people complain that Fish and Game is funded entirely through fees and that is unfair, that if you proposed your question to them, that they would agree as readily as I did. Do you agree with that?

SENATOR GORDON: As soon as I figure it out, I probably will.

SENATOR F. KING: I won't take up too much time, but this has been an interesting debate and as I sat here, it suddenly occurred to me that perhaps the Senate is not directing its efforts in the right way. I would offer an observation that if the legislature had done as good a job of managing the state finances as the Fish and Wildlife Commission has done in managing the wildlife of this state, that we would be a lot further today. So maybe we ought to think about that rather than about this.

SENATOR ROBERGE: There has been some plan of what, to change the name of Fish and Game to Fish and Game Recreation? They would like to expand their powers and in fact they have expanded their powers in recent years. So I would be very much in favor of adding three more people from the general public to that board. I see no reason against it. Why are they objecting to it if there is no good reason? No one here has really given me a good reason why not to. I am going to vote for this bill and against inexpedient to legislate.

Recess.

Out of Recess.

Question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Disnard.

Seconded by Senator Trombly.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Eaton, Squires, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm.

The following Senators voted No: Roberge, Fernald, Wheeler, Cohen.

Yeas: 18 - Nays: 4

Committee report of inexpedient to legislate is adopted.

SUSPENSION OF THE RULES

Senator Gordon moved that the Rules of the Senate be so far suspended to allow a committee report not advertised in the Senate Calendar.

Adopted by the necessary 2/3 vote.

SB 210-FN-L, relative to payment by the state for certain court-ordered placements of special education students.

Senator Gordon moved ought to pass.

SENATOR GORDON: Senate Bill 210 requires the state to pay the full cost of special education services to all court-ordered out-of-district special education pupils. This bill is the result of the 1998 Special Education Commission which was created as a result of SB 462. Passage of SB 210 will help alleviate the financial distress court-ordered out-of-district special education placements can create for the district that the child is placed in. Last spring, the Education Committee recommended this bill ought to pass by a unanimous 9-0 vote, and was adopted by this body by voice vote. I urge your continued support for SB 210 so that this can go back to the Finance Committee for their consideration. Just in terms and for further explanation, I represent the small town of Rumney, and Rumney happens to have a facility located in town, and there are many court-ordered placements. When there are troubled children in Manchester or Nashua or other communities, the court will order them to be placed there. What happens is that they attend the public school. When they attend the public school, the cost of their education has to be included in the Rumney school budget. What this has done in the past for a very, very small town like Rumney, it has been a huge financial burden for them. There are alternatives which we have dealt with in the past, in terms of allowing the town to borrow money in anticipation of their expense, interest free from the state. But the fact is, that this is a big problem. They can get reimbursement from the district that the kids are coming from, if they can figure out what district that is. What this bill would do is say that if the court, state orders the placement of a child, simply, that the state has a responsibility to make sure that the town is reimbursed for those services. In conjunction with what we have just done in terms of education funding, that seems perfectly reasonable. I would indicate that the Department of Education indicates that it has the money to fund this currently. The purpose of this today is...the reason that we are suspending the rules today is, because we voted yesterday, in the Education Committee, unanimously, to send this to the Finance Committee. But because

it wasn't on the calendar today, that meant that it wouldn't be heard until next week, and we are bringing it out early, in order to send it to the Finance Committee so that it could come back out next week and be acted upon. I would urge your support.

SENATOR MCCARLEY: I would like to speak briefly, so I echo Senator Gordon. It is both a youth policy issue and also a financial implication. Because we had not realized, in terms of getting it to Finance February 3, that the bill would be dead because it is a 1999 bill. I would certainly encourage the entire Senate to support this suspension motion and send it to Finance.

SENATOR DISNARD: I support the bill, I just wish to call an error in the methodology.

Adopted.

Referred to the Finance Committee (Rule #24).

HOUSE MESSAGE

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

SB 89-L, relative to library trustees.

SENATE NONCURS AND REQUESTS A COMMITTEE OF CONFERENCE

SB 89-L, relative to library trustees.

Senator Cohen moved to noncur and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Brown, Trombly, J. King

HOUSE MESSAGE

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

SB 222-FN-A-L, relative to guarantee of loans to local development organizations.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 222-FN-A-L, relative to guarantee of loans to local development organizations.

Senator D'Allesandro moved to concur.

Adopted.

HOUSE MESSAGE

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

SB 29-L, relative to the proper sheltering of dogs.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 29-L, relative to the proper sheltering of dogs.

Senator Disnard moved to concur.

Adopted.

HOUSE MESSAGE

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

SB 176, relative to technology support for individuals and making an appropriation therefor.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 176, relative to technology support for individuals and making an appropriation therefor.

Senator Squires moved to concur.

Adopted.

HOUSE MESSAGE

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

SB 162, providing for the licensure and regulatory oversight of voluntary small employer health insurance purchasing alliances.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 162, providing for the licensure and regulatory oversight of voluntary small employer health insurance purchasing alliances.

Senator Wheeler moved to concur.

Adopted.

MOTION TO VACATE

Senator Cohen moved to have **SB 303**, relative to campaign contributions by corporations, vacated from the Executive Departments and Administration Committee to the Public Affairs Committee.

Adopted.

HOUSE MESSAGE

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

SB 86, relative to enforcement of the collection and payment of county taxes by the county treasurer.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 86, relative to enforcement of the collection and payment of county taxes by the county treasurer.

Senator Below moved to concur.

Adopted.

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session and that the business of the last session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

ANNOUNCEMENTS

LATE SESSION

Senator Cohen moved that the Senate be in recess for the purpose of House Messages, introduction of bills, Enrolled Bills Reports and amendments, and that when we adjourn, we adjourn until Thursday, February 3, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

SB 46-FN, relative to the applicability of mooring permit requirements.

HB 75, changing the number required for a quorum on the commission for human rights.

HB 422, relative to advertising by rent-to-own businesses.

HB 448, relative to the board of dental examiners and the regulation of dentists and dental hygienists.

HJR 6, encouraging the revitalization of the northern rail line from Concord to Lebanon.

In recess.

Out of Recess.

HOUSE MESSAGE

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

HB 53, relative to qualifications and appointments of marital masters.

HB 226-L, establishing municipality bond payment schedules and percentages.

HB 246, relative to personnel transfers at the department of safety.

HB 254-L, establishing a committee to study building inspector liability and other related matters.

HB 273-FN-L, establishing a school building aid oversight committee.

HB 279-FN-A, relative to refinancing the cost and rehabilitation of the Cheshire Bridge.

HB 297-FN, permitting a jury trial in the superior court for alleged violations of the state law against discrimination for a certain time period or with the written assent of the commission for human rights after an action has been filed with the commission.

HB 304, relative to school employee and volunteer background investigations.

HB 310, providing that the department of agriculture, markets, and food shall not conduct meat inspections unless and until such time as the United States Department of Agriculture withdraws its meat inspection program from the state.

HB 312, relative to the carrying of firearms in courthouses.

HB 387, relative to local telephone calling areas, access charges, and competitive telephone services.

HB 407, establishing a committee to study unsolicited commercial telephone solicitation calls.

HB 427, relative to the laws requiring a prescription to possess hypodermic needles and modifying the drug paraphernalia laws applying to syringes

HB 457, extending the committee to study electric rate reduction financing.

HB 514-L, relative to change of school assignment and transfers of public school pupils.

HB 521-L, allowing municipalities that have adopted the municipal budget act to override the 10 percent limitation on exceeding appropriations recommended by the budget committee.

HB 522, relative to the public's access to sex offender registry information.

HB 568, establishing a program for performance evaluations of judges.

HB 569, relative to the tax credit for service-connected total disability.

HB 617-FN-A-L, relative to funding and monitoring seacoast harbor issues.

HB 618-FN-A, establishing a voucher program for smoking cessation

HB 628, relative to the relocation of the principal residence of a child.

HB 630-FN-L, relative to the Skyhaven airport transfer plan.

HB 683-FN, requiring teachers and school administrators to report incidents of disruptive behavior by students.

HB 699-FN-A, establishing the granite state scholars program and making an appropriation therefor.

HB 730-FN, establishing a house committee to review methods for recording committee sessions, authorizing a request for proposals, and making an appropriation therefor.

HB 733, relative to a state master plan for the deployment of personal wireless service facilities.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 53-733 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 53, relative to qualifications and appointments of marital masters.
Judiciary

HB 226-L, establishing municipality bond payment schedules and percentages. **Banks**

HB 246, relative to personnel transfers at the department of safety. **Executive Departments and Administration**

HB 254-L, establishing a committee to study building inspector liability and other related matters. **Insurance**

HB 273-FN-L, establishing a school building aid oversight committee. **Education**

HB 279-FN-A, relative to refinancing the cost and rehabilitation of the Cheshire Bridge. **Transportation**

HB 297-FN, permitting a jury trial in the superior court for alleged violations of the state law against discrimination for a certain time period or with the written assent of the commission for human rights after an action has been filed with the commission. **Judiciary**

HB 304, relative to school employee and volunteer background investigations. **Education**

HB 310, providing that the department of agriculture, markets, and food shall not conduct meat inspections unless and until such time as the United States Department of Agriculture withdraws its meat inspection program from the state. **Public Institutions, Health and Human Services**

HB 312, relative to the carrying of firearms in courthouses. **Judiciary**

HB 387, relative to local telephone calling areas, access charges, and competitive telephone services. **Executive Departments and Administration**

HB 407, establishing a committee to study unsolicited commercial telephone solicitation calls. **Executive Departments and Administration**

HB 427, relative to the laws requiring a prescription to possess hypodermic needles and modifying the drug paraphernalia laws applying to syringes. **Public Institutions, Health and Human Services**

HB 457, extending the committee to study electric rate reduction financing. **Energy and Economic Development**

HB 514-L, relative to change of school assignment and transfers of public school pupils. **Education**

HB 521-L, allowing municipalities that have adopted the municipal budget act to override the 10 percent limitation on exceeding appropriations recommended by the budget committee. **Public Affairs**

HB 522, relative to the public's access to sex offender registry information. **Judiciary**

HB 568, establishing a program for performance evaluations of judges. **Judiciary**

HB 569, relative to the tax credit for service-connected total disability. **Insurance**

HB 617-FN-A-L, relative to funding and monitoring seacoast harbor issues. **Environment**

HB 618-FN-A, establishing a voucher program for smoking cessation. **Public Institutions, Health and Human Services**

HB 628, relative to the relocation of the principal residence of a child. **Education**

HB 630-FN-L, relative to the Skyhaven airport transfer plan. **Transportation**

HB 683-FN, requiring teachers and school administrators to report incidents of disruptive behavior by students. **Education**

HB 699-FN-A, establishing the granite state scholars program and making an appropriation therefor. **Education**

HB 730-FN, establishing a house committee to review methods for recording committee sessions, authorizing a request for proposals, and making an appropriation therefor. **Internal Affairs**

HB 733, relative to a state master plan for the deployment of personal wireless service facilities. **Energy and Economic Development**

2000-3153-EBA

04/09

Enrolled Bill Amendment to HB 448

The Committee on Enrolled Bills to which was referred HB 448

AN ACT relative to the board of dental examiners and the regulation of dentists and dental hygienists.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 448

This bill makes a correction to the effective date.

Enrolled Bill Amendment to HB 448

Amend section 30 of the bill to read as follows:

30 Effective Date. This act shall take effect July 1, 2000.

Senator Trombly moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bill sent down from the Senate:

SB 116, eliminating straight ticket voting.

HOUSE MESSAGE

The House of Representatives has passed a bill with the following title in the passage which it ask concurrence of the Senate:

HB 235-FN-A, increasing exemptions under the interest and dividends tax.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill numbered 235 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 235-FN-A, increasing exemptions under the interest and dividends tax. **Ways and Means**

January 20, 2000

2000-3147-EBA

01/09

Enrolled Bill Amendment to SB 176-FN-A

The Committee on Enrolled Bills to which was referred SB 176-FN-A AN ACT relative to technology support for individuals and establishing a committee to study certain assistive technology services provided statewide.

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

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to SB 176-FN-A**

This amendment corrects the title of the bill to accurately reflect the contents of the bill

Enrolled Bill Amendment to SB 176-FN-A

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

AN ACT establishing a committee to study certain assistive technology services provided statewide.

Senator Trombly moved adoption.

Adopted.

Report of committee on enrolled bills

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

SB 29, relative to the proper sheltering of dogs.

SB 86, relative to enforcement of the collection and payment of county taxes by the county treasurer.

SB 162, authorizing licensure and regulatory oversight of voluntary small employer health insurance purchasing alliances.

SB 176, establishing a committee to study certain assistive technology services provided statewide.

HB 448, relative to the board of dental examiners and the regulation of dentists and dental hygienists.

Senator D'Allesandro moved adoption.

Adopted.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, February 3, 2000 at 10:00 a.m.

Adopted.

Adjournment.

February 3, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

As I was driving to my polling place day before yesterday, I was still having a vigorous conversation with myself about who I was going to vote for. And I thought of all of you and realized that I only have to go through that arduous process once or twice a year. You have to decide how to vote every time you come into this room. I am impressed! Sometimes the decision is difficult because there seems to be more than one very good option before you. How to choose? Sometimes the choice is hard because all of the options appear to be so much less than you would wish. What's my least worst choice here? Today, once again, you and the House and the Governor embark on that arduous process of considering the options, not your options, really, not theirs and not hers, but ours. And then you get to choose from amongst our various options for us. That's a pretty scary job, but I trust you together to do it, and so do a lot of others. Don't forget that. Let us pray:

Gracious, loving, and wise Lord of limitless options, pry open the minds and hearts of the good people who work here, Senators, staff members, reporters and even lobbyists. When they are right, strengthen them, when they are wrong, forgive them, when they are confused, inform them, and when they are afraid, protect them. And at the end of the day, may they boldly and brilliantly make the choices You and we, have put them in this place to make. And all will be well. Amen.

Senator Fernald led the Pledge of Allegiance.

NOTICE OF RECONSIDERATION

Senator Cohen served notice of reconsideration on **SB 89-L**, relative to library trustees.

HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of hearing the State of the State address by her Excellency, Governor Jeanne Shaheen.

In recess for Joint Convention.

Out of Recess.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

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

SB 186-FN, relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance.

**SENATE NONCONCURS AND REQUESTS A
COMMITTEE OF CONFERENCE**

SB 186-FN, relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance.

Senator Wheeler moved nonconcurrency and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: J. King, F. King, Wheeler

HOUSE MESSAGE

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

SB 143, relative to penalties for incest.

**SENATE NONCONCURS AND REQUESTS A
COMMITTEE OF CONFERENCE**

SB 143, relative to penalties for incest.

Senator Pignatelli moved nonconcurrency and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Pignatelli, Squires, Brown

HOUSE MESSAGE

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

SB 147, relative to self-referrals for chiropractic care under managed care organizations.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 147, relative to self-referrals for chiropractic care under managed care organizations.

Senator Wheeler moved concurrence.

Adopted.**HOUSE MESSAGE**

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

SB 36-FN-A, relative to salary increases for direct care providers for persons with developmental and acquired disabilities.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 36-FN-A, relative to salary increases for direct care providers for persons with developmental and acquired disabilities.

Senator Squires moved concurrence.

Adopted.

COMMITTEE REPORTS

SB 79, requiring vendors who operate electronic customer service terminals to disclose to customers if they place floor holds on or charge other fees to the bank accounts of customers using ATM cards at such terminals. Banks Committee. Vote 3-0. Inexpedient to Legislate, Senator Klemm for the committee.

SENATOR KLEMM: This bill would have required vendors to disclose to consumers if they put a hold on the consumer's account or charge a fee if the consumer uses a debit card for a transaction. The issue regarding the varying uses of debit cards is complex. Because it has not been shown to be a common occurrence, the committee, after further review, recommends this bill inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 97, relative to testamentary trusts which are institutional funds. Banks Committee. Vote 3-0. Ought to pass with amendment, Senator Fraser for the committee.

2000-3209s

09/10

Amendment to SB 97

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

AN ACT relative to charitable trusts which are institutional funds.

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

1 Management of Institutional Funds; Declaration of Purpose. Amend RSA 292-B:1 to read as follows:

292-B:1 Declaration of Purpose. It is hereby declared to be in the public interest and to be the policy of the state to promote, by all reasonable means, the maintenance and growth of eleemosynary institutions by encouraging them *and those who manage one or more charitable trusts which are for the sole benefit of eleemosynary institutions or other charitable purposes* to establish and continue investment policies, without artificial constraints, which will provide them with the means to meet the present and future needs of such eleemosynary institutions *and charitable purposes* pursuant to the provisions of this act. To this end it is hereby declared to be in the public interest and to be the policy of the state to encourage such institutions to adopt investment policies whose objective is to obtain the highest possible total rate of return consistent with the standard of prudence.

2 Definition of Institutional Fund. RSA 292-B:1-a, II is repealed and reenacted to read as follows:

II. "Institutional fund" means a fund held for or by an institution for its exclusive use, benefit, or purposes, and includes a fund held by a trustee for one or more institutions or other charitable purposes in which no beneficiary that is not an institution or charitable beneficiary has an interest, other than possible rights that could arise upon violation or

failure of the purposes of the fund. The term "institutional fund" shall not include a fund held by a town or other municipality under RSA 31:19 or a fund created by a town or other municipality under RSA 31:19-a.

3 Definition of Endowment Fund. Amend RSA 292-B:1-a, III is repealed and reenacted to read as follows:

III. "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable *to or* by ~~[the]~~ *an* institution on a current basis under the terms of the applicable gift instrument.

4 Definition of Historic Dollar Value; Gift Instrument. Amend RSA 292-B:1-a, V and VI to read as follows:

V. "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution *or one who holds the institutional fund* is conclusive.

VI. "Gift instrument" means a will, deed, grant conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held *for or* by an institution as an institutional fund.

5 Rule of Construction. Amend RSA 292-B:3 to read as follows:

292-B:3 Rule of Construction. RSA 292-B:2 does not apply if the applicable gift instrument indicates the donor's *specific* intention that net appreciation shall not be expended *or that the provisions of RSA 292-B shall not apply to gifts made under the gift instrument*. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this chapter.

6 Standard of Conduct. Amend RSA 292-B:6 to read as follows:

292-B:6 Standard of Conduct. In the administration of the powers to appropriate appreciation, to accumulate income or add income to principal, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ~~[ordinary business care and prudence]~~ *general standards of prudent investment as defined under RSA 564-A* under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions. Provided, however, the appropriation of appreciation in any year in an amount greater than 7 percent of the fair market value of the assets of the institution's endowment funds (calculated on the basis of market values determined at least quarterly and averaged over a period of 3 or more years) shall create a rebuttable presumption of imprudence on the part of the governing board.

7 Release of Restrictions on Use or Investment. Amend RSA 292-B:7, II to read as follows:

II. If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the

governing board may apply in the name of the institution *or institutional fund* to the [~~superior~~] *probate* court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

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

2000-3209s

AMENDED ANALYSIS

This bill allows the governing body managing a charitable trust which is an institutional fund to appropriate expenditures from the realized and unrealized net appreciation in the fair value of the charitable trust.

SENATOR FRASER: Madame President, SB 97 would allow trustees of all charitable trusts to elect to be covered by the institutional funds management act RSA 292-B. This act permits expenditures of a portion of the principal of the trust fund. This would allow trustees to establish sense spending policies for the trust or to use a portion of the principal for distribution to the charity if needed. The agreed upon amendment ensures proper safeguards regarding these spending policies, and references prudent spending standards. The committee recommends this bill ought to pass as amended.

Amendment adopted.

Ordered to third reading.

CACR 23, relating to the responsibility and authority of the general court to determine the content, extent, and funding of a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education, and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education, by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state, or the political subdivision in which they are imposed. Education Committee. Vote 5-4. Inexpedient to Legislate, Senator McCarley for the committee.

Senator McCarley moved to have **CACR 23**, relating to the responsibility and authority of the general court to determine the content, extent, and funding of a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education, and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education, by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state, or the political subdivision in which they are imposed, laid on the table.

Adopted.

LAID ON THE TABLE

CACR 23, relating to the responsibility and authority of the general court to determine the content, extent, and funding of a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education, and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education, by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state, or the political subdivision in which they are imposed.

HB 311-FN-A, relative to grants made under the New Hampshire incentive program. Education Committee. Vote 9-0. Inexpedient to Legislate, Senator McCarley for the committee.

SENATOR MCCARLEY: House Bill 311 makes part-time students eligible for grants under the New Hampshire Incentive Program, which are currently only available to full-time students. The Education Committee is generally supportive of measures that improve access to higher education; however, the House Finance Committee removed the additional funding proposed for the program. The prime sponsor is no longer supportive of HB 311 as written, as passage of the bill would make more students eligible for the same total amount of grant money, thus decreasing the grant amount awarded per pupil. The Senate Education Committee voted 9-0 inexpedient to legislate, and I would urge your support. I should say that the prime sponsor of the bill in the House asked us to do this as well because his intent was never to reduce grants to full-time students.

Committee report of inexpedient to legislate is adopted.

HB 690-FN-L, relative to charter schools and open enrollment districts. Education Committee. Vote 5-4. Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: Although New Hampshire has had charter school legislation on the books for quite a few years, we still do not have a single charter school operating in this state. We see a movement across the country and in our neighboring states to allow choice in education, via a public charter school, but most attempts in New Hampshire have failed. As a matter of fact, our neighbor in Massachusetts, at my last count, had 21 charter schools, and the growth that they expect to have in the next year or two is phenomenal. HB 690 establishes an alternative process for the approval of charter schools. It allows the charter school application to be submitted directly to the state Board of Education for approval, rather than having a vote at the local level prior to state board approval. House Bill 690 also provides that each pupil's resident district, shall pay to the charter school, the per pupil adequate education cost established in RSA 198:40, which is the adequate education grant formula from HB 117. The alternative approval process retains an appeal process, and the local district will still have the final vote to fund and approve schools. Passage of this bill may help proposed charter schools get off the ground. I ask for your support of the ought to pass motion.

SENATOR MCCARLEY: When we looked at this bill in committee, back in the spring and again briefly this fall, I think that many of us who have been associated with public school boards these days, actually believe that the kind of flexibility associated with some of the charter school propos-

als are good things. Matter of fact, I think that they are very good things, but there has certainly been concern about having the local communities feel that they are not taking money from their current public schools to put into another form of a public school, a charter school. I think that the world changed a lot this spring, when we looked at actually funding some level of adequacy for every student in the state of New Hampshire. I am not clear, and I am not at all sure that the language in this bill actually can be interpreted to tell us what we are talking about for those per pupil cost issues. It came up at the hearing, and I think that it is conceivably an actual flaw in the bill. I also think that because things have changed in terms of how we fund education, that while people feel that this stuff has been studied to death, that I really wanted a chance to keep this alive. I offered an amendment to put onto it that would establish a study committee, to let us have one more look, because of how the world has changed. It did not pass in committee, but I am asking you for the opportunity, and I will tell you that I will be bringing a floor amendment in if this current language passes on this vote. I will be offering a floor amendment to go back to that because I think that we are actually, fundamentally, about to pass a piece of legislation that is flawed. We can blame the process, and we can blame the system, because we ran out of time, and everything happened quickly at this time of the year, but I think that there are actually problems with this bill as it is written that will make it very hard to interpret. So beyond the issue of skipping the local control issue and going straight to the State Board for the first vote, which I have some concerns about, but even setting that aside, I think that there are some potential flaws in the legislation. I would encourage people to consider the floor amendment.

SENATOR LARSEN: I think that there is a reason why you haven't seen school districts establishing charter schools. Yes, as we created it, and I had trouble with it even when it was being created. As we created it we made it a more difficult standard, but we kept local control. This bill loses local control. This bill says that you can skip over your local school board and go right to the state board, get them to approve it. This bill also... I remember the debates back on charter schools when this statute was created, and the argument was in fact, charter schools would operate for less. Now this bill eliminates the 80 percent of the average school costs and gives them 100 percent. We know our public schools are having trouble operating with the monies that they have. Now we are going to allow 100 percent of the funding of these students to be shifted into the private market. These are schools that don't have to have the same teacher certification standards. These schools have potential, they need to be studied further. We need to see if we can create charter schools within the public school system, not sapping money that is already tight in our schools away from those schools. I say that we need to take time to study this, and I will be supporting the floor amendment that is about to come.

SENATOR JOHNSON: I just want to say that as a school board member in following this scenario for a number of years, I find that there is undue influence at the local level. I think that if you are looking at local control, I think that the parents of the children who would like to propose a charter school, should be the ones who decide that. By going to the state board, that could happen. Remember, it still has to come back to the district for the funding, so at that point, if the district was not comfortable with it, they could demand that the funding would not be there.

SENATOR D'ALLESANDRO: I speak in opposition to the pending motion. I have been a member of the local school board for the last 10 years and I represent the largest population of students in the state of New Hampshire. I think that bypassing the local board is a critical error. We are elected representatives. We are elected by the people in our district. To bypass us in terms of this movement, I think, is a critical error. I don't have any opposition to charter schools. The only school board in the city of Manchester have welcomed charters coming before us. They just haven't been present. This step pushes us to the side and completely eliminates elected members of the school board in Manchester, allows people to go directly to the state board of education, and then return to the people. I think that it is a flawed process and I believe that the concept of studying this and making it a better process is one that deserves consideration. Thank you very much.

SENATOR GORDON: I will be very brief. I think that one of the concerns that I have had, well I have two concerns. One is that I entered into the Senate close to six years ago, we were talking about establishing charter schools, and I am not aware if there is one operating charter school in the state at this time. I think that tells us something. That there is a problem here. Why isn't that? If in fact we believe that inherently, there are some good qualities in charter schools as has been indicated, it would seem that over the course of six years that we might have found a process that would enable them to be put into place. I think that one of the concerns that I have had is that this issue of going to a local school district because that is necessarily where the charter school is going to be located, because the basic concept of the charter school doesn't necessarily mean it is only going to accommodate the needs of a particular community. In fact, by its very nature, a charter school, as we have talked about it before, should accommodate the needs of a variety of communities. Hopefully, if they were to work in a proper way, may even be specialized to the point, where they would provide special services, or a special form of education that would attract students from all over the state. So to put the decision in the hands of one single local school board to decide whether or not having this charter school is a good idea, I am not sure is the proper thing to do, because what the interest is here, is a statewide interest. It is not just a local interest. So I think that the idea of applying to the state school board, with the idea of getting a basic level of approval, is an appropriate approach, and then allowing the local school district to decide ultimately whether or not it wants to provide funding for its students to go to that charter school. It makes all the sense in the world to me. I just think that it is very logical in a very logical approach. I probably agree with Senator McCarley that that isn't the perfect bill, but unfortunately, after six years, I am not sure that I have found one. What happens as it does quite frequently, and that is certainly true with charter schools, we have had to correct a number of bills, and if that needs to be done, I think that we can accommodate that in the process that we have in place.

SENATOR MCCARLEY: Very briefly. Again, I think that it is potentially, an unintended consequence, but one of the other things that this language did was, it actually removed what had been in an original charter school legislation, involving allowing a student preference in the community in which the charter school was going to be located in. That has been removed. **TAPE CHANGE** The local community no longer has the assurance that their children in the community where the school is going to be, are actually going to have preference to get into the school.

I am not sure that is going to be a good selling point to the local community for that charter school. So we could actually have the unintended consequence of discouraging a local community, because they don't have the guarantee that the kids and parents who are interested in trying to set this up, their kids are going to get a preference. Again, I don't know if that was intended or unintended, but it is a reality of what we have ended up with in the language. Thank you.

Question is on the motion of ought to pass.

A roll call was requested by Senator Francoeur.

Seconded by Senator McCarley.

The following Senators voted Yes: Gordon, Johnson, Below, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Klemm.

The following Senators voted No: F. King, Fraser, McCarley, Trombly, Disnard, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.

Yeas: 12 - Nays: 12

Motion failed.

Senator Trombly moved to refer to interim study.

Recess.

Out of Recess.

Senator Trombly withdrew his motion for referring to interim study.

RECONSIDERATION

Senator Trombly having voted with the prevailing side moved reconsideration on **HB 690-FN-L**, relative to charter schools and open enrollment districts, whereby we voted down the motion of ought to pass.

Adopted.

Senator Trombly moved ought to pass.

Adopted.

Senator McCarley offered a floor amendment.

2000-3259s

04/09

Floor Amendment to HB 690-FN-LOCAL

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

AN ACT establishing a committee to study charter schools and open enrollment school districts.

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

1 Committee Established. There is established a committee to study the application procedures relative to charter schools and admission preferences relative to charter schools and open enrollment school districts.

2 Membership and Compensation.

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

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

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

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

3 Duties. The duties of the committee shall be:

I. To study the application procedures relative to charter schools, including the feasibility of implementing alternative application procedures for the establishment of charter schools.

II. To study admission preferences used in charter schools and open enrollment school districts.

III. To study any other issue deemed in furtherance of the committee's objectives.

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

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2000.

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

2000-3259s

AMENDED ANALYSIS

This bill establishes a committee to study application procedures relative to charter schools and the admission preferences used in charter schools and open enrollment school districts.

SENATOR MCCARLEY: As it is being passed out, since we have already heard some of the discussion, and I have indicated what is in the floor amendment, the floor amendment establishes a Senate study committee to deal with the issues of applications and procedures of charter schools. I would encourage you to consider this and to pass it. Thank you.

Floor Amendment adopted.

Ordered to third reading.

SB 219-FN-L, establishing a procedure for providing educational improvement assistance to local school districts. Education Committee. Vote 5-3. Ought to pass with amendment, Senator McCarley for the committee.

2000-3073s

04/09

Amendment to SB 219-FN-LOCAL

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

AN ACT establishing a procedure for providing educational improvement assistance to local school districts and making an appropriation therefor.

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

2 Adequate Public Education; Delivery of an Adequate Public Education; Local Educational Improvement Plan. RSA 193-E:3 is repealed and reenacted to read as follows:

193-E:3 Delivery of an Adequate Education. In order to implement New Hampshire's policy of providing all students with the opportunity

to acquire an adequate education, each school district shall put in place and evaluate the assessment and performance indicators outlined in this section, which shall be collectively known as quality standards.

I. By June 30, 2002, and every 3 years thereafter, each school district, through a process involving parents, teachers, employers, and other community members, shall prepare and implement a local education improvement and assessment plan which shall be aligned with the state-wide education improvement and assessment program established in RSA 193-C, and which shall be designed to improve student achievement within each school in the district. Each such plan shall be filed with the department of education. The department of education shall comment to the district on the plan in a timely fashion. At a minimum, the plan shall include the following assessment and performance indicators:

- (a) Curriculum and proficiency standards for all students.
- (b) School and district performance goals based on reported data on educational indicators listed in paragraph II.
- (c) Procedures for aligning curriculum, instructional practices, and student and programmatic assessments, including annual reporting of results.
- (d) Local assessment measures which focus on individual student performance.

- (e) Role of support services and programs.
- (f) Role of instructional leadership.
- (g) Strategies to promote family and community involvement; and
- (h) Staff supervision and evaluation and performance-based professional development.

II.(a) Each school district shall annually demonstrate that it has met or exceeded its own school and district indicators for achievement or improvement established by the school district in accordance with rules adopted by the state board of education.

(b) By July 15, 2000, each school district shall report to the department of education its data for the previous school year on its school and district performance indicators. The requirements for data keeping and the form of the report shall be established in accordance with rules adopted by the state board of education. Performance indicators shall include the following areas:

- (1) Attendance and dropout rates.
- (2) School environment indicators, such as safe-school data.
- (3) Proportion of graduating students going on to post-secondary education, military service, and the workplace; and
- (4) Performance on state tests administered pursuant to RSA 193-C and other standardized tests administered at local option.

(c) In addition, local districts shall report on locally developed performance indicators and assessment measures.

III. Each public elementary, middle, junior high, and high school in the school district shall meet the standards for school approval adopted by the state board of education.

IV. Beginning December 1, 2002, and annually thereafter, the commissioner of education shall determine the extent to which each school district is meeting its quality standards established pursuant to paragraphs I, II, and III of this section. A school district that meets or exceeds its quality standards shall be recognized in accordance with RSA 193-E:4, II. A school district that does not meet its quality standards shall be designated by the commissioner of education as a school district in need of assistance. Each year, the commissioner of education shall

provide a report of such determinations to the governor and council, state board of education, speaker of the house, president of the senate, and chairs of the house and senate committees responsible for education and finance.

V. Beginning no later than December 1, 2000, and annually thereafter, the department of education shall issue a report on the condition of education statewide and on a district-by-district and school-by-school basis. This report shall include demographic and student performance data including, but not limited to, school and district performance on state tests administered pursuant to RSA 193-C, other standardized tests administered at local option by at least 25 percent of school districts, data provided under paragraph I of this section, as well as other relevant statistics. Comparisons with state averages and with the condition of each district and school in comparison with previous years shall be provided, including, but not limited to, statewide rankings of each district and school on the state tests administered pursuant to RSA 193-C and on other standardized tests administered at local option by at least 25 percent of the school districts. The report shall be organized and presented in a manner that is easily understood by the public and that assists each school board with the identification of trends, strengths, and weaknesses and the development of its local education improvement and assessment plan.

3 New Sections; Adequate Public Education; Education Improvement Assistance to Local School Districts. Amend RSA 193-E by inserting after section 3 the following new sections:

193-E:4 Educational Assistance to Local School Districts.

I.(a) Within 60 days of the issuance of the annual report on the condition of education as provided in RSA 193-E:3, V each school board shall provide an opportunity for public discussion of the report at a meeting of the board called for the exclusive purpose of reviewing the report. At least 7 days advance public notice shall be given.

(b) Once a school district has implemented a local educational improvement and assessment plan pursuant to RSA 193-E:3, I, this plan shall be discussed at the public meeting provided for in subparagraph I(a) of this section.

II. A school district that has been identified pursuant to RSA 193-E:3, IV as meeting or exceeding its quality standards shall receive formal recognition from the state board of education and the governor. Any school district, school, or teacher that demonstrates a best practice worthy of recognition shall also receive formal recognition from the state board of education and the governor. Such school districts, schools, or teachers shall be eligible to apply for grants from the special projects and improvement fund administered by the department of education pursuant to RSA 193-E:8.

III.(a) A school board, in response to the annual report on the condition of education, may request from the department of education the assistance available under paragraph IV.

(1) If a school board requests assistance on behalf of a school district that has not been designated as a school district in need of assistance pursuant to RSA 193-E:3, IV, then the assistance requested under paragraph IV to be provided by the department of education shall be based on the availability of resources as determined by the commissioner of education.

(2) If a school board requests assistance on behalf of a school district that has been designated as a school district in need of assistance, then the school or district shall receive assistance from the department of education in accordance with subparagraph IV(a)(2).

(b) If a school board has received notice pursuant to paragraph VI, then the school district shall receive assistance from the department of education in accordance with subparagraph IV(a)(3).

IV. The department of education and the state board of education shall work cooperatively with school boards to provide assistance as follows:

(a)(1) Within 30 days of a school board's request for assistance pursuant to subparagraph III(a)(1), the commissioner of education may appoint a quality assurance team to review the educational programming and effectiveness of the school district. In cooperation with local officials, the team shall prepare and present a report at a regularly scheduled public meeting of the local school board and to the state board of education. This report shall be issued within 4 months of the team's appointment. Based on this report, the local school board and superintendent shall, within 6 months of the issuance of the report, prepare a corrective action plan and submit it to the state board of education for approval. If the plan is not approved, the local school board may revise the plan and resubmit it to the state board. The school board may decide to implement the corrective action plan on its own, through the use of a technical assistance advisor, or through the use of a peer review team. Any such decision shall be included in the corrective action plan.

(2) Within 30 days of a school board's request for assistance pursuant to subparagraph III(a)(2), the commissioner of education shall appoint a quality assurance team to review the educational programming and effectiveness of the school district. In cooperation with local officials, the team shall prepare and present a report at a regularly scheduled public meeting of the local school board and to the state board of education. This report shall be issued within 4 months of the team's appointment. Based on this report, the local school board and superintendent shall, within 6 months of the issuance of the report, prepare a corrective action plan and submit it to the state board of education for approval. The school board may decide to implement the corrective action plan on its own, through the use of a technical assistance advisor, or through the use of a peer review team. Any such decision shall be included in the corrective action plan.

(3) Within 30 days of the issuance of a notice to a school board pursuant to paragraph VI, the commissioner of education shall appoint a quality assurance team to review the educational programming and effectiveness of the school district. In cooperation with local officials, the team shall prepare and present a report at a regularly scheduled public meeting of the local school board and to the state board of education. This report shall be issued within 4 months of the team's appointment. Based on this report, the local school board and superintendent shall, within 6 months of the issuance of the report, prepare a corrective action plan and submit it to the state board of education for approval. The school board may decide to implement the corrective action plan on its own, through the use of a technical assistance advisor, or through the use of a peer review team. Any such decision shall be included in the corrective action plan.

(b) If the state board of education does not approve a corrective action plan submitted in accordance with subparagraphs IV(a)(2) or IV(a)(3), then the commissioner of education shall work with the local school board and superintendent to revise the corrective action plan. If the local school board and superintendent do not revise the corrective action plan within 2 months or the state board of education does not approve the revised corrective action plan, then the commissioner of education shall submit in a

timely manner a corrective action plan, including methods for implementing it, to the state board of education for approval without further action of the local school board.

(c) If an approved corrective action plan includes the use of a technical assistance advisor, then the commissioner of education shall appoint a technical assistance advisor who is authorized to access the state special projects and improvement fund to provide assistance to local school district staff in the implementation of the corrective action plan until the goals of the corrective action plan are met.

(d) If an approved corrective action plan includes the use of a peer review team, then the commissioner of education shall name a peer review team consisting of one person appointed by the chairperson of the local school board, one person appointed by the chairperson of the state board of education, and a third member chosen by the local school board and state board of education appointees to advise the school district's superintendent and the local school board relative to the implementation of the corrective action plan until the goals of the corrective action plan are met.

V. If, by the time of the annual school district meeting or by April 30 in a city with a dependent school department, the school board of a school district in which a school district has been designated as a school district in need of assistance pursuant to RSA 193-E:3, IV has not submitted a request for assistance under paragraph III, then the legislative body of the school district may vote to direct the school board to submit a request for assistance under paragraph III. If a majority of the legislative body votes in favor of requesting assistance, then that assistance shall be requested and provided in accordance with paragraphs III and IV.

VI. A school board shall have one year from the date that a school district has been designated as a school district in need of assistance pursuant to RSA 193-E:3, IV to remedy identified problems at the local level. If the school district is designated as a school district in need of assistance and the school board does not request assistance under paragraph III within one year of such designation, then on December 1 of the year following the designation, if the school district continues to be designated as a school district in need of assistance, the commissioner of education shall issue a notice to the school board and shall initiate a process for providing assistance pursuant to subparagraph IV(a)(3), without further action of the school board.

193-E:5 Assistance to Local School Districts.

I. By June 30, 2002, and every 3 years thereafter, the state board of education through a process that provides opportunities for public input from parents, employers, educators, and other citizens shall review and update the statewide education improvement plan developed in accordance with RSA 193-C that describes how the department of education will help schools and school districts improve student achievement. The plan shall include goals and strategies for the delivery of technical assistance and professional development, the sharing of best practices, the modification or expansion of existing programs, and the establishment of new programs.

II.(a) Notwithstanding any other provisions of law, no later than June 30, 2003, and every 5 years thereafter, the state board of education shall review and update school approval standards based on input from parents, employers, educators and other citizens.

(b) The state board of education shall work with a joint select committee of the house and senate education committees, whose members

shall be appointed by the speaker of the house and the president of the senate, to identify amendments that should be made to the school approval standards to reflect the provisions of RSA 193-E. Further, any proposed amendments shall consider the recommendations of the adequate education and education financing commission established in RSA 198:49 and should be reviewed by the house and senate education committees, which may submit comments on the proposed amendments to the state board of education. The state board of education shall consider such recommendations and comments in adopting amendments to the school approval standards pursuant to RSA 541-A.

III. Beginning no later than January 1, 2002 the commissioner of education shall ensure that the state curriculum frameworks adopted under RSA 193-C shall be reviewed on a staggered, 5-year cycle such that no more than 2 frameworks are being reviewed at the same time. In order to provide reliable annual comparisons of data at the school and district levels, the statewide improvement and assessment program shall be expanded to include more than the 3 grades required under RSA 193-C:6.

IV. No later than June 30, 2004, and every 3 years thereafter, the state board of education shall review, and update as necessary, the format and information included in the report required pursuant to RSA 193-E:3.

V. No later than January 1, 2001, the state board of education shall adopt rules, pursuant to RSA 541-A, establishing the requirements for data keeping and the form of the report as required in RSA 193-E:3, II.

VI. No later than June 30, 2001, the state board of education shall adopt rules for the development and implementation of the local education improvement and assessment plan required under RSA 193-E:3, I.

VII. No later than June 30, 2001, the state board of education shall adopt rules for the establishment of assessment and performance indicators required under RSA 193-E:3, II.

VIII. No later than December 1, 2002, the state board of education shall adopt rules, pursuant to RSA 541-A, for the approval of corrective action plans as required by RSA 193-E:4, IV(a).

IX. The department of education shall implement credible procedures to review compliance with school approval standards.

193-E:6 Legislative Oversight Committee.

I. An oversight committee shall be established consisting of:

(a) The chairperson of the house education committee, or a designee.

(b) The chairperson of the senate education committee, or a designee.

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

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

(e) One member of the house finance committee, appointed by the speaker of the house.

(f) One member of the senate finance committee, appointed by the senate president.

II. The chair of the oversight committee shall rotate biennially between the chairperson of the house education committee and the chairperson of the senate education committee. The first chairperson shall be the chairperson of the house education committee. A member shall only serve while a member of the general court. The members shall not be compensated but shall receive mileage at the legislative rate when carrying out their duties.

III. The oversight committee shall examine the goals, purposes, organization, operation, and financing of the state's program to provide a constitutionally adequate education, and it shall evaluate and make recommendations for the continued provisions and improvement of the program.

IV. The oversight committee shall review the development and implementation of the program to ensure that they are in accordance with legislative policy.

V. The oversight committee shall submit a report to the general court by June 30, of each even-numbered year. Copies of the report shall be submitted to the governor, the senate finance and education committees, the house finance and education committees, the department of education, the department of revenue administration and to any other individual or organization as the committee deems advisable.

193-E:7 Enforcement. The attorney general has authority to enforce the provisions of this act in accordance with New Hampshire law through appropriate civil and equitable relief, including but not limited to injunctive relief.

193-E:8 Special Projects and Improvement Fund. A special projects and improvement fund is hereby established in the department of education and continually appropriated to the department. The department of education shall use moneys appropriated for this fund to provide grants to school districts pursuant to RSA 193-E:4, II. The department of education shall also use moneys appropriated for this fund to support the implementation of approved corrective action plans. The technical assistance advisor assigned to work in school districts pursuant to RSA 193-E:4, IV(c) shall be authorized to access this fund in accordance with procedures established by the department of education.

4 Appropriation. The sum of \$1 for the biennium ending June 30, 2001 is hereby appropriated to the department of education for the purposes of the special projects and improvement fund established in RSA 193-E:8 as inserted by section 3 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

5 Repeal. RSA 194:23-d, relative to state financial aid to elementary schools and high schools which are approved by the state board of education, is repealed.

6 Effective Date. This act shall take effect July 1, 2000.

2000-3073s

AMENDED ANALYSIS

This bill establishes a procedure for the department of education to identify local school districts which are in need of assistance and to assist in improving the overall quality of educational programs and services offered by such districts. The bill also establishes a special projects and improvement fund within the department of education and appropriates \$1 to this fund for the biennium ending June 30, 2001.

SENATOR MCCARLEY: In the past year, the state has increased its commitment in the funding of public education to the tune of \$825 million. Since that time, I have heard time and time again from constituents asking what the state is doing to ensure that this \$825 million is helping our schools and our children, improve. Senate Bill 219 provides a mechanism for measuring our schools' continual improvement and providing assistance to those schools that are not improving. The majority of the Senate Education Committee agreed that the approach outlined in the amendment to SB 219 is a good, solid approach to es-

tablish a delivery/accountability system. It requires each school district to prepare a local education improvement and assessment plan, developed with significant community input, and aligned with statewide education improvement and assessment program and the curriculum frameworks. Each district will assess its progress towards the plan's goals by its own standards. Districts identified in need of assistance, those failing to meet their goals, will be offered technical assistance. The majority of the Education Committee realized the need for accountability and some method of measuring of improvement in our schools. I urge your support of the Committee recommendation of ought to pass with amendment.

SENATOR LARSEN: Very briefly. Over and over again, we have heard that we need to keep our schools accountable for what they are doing. This bill allows for that accountability. This bill encourages school districts to be accountable, not for what the state tells them to do, but for their own plans. There are school districts that may have trouble meeting those plans. This bill sets up a process that will allow them to seek help. This bill is not the creation of the Senate Education Committee or some legislative body. This bill incorporates the best recommendations of a citizen advisory group set up soon after the Claremont decision, to push this through as a method for improving our schools and making them accountable to the standards that they set for themselves. This bill makes sense. It is time that we pass it. Everyone in this room, at one time or another, has heard from people telling them to make our schools accountable for teaching our kids. This bill does it. Let's pass this bill today.

SENATOR FRANCOEUR: Senator Larsen, aren't the local communities already accountable for the individuals? They vote for a school board member and put them in and they vote for the budgets. Are they vocally able to control what is happening in the schools without answering to the state currently?

SENATOR LARSEN: What they are not able to do is to seek assistance or gain assistance if they cannot meet their own standards for educational plans. What this allows is for the state department of education to send in mentors to send in people who can in fact help them improve where they find themselves falling behind in their own goals.

SENATOR FRANCOEUR: Could you explain to me then, why on page 12 of the calendar, we need "enforcement by the attorney general's office" to do this?

SENATOR LARSEN: At a certain point when the local school district has not been able to perform, then this gives an enforcement provision, because without it, the bill has no teeth at all. The bill has no ability to accomplish the goals set up. I very much doubt that that enforcement process would ever be used. Do you know of a school that is absolutely failing in its own goals? I don't believe that would be used. It is the kind of thing that is seen as an enforcement technique that would allow for these plans and these goals to be met, because it encourages enforcement as well as action.

SENATOR F. KING: I am going to vote against this legislation for a couple of reasons. I think that it is an issue of local control. I voted against the previous legislation because I accepted the argument that it flies in the face of local control. I think that this bill does that even more. It definitely sets up a process whereby the state at some point,

in the process, will determine whether a school district is meeting its mission. If the state decides that is not the case, it sets in motion, a very well defined enforcement process that ultimately could lead to the attorney general bringing an objective action against a school district. So I think that it flies in the face of local control, and for that reason alone I would vote against it. The second reason for voting against it is the issue of money. This bill provides the princely sum of \$1 to allow the board of education to do this. It is clearly an unfunded mandate for at least 20 percent of the communities in the state, because it will cost money, some sum of money, yet to be determined by the school districts. As we know, 20 percent of the communities in the state are now donor communities, which means that they are sending more money to the state than they are receiving, and now we are going to mandate them to do something. That is a 28-a issue. The state is not the least prepared to provide more than a \$1 to those towns that are going to accrue some expense, then you have a violation of our constitution. In my town, which received a considerable amount of money under the legislation that was passed, I would say that they could not make the argument to this unfunded mandate because the state is providing more money than they have received in the past. But for those towns that are donor communities, and I have some, this is an unfunded mandate, and that is the second reason that I cannot support this legislation. Thank you.

SENATOR SQUIRES: There is much about this bill, Madame President, that is good and there are some things that trouble me. The things that bother me are on page two beginning on line 19. The bill sets out the kind of data that we should collect regarding drop out rates, and then it presumes that the commissioner of education has the wisdom to say that according to this data, quality standards, they may not meet them. They may be in the need of assistance. You will see that phrase on line 24. It is my opinion, after listening to hours of discussion about accountability and measurement, that no one, neither New Hampshire or any other state, has the ability to say what a drop out rate of X percent in a specific school district is good or bad at this point in time. The fact of the matter is, in a district such as I represent or indeed as Senator D'Allesandro represents, very large districts with multiple elementary schools for example, there is probably a difference in the performance of those schools in the same community. I do not understand, how for example, you could if you refer back to line 13, "the performance of state test administered pursuant to RSA 193-C." Over and over we have heard that these tests are not meant to do exactly what the bill sets out to do. That the structure of the tests...we heard yesterday for example that you can't even compare the test given in grade 3 to the test given in grade 6, because they are not standardized. So you do not know in fact, that because there is a fall off in the performance of mathematics competency in grade 3-6, whether that means anything at all. In fact, the individual representing the School Boards Association said that they did not, which made me think frankly, why are we giving these tests? But my point is, that the bill assumes a level of knowledge and judgement that does not exist at this point in time. For that reason, I like the idea of data collection, but I do not like the idea of believing that we can make assessments based on the information and the level of knowledge that we now have about these indicators. Thank you.

SENATOR JOHNSON: Madame President, Senator Fred King has addressed two of the issues that I had a concern about. The 28-a issue and the cost, but beyond that, I think that Senator McCarley alluded to, and

I want this body to understand that the Department of Education already has the ability in place to help those schools who are not doing well. All that we are doing here is creating a larger bureaucracy to try and take care of that. I have a concern regarding those three issues. Thank you.

SENATOR GORDON: Again, I share the concerns about the unfunded mandate. I just got through, as we all did, listening to the governor. I think that the governor's remarks were right on. That is, that if you are going to make a difference in the school, then you do that by investing in teachers. That is where you need to put your money, you need to have quality teachers who do the job and they need to be paid well. We need to invest in self improvement, and improving teachers in the schools. I think that is where we need to make the difference. Simply requiring school districts to provide statistical information, from my point of view, is not what is going to improve our schools. What it is going to do is increase the number of administrators that we have in our schools. I don't know if any of you had anyone call you up and say, "do you know what we really need is more people in our schools carrying clip boards." No one has called up and said that we need more administrators in our schools. What we need to do is to put more teachers in our schools. We need to pay our teachers well to do the job that they are doing. We need to look at those districts who aren't paying them well and make sure that they do. I think that my concern about this bill is because it does, after the fact, what we should have already done. Many of you know my feeling on this, that if we are going to be sending out \$4200 per student, when we send out that money, we should have had certain expectations as to how that money would be spent. It should have been spent on ways which would have improved our schools. Instead of doing that, we sent out \$4200 to every school with basically, no idea of how it is going to be spent. I guess that is because we decided that we want to invest in local control. Well if that is the case, why is now, that we have to exercise control? I certainly oppose anything that is going to end up putting us in a position where we are going to be sending in educational SWAT teams into these schools. I think that is wrong. So I am opposed to the bill. I, like Senator Squires, I feel strongly that the Department of Education should be doing a better job of maintaining statistics in regard to education in the state. I think that in the whole debate that we had over the last two years on education, that it was very apparent that the Department of Education was doing an abominable job of doing that. But everything that would indicate to me, in terms of the support that we see from the School Board Association, and from the other administrators, is that they are willing to do that voluntarily. If they are willing to do that voluntarily, I don't understand why we have to pass a law to require them to do it. I am going to oppose the bill on that basis.

SENATOR FERNALD: Senator Gordon, if a school district is failing to provide an adequate education, do you think that the state should have some obligation or some role in rectifying the problem?

SENATOR GORDON: I don't think that the state has a choice. I don't think that it has a choice, because the Supreme Court has ruled that education is a fundamental right in this state. As long as it is a fundamental right, I think that the state has an obligation to act. I guess the issue is, I haven't been presented as yet, with the name of any district that is failing. I guess in asking myself why we are passing this legislation, I need to know which district it is before I deal with the problem.

SENATOR FERNALD: If we wait until we have a failing district to pass legislation, isn't it a little late? Shouldn't we put the procedure in place now so that if the situation arises we can address it?

SENATOR GORDON: Well I think that is probably why the law books have expanded so much as they have over the last few years, as an effort by the legislature to solve problems which at this point in time, don't exist. I think that if perhaps we made sure that we had a problem before we passed legislation to fix it, then we would be much better off.

SENATOR D'ALLESANDRO: In the last version of the capital budget, we appropriated \$1 million to the state Department of Education in order to upgrade their ability to get pertinent data. That interaction between the districts and the Department of Education will give us better information upon which to base judgement as we move forward. One of the flaws that we saw in the process was the fact that the data that had been collected wasn't really appropriate. So we have taken that situation and we have spiffed it up. We saw a presentation before our school board last evening as to how that data can now be accessed in a much more efficient manner, and how we can use it. As a result of that, we will put a plan together in each one of our elementary schools, and each one of our middle schools, and each one of our high schools, in hope to achieve success as it relates to this plan. In our district, we welcome the opportunity if we are not moving forward to get help from the state Department of Education. That is what the state Department of Education is there for. To assist us if we are not achieving as we would like to achieve. I would agree with Senator Fernald, why should we wait until we have a dramatic failure before we do this. If progress is what we are looking for, the plan is in place, and we are moving forth and looking at that plan. If we are not moving as expeditiously as we proceed, we welcome the opportunity to get help from the state. I think that is what this piece of legislation does. It doesn't take away local control. We are still putting our plan together. We are looking at our plan and we are reviewing our plan. If we need assistance, we know that that assistance is available. I think that is the progression that education has been missing. We have been going through an educational reform in this state. We can't leave it hanging without an accountability aspect for educational reform. I don't think that any of our districts are failing. We want our districts to be successful, but I might say that in Manchester, the three of our high schools are on probation from the New England Association for a variety of reasons. Internally, we are correcting those. We are working on correcting those items, but there are some things that we might need more help on. As a result, I think that the state is there to give us that help. So I think that the law is a good one. It is one that should be in place, because what it does is it shares that area of expertise that not every district can have and maintain. I don't think that it creates an additional bureaucracy. What it does is use effectively, what we have and what we have given the state Department of Education, some tools to be more effective.

SENATOR TROMBLY: Senator D'Allesandro, I am trying to boil this down to the bottomline. The way that I read this bill is the school district by involving parents, teachers and community leaders, which is in the language of the bill, will meet, set standards and goals that they want for their children in that district? Is that correct?

SENATOR D'ALLESANDRO: That is correct.

SENATOR TROMBLY: They will then review that and if they feel... those people feel that they are not meeting it, and if they feel that they need help doing that, then they may appeal to the state. Is that correct?

SENATOR D'ALLESANDRO: That is correct.

SENATOR TROMBLY: Is that appeal mandatory, or is it discretionary in the school district?

SENATOR D'ALLESANDRO: It is discretionary in the school district.

SENATOR TROMBLY: Then the state would come in and help these people do, at the local level, implement not a statewide educational plan, but a local plan to educate their own students?

SENATOR D'ALLESANDRO: That is correct.

SENATOR J. KING: I rise to say a few words. I strongly approve of this bill. In fact, it was the best part of the ABC Plan that started out. It was the most forceful part and hopefully, I thought that it was the part that would have succeeded before anything else would have. It is much needed. I thought for several years. I wouldn't mind us having something like this where you could go in and say that we need some help. To talk about criticism, if you read the papers, any day, how lousy our school system is, the teachers aren't doing their jobs, this is wrong, that is wrong, what alternative do they have? None. We are starting charter schools. We are trying to start choice schools. Why? Where do they get their information that this is needed? They are taking them out of the public schools that we say are not any good. Baloney! They are good, and we can make them better by having some accountability, and then if we use a charter school or something else, we can do it. But you can't do it because some group wants to get out of there because they have a reason that they don't like that school. There is criticism going on. There is too much of it and it is unfair. Let's get accountability and find out where it is. I am not afraid of the Board of Education doing something wrong. They have been there for 100 years and they haven't done it yet, I don't think that they are going to start now.

SENATOR F. KING: Just briefly. I want to make it clear that it isn't that I don't believe that we should have quality education. What I believe is that we are only halfway through the process of developing an adequate funding problem for education, a funding solution for the problem that we have in education. I was probably right the first time I said it. If you come from a community that picked up \$30 million new money, then probably you are going to be easy...it will be easier for you to achieve some changes in your system, and you will probably welcome something like this. If you come from a community that it costs you \$4 million, then you have a problem. We heard yesterday in a meeting that we had, that there is one school district in the state that they had to cut their budget because...their school budget by several hundreds of thousands of dollars because they could not deal with the new costs that they have got. So I think what we need to do is deal with the quality issue when we finally decided a fair way to fund education. At that time, if I am here, I will be glad to vote for a bill like this. But as long as we have some people being treated unfairly, in the issue of cost distribution, then I think that this is not the time for this bill.

SENATOR MCCARLEY: Just briefly for a second time. A former speaker indicated that we should have been doing this the time that we did the money. I like to occasionally remind us in that Ground Hog day concept

that we have been through, that two years ago, the Senate polled this language when we did the money. So we need to remember that indeed we tried that once and we couldn't get the votes out of this Senate. I think that while I understand Senator Squire's raising the issue of his concerns beginning on line 19. If you read the line, what it says is that the "Commissioner of Education shall determine the extent to which each school district is meeting the quality standards established in paragraphs 1-3." It needs to be reminded and pointed out here that those standards are developed by the local communities. The local communities are going to tell the state department what it thinks that it can achieve. The second year it is going to look at what it achieved, and see if it got there and what it can do about it. It is not a matter of what **TAPE CHANGE** communities are going to set those standards and they're going to assess whether or not they are achieving them. That will take place as part of the dialogue with the Department of Education. The unfunded mandate issue, I understand that there are donor towns, I have no interest in wandering into donor town discussions today, but I think that the reality is that we do have a statewide property tax that raises dollars for education, and it is assessed on everyone at \$6.60 and that does raise roughly \$32.321 per pupil basis. And it does that in the donor towns just as well as it does in the towns that actually get additional monies from the state. So I think that the unfunded mandate issue is actually not an issue.

SENATOR FERNALD: This has been a difficult issue for me. I voted against it the last time. I think that it is difficult because we have in conflict, a constitutional obligation on one hand, and a dearly held political New Hampshire, New Hampshire political belief on the other. We have an obligation in the constitution to provide an adequate education, and there has to be a point of which, if a school district is failing, the state has the mechanism to deal with that failure. Under our current law, we don't have that. The way that it used to work, when we had Foundation Aid, was that a failing district could lose its Foundation Aid, which we never did because it was so draconian, and that was basically the only mechanism that we had. This is different. I think that it strikes the right balance between our constitutional obligation and our belief in local control. We want local control with education and this preserves that because the standards that we are talking about are the local plans that are put together by the local community. It is only if they fail to meet their own plans that then the state provides assistance. We are not going to withhold money, which is the old system, we are going to go in and try and solve the problem. I have heard three criticisms to this, and I don't think that any of the three stand up. The first one is, "this is bureaucratic and it is going to add more administrators, we don't need it." So I look at what the bureaucratic requirements are here. What it requires is that local people come up with a plan for school improvement and assessment. Well by golly, if they are not doing it now, they should be. I mean, everybody, every organization should figure out where they are, and where they are going. I don't think that this is adding anything to what the local districts are doing, other than the fact that they are going to put it in an envelope and send it to Concord. The second criticism that I heard was the 28-a issue, which doesn't make any sense. Yes, we have donor towns, but in those towns we have a statewide property tax, and \$6.60 per thousand is going to those towns, that is state money. We are giving \$4200 per child to the children in those school districts, so there is plenty of state money going into the donor towns

as well as the receiver towns, there is no unfunded mandate here. Thirdly, it was said that we are going to be penalizing a school district that meet a dropout rate. I think that that speaker misread the bill. That is a data reporting section of the bill in that the school districts are supposed to report all of this data, and the state is going to make annual reports about how all of the school districts are doing on dropout rates or what have you. Just because you report the data doesn't mean that the state is going to look at it and say that they are a failure. Whether or not you need assistance under this bill, is if you have met your own plan, not how you report the data. So I am going to vote yes this time. Thank you.

Recess.

Out of Recess.

SENATOR BELOW: Just briefly. I think that it is obvious that when we are spending hundreds and hundreds of millions of taxpayer dollars, that we should expect some accountability in terms of evaluating the outcome and the performance results of that investment. In this knowledge based economy, it is that information from collecting data and looking at performance indicators that provides us the feedback to establish a process of continuous improvement which is what we want for our public schools. It is important to note that the amendment as offered by the committee sets forth an oversight committee, part of whose job is to evaluate and make recommendations for the continued provisions and improvement of the program. I must say that I really do not understand this 28-a argument. I think that it is interesting to note that as far back as 1871, when the Supreme Court considered the question of what is the role and duty of the local school districts? They pointed out that an examination of our statutes on this subject, from the time that school districts are first spoken of, down to the present time, shows that they are, and always have been, public corporate bodies created by the legislature as a means and instrument in carrying out the public duty in reference to public instruction laid upon the legislature by the constitution. We have this duty to provide for public instruction laid upon us by the constitution. It is only logical that we should create a framework working in conjunction with our local communities, our local school boards, a partnership really, that helps assist a framework for improving that process. We are funding that adequate education with the statewide property tax. Many of us feel that that is not a good or fair solution to the problem, but the fact is, regardless of what your community is, the full amount that we have deemed appropriate for an adequate education is being funded with state dollars. If the costs of evaluating that is greater than what we have funded, then we should increase the funding for an adequate education. Thank you.

SENATOR BROWN: The statewide property tax essentially, would you please respond to this, took our local property taxes and called them a state tax, added \$24 million to the donor towns, and now you are telling us that they need to be accountable to us because of state dollars?

SENATOR BELOW: I am not saying that they need to be accountable to us. I am saying that they need to be accountable to the taxpayer. The taxpayers are the ones that are funding public education in this state, whether it is local dollars or state dollars. In fact, it is the biggest thing that we do with tax dollars in this state. About half of all of local and state taxes fund public education. So it only makes sense that we should systematically evaluate the outcomes and performance of that public education system.

SENATOR BROWN: Perhaps I wasn't clear. I take exception, I guess, to the notion that we now have this state tax, when in fact, we have simply reclassified a property tax, calling part of it a state tax and part of it a local tax. Would you agree with that?

SENATOR BELOW: I guess that I don't understand the question.

SENATOR RUSSMAN: I rise to speak briefly. I find it somewhat intriguing that we will probably have an opposite vote here on the previous bill, that we were going to have the charter schools go to the state Board of Education...somehow I have a sense that probably the people that voted to do that are going to vote now, not to do this, and I am going to vote against the bill only because I think that probably the schools, if they are deteriorating, if not deteriorated enough to the point where people are going to be concerned, or are concerned, with a ground swell of discontent in the local districts. My guess is that the local districts at that time, will probably seek some additional help, and they probably can do that. I am convinced that for all of the money that we are spending and for all of the work that we are doing, and for all of the standards that we may set, the kids aren't going to do better, and we expect too much from some of the schools. Matter of fact, we expect too much from all of the schools, because parents aren't connected to their kids, and aren't working with those kids every night doing what they need to do, and seeing that they need to do it, and to do what they have to do in their homework. It doesn't matter how good the school is and what have you. I think that the money that we spending here, and the bill that we have before us, I don't think, is going to essentially make a school educated kid better one way or the other, so I am going to be voting against it.

SENATOR LARSEN: Senator Russman, the consistence...wouldn't you agree that in fact, the consistency is that under the previous vote, local control was deleted to hopscotch over the local school board and send it directly to the state board? Under this, local control continues because they set up their own plans, then they send it to the state and say, here is our local plan and we are going to try to meet this this year. So it is consistent for those who believe that local school districts ought to have input to vote that this bill ought to include local input as well?

SENATOR RUSSMAN: I think that is a matter of perspective. Thank you.

Amendment adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Francoeur.

Seconded by Senator Brown.

The following Senators voted Yes: Below, McCarley, Trombly, Disnard, Fernald, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Krueger, Brown, Russman, Klemm.

Yeas: 12 - Nays: 12

Motion failed.

Senator Russman moved to have **SB 219-FN-L**, establishing a procedure for providing educational improvement assistance to local school districts, laid on the table.

Question is on the motion to table SB 219.

A division vote is requested.

Yeas: 8 - Nays: 15

Motion failed.

Senator Russman moved inexpedient to legislate.

A roll call was requested by Senator Trombly.

Seconded by Senator McCarley.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Krueger, Brown, Russman, Klemm.

The following Senators voted No: Below, McCarley, Trombly, Disnard, Fernald, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.

Yeas: 12 - Nays: 12

Motion failed.

Senator Trombly moved to have **SB 219-FN-L**, establishing a procedure for providing educational improvement assistance to local school districts, laid on the table.

Question is on the motion to table SB 219.

A roll call was requested by Senator Russman.

Seconded by Senator Trombly.

The following Senators voted Yes: Below, McCarley, Trombly, Disnard, Fernald, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Krueger, Brown, Klemm.

Yeas: 13 - Nays: 11

Adopted.

LAI D ON THE TABLE

SB 219-FN-L, establishing a procedure for providing educational improvement assistance to local school districts.

HB 314, relative to the escrowing of certain utility payments. Energy and Economic Development Committee. Vote 3-0. Interim Study, Senator F. King for the committee.

SENATOR F. KING: House Bill 314 is a bill that has been in our committee for sometime as we heard the governor in her address today, the issue of deregulation of the electrical industry in this state, which is a very important issue, and one in which we will be dealing with, hopefully before we go home in the spring. This bill is a bill that we kept in the committee in case that we need to do something with a particular piece of legislation later on in this session. So we would like to move interim study on this bill and to keep it alive in the committee in case we need it.

SENATOR TROMBLY: Senator King, I just wanted to be sure with what I heard you request. Were you hoping to use this as a vehicle for something this session or some sort of action in the next session?

SENATOR F. KING: That was the committee's intention, but perhaps that is not possible.

SENATOR TROMBLY: For this session?

SENATOR F. KING: Yes.

Committee report of interim study is adopted.

SB 196-FN-L, relative to electric rate reduction financing. Energy and Economic Development Committee. Vote 3-0. Interim Study, Senator Below for the committee.

SENATOR BELOW: This bill was referred to the Energy and Economic Development Committee. It is certainly a hot topic in aspect of the settlement agreement that is pending before the PUC that needs further consideration. The committee does recommend that this bill be voted for interim study, as it is an issue that we need to continue to look at, but are not ready to take other action on at this point.

Committee report of interim study is adopted.

HB 97, relative to the right to farm. Environment Committee. Vote 5-0. Ought to pass with amendment, Senator Below for the committee.

2000-3164s

08/01

Amendment to HB 97

Amend the introductory paragraph of RSA 674:32-b as inserted by section 3 of the bill by replacing it with the following:

674:32-b Existing Agricultural Uses. Any agricultural use which exists pursuant to RSA 674:32-a:

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect July 1, 2001.

SENATOR BELOW: I rise in support of the 5-0 committee report of ought to pass with amendment. This bill, which was rereferred to the Senate Environment Committee provides for protection of agricultural activities by creating presumption that unless explicitly addressed through zoning ordinances, such activities are deemed permitted if conducted in accordance with best management practices adopted by the commissioner of agriculture and other applicable laws and regulations. Once the body adopts the committee report, I would like to offer a floor amendment, which I will explain at that time.

SENATOR FRANCOEUR: Senator Below, when I read the amended analysis, it says "this bill provides protection for agricultural activities and not creating presumption that unless explicitly addressed through zoning, such activities are deemed permitted." What if I found a clause in my deed that says that agriculture is not permitted. This isn't addressing that. Is there anything in your planned amendment that would explicitly say that this does not include the restrictions or that type of thing?

SENATOR BELOW: The floor amendment which I would offer after this vote, doesn't explicitly say that, but it removes some language that is in this version of the bill that may create that problem. Perhaps getting ahead here, the bill, if we adopted it, in its current version, has a provision that says that agriculture uses may be reestablished after any period of disuse. In the proposed floor amendment, that part would be stricken so that there is no legal statute saying that you can rees-

establish a use after any period of disuse. So if there were a protective covenant, there would be no way that it would be overruled by the legislation.

SENATOR GORDON: Senator Below, I just want to make sure that I understand this correctly. As is common, I own a piece of property, and I am selling the property next door, and I decide that I don't want to have farm animals next door, and I put a covenant in the deed that says that you are buying this property and that when you do, you agree that you will not have for perpetuity any farm animals on this property. This won't interfere in any way with my right to do that, and that would still be enforceable?

SENATOR BELOW: If the floor amendment that I will propose is adopted, that is my understanding, yes.

Amendment adopted.

Senator Below offered a floor amendment.

2000-3282s

08/01

Floor Amendment to HB 97

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

2 Purposes of Zoning Ordinances. Amend RSA 674:17, I(g) and (h) to read as follows:

(g) To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care; [~~and~~]

(h) To assure proper use of natural resources and other public requirements[-]; **and**

(i) **To accommodate reasonable agricultural uses.**

3 New Subdivision; Agricultural Uses of Land. Amend RSA 674 by inserting after section 32 the following new subdivision:

Agricultural Uses of Land

674:32-a Presumption. In accordance with RSA 672:1, III-d, whenever agricultural activities are not explicitly addressed with respect to any zoning district or location, they shall be deemed to be permitted there, as either a primary or accessory use, so long as conducted in accordance with best management practices adopted by the commissioner of agriculture, markets, and food and with federal and state laws, regulations, and rules.

674:32-b Existing Agricultural Uses. Any agricultural use which exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing technology or markets, or changed to another agricultural use, as set forth in RSA 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state laws, regulations, and rules, including best management practices adopted by the commissioner of agriculture, markets, and food; subject, however, to the following limitations:

I. Any new establishment, re-establishment after disuse, or significant expansion of an operation involving the keeping of livestock, poultry, or other animals may be made subject to special exception, building permit, or other local land use board approval.

II. Any new establishment, re-establishment after disuse, or significant expansion of a farm stand, retail operation, or other use involving on-site transactions with the public, may be made subject to applicable special exception, building permit, or other local land use board approval and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety.

674:32-c Other General Provisions.

I. The tilling of soil and the growing and harvesting of crops and horticultural commodities, as a primary or accessory use, shall not be prohibited in any district.

II. Nothing in this subdivision shall exempt new, re-established, or expanded agricultural operations from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in circumstances where their literal application would effectively prohibit an agricultural use allowed by this subdivision, or would otherwise be unreasonable in the context of an agricultural use, the board of adjustment, building code board of appeals, or other applicable local board, after due notice and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit the agricultural use, unless such waiver would have a demonstrated adverse effect on public health or safety, or the value of adjacent property. Such waiver shall continue only as long as utilized for the permitted agricultural use.

III. Nothing in this subdivision shall apply to any aspect of an agricultural operation determined to be injurious to public health or safety under RSA 147. Nothing in this subdivision shall be deemed to modify or limit the duties and authority of the department of environmental services under RSA 485 or RSA 485-A or the commissioner of the department of agriculture, markets, and food under title XL.

IV. Nothing in this subdivision shall be deemed to affect the regulation of sludge or septage.

4 Effective Date. This act shall take effect July 1, 2001.

SENATOR BELOW: I would like to offer a floor amendment. This floor amendment, I think, clarifies some of the potential problems with the bill. The intent of it is that protective covenants that are in place on land that perhaps prohibit livestock or whatever activities that they would not in any way be disrupted by the legislation. Let me just briefly point out the changes in the floor amendment. The bill had a provision that said that the purpose of zoning ordinances shall include a number of enumerated items. It says to preserve agricultural land and buildings for agricultural use. That is being changed in the floor amendment to say, "to accommodate reasonable agricultural uses" so that a zoning ordinance could define what is a reasonable agricultural use, if so desired. The previous problem appeared to almost mandate that zoning ordinance be constructed to preserve all agricultural land. It might have been an interpretation that may have been a problem. Beyond that, line 16 & 17 of the floor amendment, the former language about allowing agricultural use to be established after any period of disuse has been dropped. The effective date of the bill is made to July 1, 2001, so that communities have plenty of time, if they want to, in their zoning ordinance, address explicitly what agricultural activities are permitted or not permitted in a particular zone, that they would have time to do that before the bill becomes law.

Recess.

Out of Recess.

SENATOR GORDON: Senator Below, I can see that this addresses specifically, RSA 674 chapter 674, which was a zoning statute. I am interpreting this to mean that agricultural uses are presumed to be permitted, unless they are expressly prohibited in a zoning ordinance, and that this in no way abrogates private property rights? Is that your understanding as well?

SENATOR BELOW: Yes, that is my understanding.

Floor Amendment adopted.

Ordered to third reading.

SB 132, requiring the removal of the telecommunications tower on Mount Kearsarge. Environment Committee. Vote 5-0. Ought to pass with amendment, Senator Below for the committee.

2000-3159s

08/01

Amendment to SB 132

Amend section 1 of the bill by inserting after paragraph XIII the following new paragraph:

XIV. The department of resources and economic development should consider a collaborative process, involving affected stakeholders, including, in particular, residents of surrounding communities who view the summit, hikers who visit the summit, and concerned citizen groups, to develop any alternative plan to accommodate desired public safety telecommunication facilities. The department should consider the development of a long term summit facilities plan that may include a replacement fire tower that integrates any necessary telecommunication functions in a more architecturally and aesthetically pleasing manner.

Amend the bill by replacing section 2 with the following:

2 Telecommunications Tower on Mount Kearsarge; Removal by Department of Resources and Economic Development Required. The department of resources and economic development shall arrange for and cause the removal of the 180-foot telecommunications tower on Mount Kearsarge in Merrimack County and all related commercial communication installations and their attendant buildings on the mountain, and restore the mountain top to its preexisting natural state as nearly as is practicable by December 31, 2002. Any replacement tower built for legally permissible purposes shall be subject to a public review process pursuant to RSA 674:54.

Senator Below moved to have **SB 132**, requiring the removal of the telecommunications tower on Mount Kearsarge, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 132, requiring the removal of the telecommunications tower on Mount Kearsarge.

SB 218-FN-L, regulating the land application of sewage sludge. Environment

Committee. Vote 3-2. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3163s

08/01

Amendment to SB 218-FN-A-LOCAL

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

1 Moratorium on Use of Certain Sludge to Reclaim Gravel Pits. Class A and class B sewage sludge and industrial paper mill sludge shall not be used to reclaim spent gravel pits above aquifers.

2 Duration of Moratorium. The moratorium in section one of this act shall expire July 1, 2001.

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

2000-3163s

AMENDED ANALYSIS

This bill places a moratorium on the use of class A and class B sewage sludge and industrial paper mill sludge to reclaim spent gravel pits above aquifers. This bill also provides that the moratorium shall expire July 1, 2001.

Senator Wheeler moved to have **SB 218-FN-L**, regulating the land application of sewage sludge, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 218-FN-L, regulating the land application of sewage sludge.

MOTION TO VACATE

Senator Wheeler moved to vacate **SB 353**, relative to sales of insurance by financial institutions, from the **Insurance Committee to the Banks Committee**.

Adopted.

SB 353 is vacated to the Banks Committee.

HB 375, relative to substitutions for disqualified and deceased candidates. Executive Departments and Administration Committee. Vote 6-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill simply puts into effect a process to nominate another candidate when a candidate for office is disqualified or dies. The party's state committee is required to submit the name of the new candidate to the secretary of state's office within five days of the death or disqualification. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 226, relative to the real estate practice act and the powers and duties of the real estate commission. Executive Departments and Administration Committee. Vote 4-0. Ought to pass with amendment, Senator Francoeur for the committee.

2000-3221s

10/01

Amendment to SB 226-FN

Amend the bill by replacing section 2 with the following:

2 Exempted Classes. Amend RSA 331-A:4 to read as follows:

331-A:4 Exempted Classes. The provisions of this chapter shall not apply to:

I. An owner, builder or tenant of real estate or to [his] regular employees with respect to property owned or leased by [him] *the owner, builder, or tenant*, or to a prospective purchaser or tenant of real estate or to [his] regular employees with respect to property sought to be acquired or leased by [him;] *the purchaser or tenant*; [or]

II. [to] An attorney in fact [~~under a duly executed power of attorney authorizing the consummation of a real estate transaction;~~];

III. [tø] An attorney at law in the performance of [his] duties as an attorney[;]; [ør]

IV. [tø] An auctioneer selling at public auction[;]; [ør]

V. [tø] A public official in the conduct of [his] official duties[;]; [ør]

VI. [tø] A person or [his] *the person's* regular employees while such person is acting as a receiver, trustee, administrator, executor, conservator, guardian, or fiduciary, or while acting under court order, or while acting under the authority of a will, trust instrument, or other recorded instrument containing a power of sale[;]; [ør]

VII. [tø] Any person owning or operating a park, including [his] *the person's* regular employees, in which manufactured housing to be sold or leased is located, who may, for a fee or commission or other valuable consideration, list, sell, purchase, exchange or lease such manufactured housing without a license of a broker or salesman; *or*

VIII. A corporate consultant who receives a fee from a client based on site searching services rendered in accordance with a written contract, rather than on the completion of any particular transaction and who does not hold himself or herself out as a real estate broker;

Amend the bill by replacing sections 4 and 5 with the following:

4 Qualifications; Age of Applicant. Amend RSA 331-A:10, I to read as follows:

I. Has attained the age of [majority] *18 for salesperson applicant.*

5 New Subparagraph; Qualifications for Licensure; Course of Study. Amend RSA 331-A:10, II(c) to read as follows:

(c) *Shows proof of completion of 120 hours of study; or*

(d) *Proves to the commission that the applicant has experience equivalent to the experience required by subparagraph (a) [ør] (b), or (c).*

Amend the bill by replacing section 9 with the following:

9 New Paragraph; Escrow Accounts; Business or Personal Funds. Amend RSA 331-A:13 by inserting after paragraph VI the following new paragraph:

VII. A broker may deposit business or personal funds into an escrow account to cover service charges only, assessed to the account by the bank or depository where the account is located or to maintain a minimum balance in the account as required by the regulations of the bank or depository.

Amend the bill by replacing section 11 with the following:

11 New Paragraphs; Supervision of Real Estate Office. Amend RSA 331-A:16 by inserting after paragraph III the following new paragraphs:

IV.(a) All advertisements by an associate broker or salesperson shall include the regular business name of the firm. This requirement shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

(b) With the exception of business cards, any advertising which contains a home telephone number, cell-phone number, beeper or pager number, home fax number, or electronic mail address of an individual salesperson or associate broker, or a team of such licensees, shall also include the name and telephone number of the employing broker or brokerage firm through which the advertising licensees operate. All such advertising shall contain language identifying each number included in the advertising.

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

23 Discipline; Require Relevant Courses. Amend RSA 331-A:28, I (c) to read as follows:

(c) Require the person to complete a course *or courses* in [a] selected [area] *areas* of real estate practice relevant to the section of this chapter violated.

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

2000-3221s

AMENDED ANALYSIS

This bill makes various changes to the real estate practice act and adds new requirements and new exemptions for persons regulated by the real estate commission. This bill also establishes standards for advertising.

SENATOR FRANCOEUR: This bill makes various changes to the real estate practice act and adds new requirements and new exemptions for persons related by the real estate commission. This bill also establishes standards for advertising education requirements, clarifications for licensure and renewal. The committee recommends this bill pass as amended.

Amendment adopted.

Ordered to third reading.

CACR 20, relating to the election of governor and senators. Providing that beginning with the 2002 general election, and every 4 years thereafter, the governor and senators shall be elected. Internal Affairs Committee. Vote 3-2. Inexpedient to Legislate, Senator Klemm for the committee.

SENATOR KLEMM: This constitutional amendment concurrent resolution would have provided that beginning in the year 2002 that the governor and state senators would have been elected to four-year terms. The majority of the committee felt that the current terms of office for both the governor and the state senators are appropriate. Two-year terms for elected officials in the legislature and the governor provide the appropriate checks and balances necessary in government. The committee recommends that this bill be inexpedient to legislate.

SENATOR WHEELER: I didn't want this to go so quickly because I think that having a four-year, especially for governor, but also for senators, is the quickest way to get campaign finance reform. I think that in a state of 1.2 million or however many that we have, it is not a lot more than that, for each gubernatorial candidate to spend \$1 million or more every two years running a campaign, is not the appropriate use of expenditures. It is not the way that our money should be spent. It is not really helping anyone except the media outlets. So I think very strongly that we ought to consider putting a four-year term for governor, at least for governor, and I would also advocate for the Senate before the people. Thank you.

SENATOR SQUIRES: I rise in support of this, but beyond that, and I will tell you why in a minute. I don't understand the idea of not asking the people. We have heard that over and over again. That we need to allow the people of the state to decide. So it baffles me, and now an amendment which is not ill-conceived, it is not a poor amendment, it is a reasonable question, why is it that we don't ask the citizens what they want to do? Now my reason to support the idea is the way issues have changed and increased in complexity. I think that there was a time in New Hampshire when the majority of issues, not all issues, could be resolved in two years, but now, it is not like that at all. The electric deregulation issue has been going on for years, the school funding issue has been going on for years,

you have seen that in the budget issues now. About one-third of the legislature changes every two years. So coming in January will be one-third of the legislature that is not familiar with the continuation of these issues. So I think that there is merit in the bill, but I also think that there is an enormous amount of merit in asking the citizens what they would like to do. Thank you.

SENATOR FERNALD: I am going to speak in favor of this, and here is my reasoning. I think that there are two basic things that we do here in Concord. The first thing is that we come up here to govern. The second, to be very blunt, we come up here, the other thing, that we are trying to get reelected. The closer that we get to the election time, the more time that we spend focusing on the election instead of governing. Having an election every two years means that we are constantly running for office, basically. It distracts us from the job of governing. The difficulty with two years terms is that you need a time period where you do what you are going to do and let it go into effect. Then the voters can see what you have done and how it has affected them. And when we had the debate last year on the income tax, one question that a lot of people had was 'we are going to be up for reelection before the voters have a chance to see whether it has worked or not', because it won't even have happened yet. That is part of the difficulty that we have with two-year terms. I would probably prefer this be two separate questions. One for governor and one for senators, because it is a closer question for senators for me. I think that with an executive, it really should be a four-year term because there are so many things that a governor does, they really need four years to put their program in place, and then go back to the voters and say, "I did a good job or please reelect me." I will support this.

SENATOR LARSEN: I can't think of a better campaign finance reform than this bill. We all recognize that it is crazy that we have every two years a governor's race at \$1 million per candidate. It is crazy that we as senators being paid \$100 a year, have to raise \$40,000 our first time. There is something wrong with this picture. The majority of people in this state support campaign finance reform. This bill gives them the opportunity to see a way to bring it about quickly in this state. It is time that we pass this. Let the people look at it on its own merits. It is time to go folks.

SENATOR RUSSMAN: I do agree with this. I do think that it should include the representatives, though in fairness, because their time is valuable too. I don't know if anyone would like to table this and come up with an amendment to include the representatives, but I think that clearly, the House would be much more inclined to be in favor of this in putting it before the people to see what the people want to do, once and for all, and let them make that choice, but it should include the representatives too.

SENATOR COHEN: Senator Klemm, I was just wondering, and I don't know the answer to this, if the public came out at the hearing insisting that we have a two-year term? Were there people clamoring for continuing the two-year term?

SENATOR KLEMM: To be honest with you, I don't remember the exact turnout, but it was not very highly attended, and there was nobody clamoring for a four-year term.

SENATOR BROWN: Senator Russman, I wanted to ask you about your comment on the House members. My concern is that we have a 400 mem-

ber House and it is very difficult sometimes to find people willing to run for two years. If we made that into four-years, it might even be more difficult to find folks willing to do that. I was wondering if you talked about that in your public hearing? If that may have come up before your committee?

SENATOR RUSSMAN: In all honesty, I am not on that committee, so it didn't come up. It just seems to me that I think that if anything, you might have more interest from House members if they knew that they didn't have to go every two years in terms of that. Frankly, if anything, I think that the people, because they are closest to the people, they would be better known, so that the people who would get elected for four years are the people who would be really truly liked in their local communities, in terms of the House members that would be willing to do it.

SENATOR D'ALLESANDRO: I am on the committee of Internal Affairs and I was one of the dissenting votes. I think, as Senator Squires so clearly articulated, and I don't think that I can embellish that to any great extent, that the nature of the business has become extremely complex as we have moved forward. He mentioned one particular item. It is the utility question. That has been on the front burner for a long period of time. We have made transitions in the history of the state of New Hampshire. At one time, the governor ran every year. Then we increased it to two years. It seems to me that setting this out before the people really isn't a bad idea. Our sister states have moved in that direction. Maine has moved in that direction, Rhode Island has moved in that direction, Massachusetts has moved in that direction, Connecticut has moved in that direction, all have increased to four-year terms. There are only two states in New England left with the two-year term, and that is New Hampshire and Vermont. I think that it deserves public scrutiny. I believe that there are polls that indicate a significant majority of the public does support a four-year term.

Recess.

Out of Recess.

SUBSTITUTE MOTION

Senator Russman moved to substitute ought to pass for inexpedient to legislate.

SENATOR RUSSMAN: During the break there was some discussion of whether or not what should happen with the House respecting their views and whether or not the executive council should be added here. Now the Senate has gone forward and put forth the notion that the governor and the Senate, and I would like to perhaps urge the House to take a look at it and let them, on their own terms, decide if they would like to add themselves, and perhaps the executive council, and make that determination, perhaps. So in view of that, I would hope that we would support this, and send it over to the House, and at least let them react to it and have a hearing and make a recommendation.

Adopted.

Question is on the motion of ordering to third reading.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No: Pignatelli, Francoeur.

Yeas: 22 - Nays: 2

Adopted by the necessary 3/5 vote.

Ordered to third reading.

HB 113, affirming sovereign immunity as it relates to the Claremont ruling. Judiciary Committee. Vote 5-1. Inexpedient to Legislate, Senator Fernald for the committee.

SENATOR FERNALD: We voted this out as inexpedient to legislate because it was written to address the issue of sovereign immunity, having something to do with the state's duty to provide an adequate education. Our feeling was that it is unnecessary. The state has sovereign immunity and it applies to all the functions and duties of the state government, and we didn't need to single out education because it would create the question of whether education was somehow different than all of the other sovereign immunities that we have. So this just didn't seem to make sense to the committee. Please join us in killing it.

Committee report of inexpedient to legislate is adopted.

HB 360-FN, clarifying that any person convicted of a felony in this state is prohibited from owning or possessing firearms and other dangerous weapons. Judiciary Committee. Vote 5-1. Inexpedient to Legislate, Senator Brown for the committee.

SENATOR BROWN: I rise in support of the Committee's recommendation of inexpedient to legislate for HB 360. This bill would have modified current law relative to what types of crimes trigger the statutory prohibition on owning a firearm or other dangerous weapon, as defined in RSA 159:3. Currently, persons are prohibited from owning these weapons if they have been convicted in New Hampshire or any other U.S. jurisdiction of a felony-level crime against the person or property of another, or a felony related to the controlled drug act. In 1999, an incident occurred which revealed a small loophole in our law. An individual who had a felony conviction for an obstructing governmental operations offense, not covered under RSA 159:3, could not be prosecuted in state court for possessing a firearm. This person could be subject to prosecution for firearms possession in federal court, since under federal law prohibition on weapon ownership applies to all felony convictions. I should note that the federal statute applies only to firearms and ammunition, not the whole list of items considered by New Hampshire statutes to be "dangerous weapons." These include slingshots, metallic knuckles, stilettos, daggers, and similar items which you can find in RSA 159:3. House Bill 360 would have expanded New Hampshire statute to include persons convicted of any felony. The committee felt that this was too broad, but our attempts to craft an amendment that was sufficiently inclusive without being too broad were not successful. Since we were not shown evidence of a widespread problem with the current law, we recommend inexpedient to legislate and leaving the current law unchanged.

Committee report of inexpedient to legislate is adopted.

HB 470, relative to settlement of personal actions. Judiciary Committee. Vote 6-0. Inexpedient to Legislate, Senator Wheeler for the committee.

SENATOR WHEELER: I rise in support of the committee recommendation of inexpedient to legislate. House Bill 470 was one of three bills from the 1999 session concerning structured settlements. Those are regular

payments based on an award for damages usually arising from a personal injury or wrongful death suit. This bill would have allowed plaintiffs in personal injury or wrongful death actions to designate a structured settlement broker and an entity to receive the structured settlement payments. The committee voted to recommend finding this bill inexpedient to legislate. One of the primary problems with this bill is that structured settlements carry with them, certain tax implications, and the committee was unable to get a clear fix from anyone who participated in the hearings as to the tax consequences of using a structured settlement broker. It was also unclear whether this bill would in fact, be of any benefit to the recipients of the structured settlements. I ask you to support the committee's unanimous recommendation of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 723-FN, relative to standby and emergency guardianship proxies. Judiciary Committee. Vote 4-1. Interim Study, Senator Trombly for the committee.

Senator Trombly moved to have **HB 723-FN**, relative to standby and emergency guardianship proxies, laid on the table.

Adopted.

LAID ON THE TABLE

HB 723-FN, relative to standby and emergency guardianship proxies.

SB 44-FN, relative to physician aid-in-dying for certain persons suffering from a terminal condition. Judiciary Committee.

MINORITY REPORT: Inexpedient to Legislate, Senator Squires for the committee. Vote 3-4

MAJORITY REPORT: Ought to pass with amendment, Senator Wheeler for the committee. Vote 4-3

1999-2169s

01/09

Amendment to SB 44-FN

Amend RSA 137-L:2, III as inserted by section 1 of the bill by replacing it with the following:

III. "Capable" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, a patient has the ability to make and communicate health care decisions to health care providers, including electronic communication, if appropriate.

Amend RSA 137-L:3 as inserted by section 1 of the bill by replacing it with the following:

137-L:3 Initiating a Written Request for Medication. An adult who is capable and a resident of New Hampshire, or who is a patient regularly treated in a New Hampshire health care facility, and who has been determined by the attending physician and consulting physician to be in a condition of severe, unrelenting suffering from a terminal disease, and who has voluntarily expressed a wish to die, may make a written request for medication for the purpose of ending such person's life in a humane and dignified manner in accordance with this chapter. If such a patient is unable to write, the patient may request another person to sign the form, under RSA 137-L:4, on his or her behalf in the patient's presence.

Amend the introductory paragraph of RSA 137-L:4, II as inserted by section 1 of the bill by replacing it with the following:

II. Both of the witnesses shall be persons who are not:
Amend RSA 137-L:4, V as inserted by section 1 of the bill by replacing it with the following:

V. REQUEST FOR MEDICATION

I,....., am an adult of sound mind.

I am in a condition of severe, unrelenting suffering from....., which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, palliative treatment, and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

_____ I understand that I have the right to rescind this request at any time.

_____ I understand the full import of this request and I expect to die when I take the medication to be prescribed.

_____ I make this request voluntarily and without reservation, and

_____ I accept full moral responsibility for my actions.

Signed:.....

Dated:.....

DECLARATION OF WITNESSES

We declare that the person signing this request:

- (a) Is personally known to us or has provided proof of identity;
- (b) Signed this request in our presence;
- (c) Appears to be of sound mind and not under duress, fraud, or undue influence;
- (d) Is not a patient for whom either of us is attending physician.

.....Witness 1/Date

.....Witness 2/Date

Note: Neither witness shall be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Amend RSA 137-L:9, IV as inserted by section 1 of the bill by replacing it with the following:

IV. A qualified patient who is unable to communicate orally may satisfy the oral request requirement of this chapter by making a written or electronic request, if appropriate.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect January 1, 2001.

SENATOR SQUIRES: I have been most fortunate in my life, among other things, I have been engaged in the practice of medicine and then I have been able to come here and sit in this room as your colleague. The purposes of this bill, there really is a remarkable intersection, as it were, of these two interests. I am going to speak initially, in reference to my previous existence as a physician. I took care of many patients who were dying, and that experience taught me that they're all different. No one dies in exactly the same way. No one really understands exactly when and why one dies from chronic illness, but it requires enormous patience and understanding, and over time, some degree of skill to do that, because one not only has in front of them, the interest of the patient, but their family. The bill would lead you to believe that this is all very tidy. That you can define when someone is terminally ill. That you can define when someone is mentally competent and so forth. In my experience, it is not tidy at all. It is very confused. It changes from day-to-day. But the thing that sustained me in those circumstances, was that I had a reference point. I had a point beyond which I could not, and I would not, go. My duty as it were, and my obligations were clear. They were defined for me, just as they were defined for every physician for 2500 years. Without that reference point, I do not understand how I or any other physician could function. What role here are you in? The bill basically says that 13 people in this room are going to change a standard of behavior and conduct that has governed our, in this case Western, culture for centuries. This bill has not had a discussion in New Hampshire that involves the general public. There have not been forums, there have not been meetings, not at all, and yet it comes before us. I know that there are situations that the case can be made and one of them is Lou Gehrig's disease. Interesting enough, in Oregon **TAPE INAUDIBLE** this bill is modeled after the Oregon bill. None of the patients that died in this manner, suffered from that problem. For the most part, they suffered from cancer. The two commonest issues were pain and loss of bodily function and control. Both of which, with evolving medical support and understanding, can be managed. The specialties of pain prevention do not agree with this bill. Virtually every major medical specialty and sub specialties do not agree with it. Home health and hospital hospice do not agree with it. They can speak for themselves, but I am speaking for myself, to tell you that from my perspective and my opinion, this is wrong. New Hampshire should not do this. You will hear, I think, other issues about the potential for abuse amongst individuals with disability, with mental illness, and I am sure that other people can speak to that better than I, but it is there somewhere. We all need boundaries. We all need guidelines. We all need someplace where government doesn't go. Isn't there any place in our life that government doesn't come in? This is so special. So unique. I am not convinced that there are large numbers of patients in New Hampshire that are dying terrible deaths. Those that are, probably represent ignorance on the part of the caretakers and nothing else. We can change that. So I ask you to sustain the minority position. This is not something that we should do. It is obviously something that you can sense an issue that I feel strongly about. Thank you.

SENATOR WHEELER: I do rise in support of the majority vote in the Judiciary Committee, which is ought to pass with amendment. I certainly respect Senator Squires and I respect his opinion, and his experience, but I submit to you that this bill is indeed not putting government into our lives, it is keeping government out of our lives. Because of the Oregon experience, we do know how it has worked in one state. I

have letters, both from the democratic leader of the Senate and from the republican leader of the Senate. The democratic leader says "Oregon experience during the first year of implementation indicates that the fears expressed by opponents have proven largely unfounded. The democratic leader says, "doctor assisted suicide grants patients freedom of choice, autonomy and personal control. In 1998 only 15 terminally ill people ended their lives with lethal medication." She goes on to say, "There are no significant differences in demographic characteristics between death with dignity cases compared to other patients. Patients who chose physician assisted suicide were not disproportionately poor, less educated, uninsured or lacking access to hospital care. The choice of death was most fondly associated with concerns of about loss of autonomy and personal control of bodily functions, not fear of intractable pain." There is a report on how the law has worked in Oregon. That the officials see no abuses in the law. This bill, which is indeed modeled after the Oregon bill, would allow a mentally competent adult who has been diagnosed by at least two physicians, of having a terminal illness, which they have defined as "six months left to live." I know that that can change and people can surprise you and live longer. I don't think that really is the issue, but I do understand that there is a fuzziness in six months. It allows the person to obtain legally, the medication necessary for ending his or her own life at the time and the manner chosen by that individual. I want to stress that it is the personal autonomy that we are talking about. I want to emphasize that to me, and to the many supporters of this bill, and there are many people who support the bill, and contrary to what Senator Squires spoke about not having the public engaged in this, for the 12 years that I have been in the legislature, it has come up every session. So this is the sixth time that I have been involved in a debate on this. I have participated in classes on the ethics of this at the University of New Hampshire, and people are discussing it. I am getting letters and phone calls. Not always for it, but it is discussed. It is not as though it is a stealth issue that people haven't discussed. On the contrary to what you might think. This is not a bill about choosing how to die. It is a bill about choosing how to live and how to have control over our own lives. How to make decisions that we each should have the right to make. To me, the most important aspect of this bill is not that it will give people the ability to take their own lives, it is the fact that this bill will give people who know that they are dying, peace of mind, and that is what I hear time and time again from the people who want this legislation to pass. They are asking for peace of mind. They might never use it, but they want to know that that option is there, and that they are not totally out of control at the end of their lives. They want the right to die with dignity, peace, and with their loved ones present. I don't have the letters and I won't read them to you, but there is a former representative whose sister used this law in Oregon, and he wrote a very beautiful and moving letter about the peacefulness of the death in the manner in which she chose, at a time that where her family was present, her doctor was present and her minister was present. I think that all people deserve this. The peace of mind to know that if they feel that they will have no control, that it is totally unbearable, that there is something that they can do about it that is more dignified, more peaceful than what has happened to friends of mine who have blown their brains out with a gun, I don't think that is dignified. I don't think that is peaceful, and I don't think that people ought to have to get to that. Some of you may know a story of someone who was told that they were dying, and then

they recovered, or they received a different diagnosis. If we pass this bill, you feel, will someone like that end up taking his or her own life when they might have recovered? I submit that the right to obtain a prescription and end your life is not something that you do while you still have a hope in your mind or feeling in your body that there is a chance that you will beat the disease. If that is the kind of person that you are, the way that you are thinking, you are not going to ask for the prescription, and nobody is going to ask you to take it. It is not a thing that you do under those circumstances. It is something to do when you know that you can't take it anymore, not being in control. I don't know when a person gets to that position. Some of the people in Oregon who asked for the prescriptions, didn't use them. They died anyway, or they are still living, but they had that option. There are specific safeguards in here so that no one can act upon impulse. They can't act on this because they have no access to mental health care, pain control or hospice care. All of these things must be in place for a person who wants them. These are very specific safeguards. You have to have two physicians confirm your diagnosis and confirm that you are in a condition of severe unrelenting suffering from the terminal condition. It requires that the patient receive counseling if there is any feeling on the part of the attending physician that the patient is suffering from a psychiatric or psychological disorder. If the patient makes a verbal request to obtain the prescription, the bill that imposes a waiting period of no fewer than 15 days, when the oral request must be made a second time. The patient must also make a written request and the physician is prohibited from writing the prescription for 48 hours following the written request. In each case, the physician is required to ask the patient if she or he would like to rescind the request. Getting a prescription pursuant to this bill cannot be any part of another agreement previously entered into like a living will. It has to be a wholly separate procedure. No other person can make this decision for the patient under circumstances. Forget euthanasia. It is not the slippery slope to euthanasia. This bill makes it a class A felony to coerce or exert undue influence on a patient, to request medication for the purpose of ending the patient's life. Further, no physician will be required by this bill to provide such medication. There are many who have made the statement that this decision should be a private matter between the patient, the patient's family, and the physician. I fully agree, but it cannot be a private matter as long as aiding suicide is a felony under New Hampshire law, which currently RSA 630:4 **TAPE CHANGE** this bill would say that the taking of your own life in this manner, would not constitute suicide. We are fortunate today, as we consider this bill, to have the documented experience from Oregon, most of which I have already told you. In 1998, the first year after the bill went into affect, 15 people swallowed fatal doses of barbiturates. The governor of Oregon, who is also a physician, he is quoted as saying that "he is gratified to see that the act is working much as they expected that it would." The health division officials in Oregon found that, "A desire for personal control over lives end and concern about bodily functions" were the driving forces behind the people's use of the law. The report continues to say that financial worries, pain or lack of insurance, hospice care or education, which had been areas of great public concern, did not appear to be driving factors. That is the report from the health division officials from Oregon. In our living will law in New Hampshire, we each have the right to say in advance of a catastrophic event or illness, that we opt to refuse certain medical treatment. We have this right for something that hasn't even happened, and

may not occur at all. Senate Bill 44 extends the same right to those who are in the midst of a very real severely painful debilitating and terminal condition. Senate Bill 44 allows this person to make the decision to end their life in this world and to do so in a humane and dignified way. I have heard people opposing this bill, saying that we do not need the bill because people can end their lives without taking prescribed medication, such as starving themselves to death. I submit, is that humane or dignified? No. Morally, philosophically, and ethically, that is each person's right to be able to make this decision. Passing SB 44 would make it a legal right, and I urge you to vote to pass this bill. Thank you.

SENATOR BROWN: When we heard this bill in the Judiciary Committee, it was my first experience with public testimony on the bill, of this nature. I was struck by the people who came in, and the moving testimony that we heard on both sides of this issue. I was particularly struck by our disabled community. I want to read to you, the definition, in the bill, for 'terminal condition'. While I read it, I want you to think about a disabled person. "Terminal condition means an incurable, irreversible condition for the end-stage of which there is no known treatment which will alter its course to death and which, in the opinion of the attending physician and consulting physician, competent in that disease category, will result in premature death." We heard from several groups of disabled people who are scared to death of this language. I think that the sponsor, Senator Wheeler, is extremely sincere in this bill, and I understand where she is coming from. All of us think about our own end and we worry about it. But I want to share something else with you. I came to learn that most terminally ill people do not wish to commit suicide. Of those who do, they are most often depressed. Now if someone is depressed, other than a terminally ill person, what do we say to them? We say that we want to help you. But to someone who is terminally ill, we say, no? Contrary to the assumptions of many in the public, a scientific study of people with terminal illnesses published in the American Journal of Psychiatry found that fewer than one in four expressed the wish to die. In all of those who did, had clinically diagnosable depression. As Richmond points out, effective psychotherapeutic treatment with the terminally ill and only irrational prejudice prevents the greater resort to such measures. Suicideologist, Doctor David Clark, observes that depressive episodes in the seriously ill are not less responsive to medication than depression in others. Indeed the suicide rate in persons with terminally illnesses only between two and four percent. Compassionate counseling and assistance, such as that provided in many hospices, together with medical and psychological care, provide a positive alternative to doctor assisted suicide. Finally, I think that Doctor Squires touched onto this, but a lot of the worries that we have about loss of bodily controls, about pain management, that is something we can address and we can work on. We shouldn't say to someone who says that they are terminally ill and I want to die, that it is okay, that we won't help you. I would ask you to think about that. I do want to say that I understand the compassion, it is a tough issue. Thank you.

SENATOR RUSSMAN: I rise in support of the bill. I think that to me, it is an empowering place. I don't think that it is... I had some clients that I represented at one time. His name was Sid and he was a farmer up in Brentwood. He lived over on Scrabble Road there. He came down with liver cancer and shortly thereafter, he sent his wife to the grocery store to get something for him, and he went out behind the barn and did shoot

himself in the head. You know, I think that this is empowering our constituents. I trust our constituents to do what they think is right. I don't think that government should be making those choices for us. I think that this is a way of allowing people to make their own choices. I know that certainly, in my own case, I wouldn't want those others to make decisions as to when it was time for me or what have you, or to decide to manage my pain, or manage my own bodily dysfunction, if you will, if I wanted to die. I think that that belongs to me, and it is something that nobody else should take from me. I think that this bill goes towards that. Now whether or not there needs to be additional safeguards built in for either the disabled or the elderly, perhaps the House could look at that. But certainly, I think that there is a good argument to be made that this ought to be able to go forward and let those people have termination of their own life as they deem appropriate, and we shouldn't be sitting there trying to second guess what somebody who is in that situation, unless we ourselves are in that situation, want to do.

SENATOR TROMBLY: Shortly after I became a lawyer in the early 1980's, I had the privilege of knowing a wonderful senior citizen in the McKerley Nursing Home. I went up there one day to do her will and she looked at me after we got it all done and she said, "you know Rick, I am just tired. I have done what I want to do with my life. I am tired. I would rather end my life in the comfort of my family, but they are dead. They are not around, so I am here, and I really don't like having to eat on the schedule that the nursing home prescribes for me, or I don't like not being able to take my walk, or to have a pet, which I had my entire life. I am tired. I have lived my life, and there is nothing more for me to accomplish. I have a good life, but I am not having a good life now, and this isn't the way that I want to go." That was my first contact with someone who was facing the reality of their own mortality. She was rational and she was logical, and she knew what she was doing, she was responsible. In committee, I voted for this bill, but I am going to vote against it today. I have heard from the developmentally disabled community at great length. I believe everything that Senator Wheeler said from the bottom of my heart. Logically and emotionally, I think that Senator Wheeler is correct. When Senator Russman says that we need to trust our constituents, we need to do that. I needed to trust my client in the early 1980's. But we are talking about a quality of life here and I do honestly believe, and I hope, Senator Squires wouldn't dispute this with me, but I, as a lay person, do believe that people do have relationships with their doctors, and they do talk with their doctors. I do believe that the doctors that treat New Hampshire are caring, compassionate people. I do think that doctors make provisions for people like my client. I think that they do that. I think that it is done. It is illegal, but I think that it is done. So I think that everything about which Senator Wheeler spoke, about how true it is, does happen. I am not aware of a prosecution in this state. The other lawyers in this state can contradict me if I am wrong, but I haven't heard of one for a very long time, of a doctor taking care of their patient...and I am going to respect that unspoken tradition today, because I do believe that the appeals that I heard from the developmentally disabled community, are real. I don't think that they were trying to pull anything on me. I think that they are afraid. They have enough to worry about. We strive in this chamber to make their lives as easy as possible, and I don't think that we need to add that burden to them. So I feel comfortable in voting no today, so that I can put their minds at ease, because I know those people that want to do what this bill does, have that option already. Thank you, Madame President.

SENATOR WHEELER: Senator Trombly, I just can't let that go without saying something. Because I worked so hard for the developmentally disabled and appreciate their concerns, but do you understand that although fears don't always have a rational base, and there is really nothing in this bill that would affect the developmentally disabled community?

SENATOR TROMBLY: I agree with you.

SENATOR WHEELER: Thank you.

SENATOR KRUEGER: First of all, I want to commend Senator Trombly for what he said, having represented the developmentally disabled for so many years. I can appreciate their fears, but what I stood to say, quite frankly, was that when I heard Senator Brown describe and define terminal condition, incurable, irreversible condition, end stage, no treatment will result in premature death, it hit me. That is me. As many of you know, I suffer from a rare kind of leukemia. I, 16 years ago, lay in a hospital bed having gotten the last rites on two occasions. When you are in that position, my friends, let me tell you something. You really are depressed. In the true clinical definition of the word 'depression', because your fears are there. Your children come and you worry. You worry about financial things, you worry about your job. I was a single wage earner raising eight children. You are petrified. There are easy outs, and I would even agree with Senator Trombly, that the wonderful doctors I had, probably would have helped me do anything that I wanted. But I didn't die. I didn't get cured, but I didn't die. My mood changed and my life changed, medicine changed. I still fall in that category, but I am not so sure that I would have, in my heart of hearts, done the right thing if someone had encouraged me along these lines, because I was petrified. I lived and breathed moment to moment with the fear that I would not be able to have the courage to fight the chemotherapy, the pain, the let down, the disappointment, the financial repercussions of exactly what was surrounding me. I breathed death there. I had three roommates in my admissions of in and out for years and they all died. We were all down a wing of this hospital. There was a floor called "Far ten." Far ten sounds like it would be an almost surrealistic name for a cancer ward. It was actually a very wonderful place to be, just like hospices are a wonderful place to be, because there is a feeling, not of finality, but there is a feeling of joy. Very, very hard to decide. But on this particular ward, there was a corridor, and it was the leukemia corridor. To get down to visit anyone in that corridor you wore a mask, because obviously you couldn't bring germs in there. During one of my admissions, two women who became very, very good friends to me, lived there. One's name was Bethy and the other was Marlene. To give a name to these people who are no longer with us. One was a teacher from Fall River and the other one was an insurance agent. Both very young, both suffering from leukemia. I went through a lot, but I went through nothing like what they went through. I saw Marlene with pins in her head so that she couldn't turn it because she suffered from a cancer which had metastasized to her brain. I saw how many times she might have given up. Was her death as peaceful as it may have been if someone had offered her something to make it go away quicker? I don't think so. I was there when she died. I was there when Marlene had her second bone marrow transplant and again, I only missed her death by moments, but I can tell you that they were ready in a different kind of way. I urge you to vote against the legislation. I also appreciate, Senator Wheeler, your insight. Some of the things that you said, I can appreciate more than you can ever believe, but I am not sure that the depression issue hasn't been studied enough

to help people who are in positions, like myself. I used to give lectures on this, and I must tell you also, my friends, we are all terminal. The only thing is that I thought that I knew when the end date was. I thank you for this time.

SENATOR FERNALD: I have struggled with this issue as a lot of you have. In committee, I was tempted to move interim study, so that I could dodge the issue, but I decided that I really had to face this issue. That it was too important to let pass. I am speaking in favor of it. We, as a society, do not approve of suicide. We are the only animals in God's creation that have calendars. We are the ones who can perceive the future, and, hope for the future is part of the human condition. So we consider it a tragedy when a healthy person or a young person commits suicide, because we see the potential that is lost, but that is not the end of the question, because medical science has advanced to the point where people live longer and living longer, they tend to fall victim of diseases like cancer that are long, slow, painful deaths. So this issue comes up and in spite of our basic belief that suicide is a tragedy, I think that we understand there are circumstances where suicide is not a tragedy. Senator Trombly has alluded to that. To disagree with Doctor, Senator Squires, there are doctors who recognized this. This law does not make suicide legal or illegal. Suicide is not illegal. I mean, obviously, if you have a law against suicide you have no one to prosecute if someone successfully does it. We do have a law against assisted suicide, because to encourage a healthy person to commit suicide is wrong. It is encouraging this thing, that we all understand, to be a tragedy. But again, we all understand that there are circumstances where suicide is not a tragedy. But under the current law, then you have to look at what are the options available for a person who has reached that point? That is where, I think, we actually have a tragedy, because the means that many choose, because it is the one available, is to put a gun to their head, which means, then that their family has to find them in that state. That is not death with dignity. It isn't a tragedy if we are talking about someone who is terminally ill and in great pain. The tragedy is the means that they are forced to choose because of our law. What this law allows is the prescription of a lethal dose of medication so that a person can make this choice, and do it with dignity. I have heard a number of arguments against this. One is the concern of the disability community. I think that their concern is misplaced, because this is a law that talks about people's free choice. So it is not about forcing people to do something. This is a law about free choice. I have heard people say that this is euthanasia, well it is not. Euthanasia is when you kill somebody else. Suicide is when you make a decision for yourself. I have heard people say that this is the slippery slope to euthanasia. I don't believe in slippery slopes. I can vote yes today on this and I can vote no tomorrow on euthanasia, and I can do it over and over, and I am not on any slope. I can stand on solid ground and make choices and draw my lines. There was an argument today about this being government intrusion. It is not. The intrusion, if you will, is the current laws which limit the means that people use, or that force some doctors and patients to break the law, to do, what again, our society recognizes in certain circumstances, is not a tragedy. So I would say that another tragedy is that we make criminals out of these doctors. There was a statement that the public doesn't want this. I guess that is not my perception at all. I would point out that Oregon, which is the only state which has this law, it was passed by referendum, which meant that the majority of the voters supported it. I don't think that the people of

New Hampshire are really that much different than the people of Oregon. The last argument that I heard against this, which we heard in committee from the hospice people and I have received stuff in the mail, is that the people are depressed, and they are in pain, and if we give them proper treatment, they will not be depressed anymore and they won't be in pain anymore, and they will just slip off to meet their creator. Some of the people that came to testify, I knew personally, and I was persuaded by their testimony. I went last week to meet with a friend who had lost his wife to cancer last year, because I really wanted to know his experience. Hospice was with her, and they were using pain medication because she was in pain. They put on a morphine patch. It did no good. They put on another, they put on two more, they put on six. They have her on injector pump. No matter what they did, she was in excruciating pain that lasted for days, which made me come to realize that some of the things that we heard in committee were not true. I asked him about this, and I need to mention these people, where she is, a strict catholic, and he is too. He said, anybody who had been what she had been through or what he had been through would never oppose something like this. Thank you.

Amendment failed.

Question is on ordering to third reading.

Recess.

Out of Recess.

A roll call was requested by Senator Fernald.

Seconded by Senator Wheeler.

The following Senators voted Yes: Fernald, Wheeler.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm, Hollingworth, Cohen.

Yeas: 2 - Nays: 22

Motion failed.

Senator Squires moved inexpedient to legislate.

A roll call was requested by Senator Wheeler.

Seconded by Senator Fernald.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, McCarley, Trombly, Disnard, Roberge, Eaton, Squires, Francoeur, Larsen, Krueger, Brown, J. King, D'Allesandro, Klemm, Hollingworth, Cohen.

The following Senators voted No: Below, Fernald, Pignatelli, Russman, Wheeler.

Yeas: 19 - Nays: 5

Committee report of inexpedient to legislate is adopted.

SB 66, relative to structured settlements. Judiciary Committee. Vote 5-0. Inexpedient to Legislate, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: Madame President and members of the Senate, SB 66 is the second of three structured settlement bills to come before the Judiciary Committee last session. Just to kill the suspense, we voted to kill all three. Currently, there is little to no statutory guidance in

the matter of structured settlement transfers. The issue might arise when an individual, who is receiving regular payments from an insurance company or an insurance company assignee, as a result of a personal injury settlement, decides to assign some or all of their remaining payments to a third party in exchange for a lump sum. The lump sum is generally some negotiated amount that is lower in value than the total of all the payments, but the benefit that the person is receiving is immediate cash. Maybe they want it for a down payment on a house, or medical expenses, or some other purpose. This bill would have set certain requirements for disclosure and court approval in particular cases. After two public hearings and a lot of letters and material submitted to the committee, we are unable to determine if this bill is necessary, or what the tax implications are if the legislature makes changes; therefore, we voted unanimously that this bill should be found inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 126, requiring approval of the superior court or, in the case of worker's compensation, the labor commissioner, as a precondition to transfer of any structured settlement payment rights. Judiciary Committee. Vote 5-0. Inexpedient to Legislate, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: Senate Bill 126 is the third structured settlement bill from the 1999 session. This bill would have imposed more extensive requirements for disclosure, court approval, findings of necessity, and approval of all the parties before payments could be transferred to a third party in exchange for a lump sum payment. Despite lengthy hearings and extensive public testimony from people in the industry, there were a number of questions left unanswered concerning this bill. One was the tax implications of structured settlement transfers. Another was whether this bill gave veto power to insurance companies over any transfers of payment, since these companies generally oppose such transfers. Other questions concerned whether the court should get involved in approving a transfer, and how such cases would be treated in the court system. Ultimately, there were too many unanswered questions, and not enough demonstrated need for the bill. The committee voted unanimously to find SB 126 inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 185, relative to property settlements in cases where certain domestic relationships have terminated. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3040s

04/09

Amendment to SB 185

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

AN ACT relative to the partition of real or personal property.

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

1 Partition of Real Property; Chapter Heading Amended. The chapter title of RSA 547-C is amended to read as follows:

PARTITION OF REAL AND PERSONAL PROPERTY

2 Partition of Property. RSA 547-C is repealed and reenacted to read as follows:

547-C:1 Parties. Any person owning a present undivided legal or equitable interest in real or personal property, not subject to redemption, or

the holder of an equity of redemption shall be entitled to have partition in the manner hereinafter provided. If such interest is in fee, he or she shall be entitled to partition in fee; if a life estate or a term for years, he or she shall be entitled to partition thereof to continue so long as his or her estate endures. A life tenant, remainderman, or a tenant for years of whose term at least 20 years remains unexpired may, in the exercise of the court's equitable powers, have partition of the fee. The existence of a lease of the whole or a part of the real property to be divided shall not prevent partition, but such partition shall not disturb possession of a lessee under a lease covering the interests of all the co-tenants.

547-C:2 Petition. A petition may be filed by such person in the probate court in the county in which the real or personal property or any part of the property is located, particularly describing the property, the names of all owners or persons interested, if known, and the share of the petitioner in the property and praying for partition of the property. Upon petition by the administrator or upon its own motion, the court may cause any real or personal property to be partitioned, divided, awarded, or assigned in accordance with procedures described in this chapter.

547-C:3 Appeal. In cases where a right to jury trial is guaranteed by the constitution, a person may, at the time judgment by the probate court is declared, appeal therefrom to the superior court. The appeal shall be entered 15 days from the date of the register's issuance of the notice of decision unless for good cause shown the time is extended by the superior court. If a trial by jury is requested, the superior court shall expedite such request and schedule the case for trial in as timely a manner as possible and may cause any real or personal property to be partitioned or divided in accordance with procedures described in this chapter. In all cases which are so appealed, it shall be the duty of the superior court to transmit to the judge of the probate court, within 10 days after the case is finally disposed of, a certificate showing the final disposition of the case.

547-C:4 Owner Unknown. If the persons interested in any such real or personal property with the petitioner are unknown, it shall be described in the petition in the same manner as is required in the case of taxing unimproved lands of nonresidents, specifying the share held by each petitioner, and stating that it is held with persons unknown.

547-C:5 Notice. The petitioner shall give notice to all persons interested in the real or personal property, by causing the petition and order of notice thereon to be served on each in the same manner that writs of summons are required to be served.

547-C:6 Publication of Petition. If any petitionee or his residence is unknown, or if petitionee resides out of the state and has not had personal notice, the court shall order publication of the petition and order of notice, and may fix the time of the last publication.

547-C:7 Additional Notice. If any petitioner is absent at the time of the service of the petition, and has not returned, and does not appear at the sitting of the court at which the petition is entered, it may be continued and further notice ordered.

547-C:8 Appointing Agents. If any petitionee is a minor, or otherwise incapacitated to take care of his estate, partition shall not be made until a guardian or agent has been appointed. Such guardian or agent may be appointed by the court.

547-C:9 Owner Unknown. If any petitionee is unknown the court may, in its discretion, appoint an agent to aid and advise in petitionee's behalf in making the partition.

547-C:10 Trial of Issues. Matters alleged in the petition may be denied or avoided by the petitionee by plea, and further proceedings may be had, and an issue of fact or of law made and tried, as upon a writ at common law or a bill in equity, and the court shall have full power to determine the respective interests of all the parties; or the petitionee may file a plea denying that the petitionee holds any part of the real or personal property with the petitioner, with a brief statement of matters in defense.

547-C:11 Judgment for Partition; Committee. If the issue involves real property and is determined in favor of the petitioner, or if after notice the petitionee does not appear, or if no sufficient objection is made, the court shall render judgment that partition be made, and shall appoint a committee, consisting of 3 suitable persons, resident of the county, to make partition of the real property, to set off the shares of the several petitioners according to their respective titles and to award costs as they deem just.

547-C:12 Oath; Notice. The committee shall be sworn. They shall appoint a time and place of hearing, and cause notice thereof in writing, signed by the chairperson, to be served upon each person interested, or each interested person's agent or attorney, or to be left at each interested person's abode at least 7 days before the day of hearing.

547-C:13 Publication of Notice. If any petitionee or petitionee's residence is unknown the committee shall cause the notice to be published.

547-C:14 Setoff; Report. The committee shall make partition of the real property as directed in their commission, by setting off to each petitioner his or her just share thereof, according to his or her right, by proper metes and bounds or other distinct description, and shall return to the court a full report of their doings, with a particular description of each portion of the real property so set off.

547-C:15 Judgment; Record. If no sufficient objection appears, the court shall render judgment upon the report. The partition so made shall be recorded in the registry of deeds for the county where the real property lies.

547-C:16 Costs. The probate court shall award the costs of making the partition, and apportion the same in such manner as they deem just.

547-C:17 Against Petitioner. If on the trial of an issue involving real or personal property, as provided in RSA 547-C:10, it is determined that the petitioner has no share or interest in the property, or a less share than the petitioner claims, the petitionee shall recover the taxable costs of such trial.

547-C:18 Failure to Enter, Etc. If the petitioner fails to enter or prosecute his or her petition, costs shall be awarded in favor of all the petitionees upon whom service was made.

547-C:19 Petition. If there is no dispute about the title to real or personal property, a petition for partition may be filed with the judge of probate for the county where the real or personal property or the greater part thereof is located, who shall appoint a time and place of hearing on the petition.

547-C:20 Notice. Notice of the petition and hearing shall be given to all parties interested, by giving to each in hand, or leaving at their abode, an attested copy of the petition and order of notice, at least 14 days before the day of hearing, or by causing the same to be published.

547-C:21 Procedure. If on the hearing no sufficient objection appears, the judge shall cause partition to be made by a committee, who shall be appointed, be sworn, give notice and proceed, and the court shall appoint guardians or agents for all minors or persons incapacitated, and agents

for all persons unknown or out of the state, interested in such estate, receive and accept the report of such committee, and render judgment and award costs thereon, in the manner prescribed in this chapter.

547-C:22 Unequal Division and Sale. Whenever real or personal property is so situated or is of such a nature that it cannot be divided so as to give each owner his or her share or interest without great prejudice or inconvenience, the whole or a part of the real or personal property may be assigned, to one of them, the assignee paying to the others who have less than their share such sums as the probate court shall award.

547-C:23 Recommitment. If it appears to the court that the real property is divisible it shall recommit the report to the committee with instructions as to the division of the real property.

547-C:24 Sale. When the proceedings are pending, if it is alleged in the petition that the real or personal property is so situated or is of such a nature that it cannot be divided so as to give each owner his or her share or interest without great prejudice or inconvenience and the court so finds, or if, upon the report of the committee that the real property at issue is of the nature aforesaid, the court so finds, the court may order it to be sold and the proceeds from the sale to be divided among the owners according to their respective titles or interests, and may make all other orders that may be necessary to cause such sale and the distribution of the proceeds, as a court of equity may do in like cases.

547-C:25 Distribution Deferred. When it appears that an owner not residing within the territorial limits of the United States of America or any territorial possession thereof would not have the benefit or use or control of such proceeds due them and that special circumstances make it desirable that delivery of such proceeds to them be deferred, the court may order that such proceeds be paid to the state to be invested by the state treasurer and handled subject to such further order as such court may enter; provided a reasonable fee, as allowed by the court, of the attorney for any such owner shall be considered a lien thereon and shall be paid by the fiduciary having such funds in charge to such attorney prior to payment to the state treasurer.

547-C:26 Further Notice. If due notice to the petitionees has not been given, the court may continue the case and order such further notice of the pendency thereof as it may deem just, and when the order has been complied with it shall proceed with such division.

547-C:27 Mortgagees, etc. No partition shall be avoided by any conveyance made by a petitionee after the entry of the petition therefor, nor by any conveyance or other legal disposition, unless duly recorded at the date of such entry, nor by any mortgage, attachment or lien thereon, whenever made, nor by the death of either party; but the share or interest of each petitioner shall be set off in severalty, and be subject to all legal claims thereon, as if the claimant had been a party thereto.

547-C:28 Legal Owner. If in making partition a share or interest is set off to any person other than the legal or equitable owner, such share or interest inures to the benefit of the legal or equitable owner, his or her heirs or assigns, as if it had been set off to the legal or equitable owner.

3 Effective Date. This act shall take effect January 1, 2001.

2000-3040s

AMENDED ANALYSIS

This bill authorizes the probate court to order a partition of real or personal property where legal or equitable rights or interests in such property is at issue.

SENATOR TROMBLY: The amendment completely guts the bill and probably, thank heavens. What this does...because it is my bill. What this bill does, is currently, in terms of people jointly owning property, sometimes in the division of the property, the court does not allow, does not apply to what is called equitable principles or fairness, what should go there or what should go here, so sometimes people own property, currently real property in those terms is divided in the probate court. What this amendment does is add 'personal property' to that and puts the jurisdiction into the probate court so that that property can be divided with the probate court looking at all of the equities as opposed to the superior court which would simply apply the principles of property law or contract laws. The probate court judges are in favor of, and I am glad that they are willing to accept this. What it also does, Madame President and members of the Senate, is currently you can have people in ownership of personal property and real property. They divide the real property in the probate court and the personal property in the superior court, and it really all ought to be together so that the court can hear everything. Thank you, Madame President.

Amendment adopted.

Ordered to third reading.

HB 640-FN, relative to grievance procedures of managed care organizations. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3137s

01/10

Amendment to HB 640-FN

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

AN ACT establishing certain standards of accountability for health maintenance organizations and other entities providing health insurance through a managed care system.

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

1 New Paragraph; Medical Directors. Amend RSA 329:17 by inserting after paragraph III-a the following new paragraph:

III-b.(a) Any referral by the insurance commissioner under RSA 420-J:5-e, VII or any complaint alleging that a medical director has committed misconduct as set forth in paragraph VI of this section shall be received and reviewed by the board in accordance with the provisions of this section for potential disciplinary action. For the purposes of this paragraph, "medical director" means a physician licensed under this chapter who is employed by a health carrier or medical utilization review entity and is responsible for the utilization review techniques and methods of the health carrier or medical utilization review entity and their administration and implementation.

(b) Any complaint received by the board regarding an insurance coverage decision by a medical director shall be forwarded by the board to the insurance commissioner for review.

2 Medical Review Subcommittee; Medical Director. Amend RSA 329:17, V-a to read as follows:

V-a. A medical review subcommittee of 7 members shall be nominated by the board of medicine and appointed by the governor and coun-

cil. The subcommittee shall consist of one member of the board of medicine and 6 other persons, no more than 5 of whom shall be physicians, ***one of whom shall be a medical director as defined in paragraph III-b of this section.*** Any public member of the subcommittee shall be a person who is not, and never was, a member of the medical profession or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of medical services or an activity directly related to medicine, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment. The subcommittee members shall be appointed for 3-year terms, and shall serve no more than 2 terms. Upon referral by the board, the subcommittee shall review disciplinary actions reported to the board under paragraphs II-V of this section, ***except that matters concerning a medical director involved in a current internal or external grievance pursuant to RSA 420-J shall not be reviewed until the grievance process has been completed.*** Following review of each case, the subcommittee shall make recommendations to the board. Funds shall be appropriated from the general fund for use by the subcommittee to investigate allegations under paragraphs I-V of this section. The board shall employ a physician as a medical review subcommittee administrator who shall serve at the pleasure of the board. The salary of the medical review subcommittee administrator shall be established by the board in accordance with duties, experience, and amount of time required for the position.

3 New Section; Medical Directors Required. Amend RSA 420-E by inserting after section 2 the following new section:

420-E:2-a Medical Director. Every medical utilization review entity licensed by the department under this chapter shall employ a medical director licensed under RSA 329.

4 New Paragraph; Definition Added. Amend RSA 420-J:3 by inserting after paragraph XXV the following new paragraph:

XXV-a. "Medical director" means a physician licensed under RSA 329 and employed by a health carrier or medical utilization review entity who is responsible for the utilization review techniques and methods of the health carrier or medical utilization review entity and their administration and implementation.

5 New Paragraph; Medical Director Required. Amend RSA 420-J:6 by inserting after paragraph IV the following new paragraph:

V. Each health carrier that conducts utilization review shall employ a medical director who shall have responsibility for all utilization review techniques and methods and their administration and implementation. Nothing in this section shall be construed to preclude a medical director from consulting with or relying on the advice of a physician licensed in this state or any other state. Nothing in this section shall be construed as creating any civil liability to the medical director for the medical director's alleged negligent performance of the aforementioned responsibilities for utilization review.

6 Information Provided to Covered Persons. Amend RSA 420-J:5, II(a) – (e) to read as follows:

(a) A description of the ***internal*** grievance procedure ***required under RSA 420-J:5*** for adverse determinations and other matters [which] ***and a description of the process for obtaining external review under RSA 420-J:5-a – RSA 420-J:5-e.*** These descriptions shall be set forth in or attached to the policy, certificate, membership booklet, or other evidence of coverage provided to covered persons.

(b) A statement of a covered person's right to contact the commissioner's office for assistance at any time. The statement shall include the toll-free telephone number and address of the commissioner.

(c) Upon written denial of a requested medical service or claim by the health carrier, a statement of the covered person's right to access the internal grievance process **and the process for obtaining external review. This statement shall also include a written explanation of any adverse determination, with the name and credentials of the health carrier medical director, including board status and the state or states where the person is currently licensed, and the relevant clinical rationale used to make the adverse determination. If the person making the adverse determination is not the medical director but a designee, then the credentials, board status, and state or states of current license shall also be provided for that person. Nothing in this section shall be construed to require a health carrier to provide proprietary information protected by third party contracts.**

(d) Staff assistance in filing **an internal grievance.**

~~(e) [If requested by the consumer or health care provider acting on behalf of the consumer, a written explanation of any adverse determination, with the name and credentials of the health carrier medical director or designee, including board status and the state or states where the person is currently licensed, and the relevant clinical rationale used to make the adverse determination. Nothing in this section shall be construed to require a health carrier to provide proprietary information protected by third party contracts] Any clinical review criteria that are used by the health carrier or its designee utilization review entity as the basis of an adverse determination shall be disclosed to the treating provider and the covered person. Such disclosure shall be accompanied by the following notice: "The materials provided to you are criteria used by this plan to authorize, modify, or deny care for persons with similar illnesses or conditions. Specific care and treatment may vary depending on individual need and the benefits covered under your contract."~~

7 Second Level Grievance; Notice Required. Amend RSA 420-J:5, V(a)(3) to read as follows:

(3) The review panel shall issue a written decision to the covered person within 5 business days of completing the review meeting. Upon concurrence of the covered person, a copy of the decision shall be forwarded to the insurance department. The decision shall include the titles of the members of the review panel; a statement of the review panel's understanding of the nature of the grievance, including issues raised by the covered person, and all pertinent facts; the rationale for the review panel's decision; reference to evidence or documentation considered by the review panel in making the decision; if an adverse decision is made, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and a statement of the covered person's right to file an external appeal as provided in RSA [420-J:5, VIII] **420-J:5-a - RSA 420-J:5-e. The statement of appeal rights shall include a description of the process for obtaining external review of a determination, a copy of the written procedures governing external review, including the required time frames for requesting external review, and notice of the conditions under which expedited external review is available.**

8 Review Panel; Notice Required. Amend RSA 420-J:5, V(b)(3) to read as follows:

(3) The review panel shall issue a written decision to the covered person within 5 business days of completing the review meeting. The decision shall include the titles of the members of the review panel; a statement of the review panel's understanding of the nature of the grievance and all pertinent facts; the rationale for the review panel's decision; reference to evidence or documentation considered by the review panel in making the decision; if an adverse decision is made, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and a statement of the covered person's right to file an external appeal as provided in RSA [420-J:5, VIII] **420-J:5-a – RSA 420-J:5-e. The statement of appeal rights shall include a description of the process for obtaining external review of a determination, a copy of the written procedures governing external review, including the required time frames for requesting external review, and notice of the conditions under which expedited external review is available.**

9 Expedited Internal Grievance Review. Amend RSA 420-J:5, VI(e) to read as follows:

(e) In any case where the expedited review process does not resolve a difference of opinion between the health carrier and the covered person or the provider acting on behalf of the covered person, the covered person or the provider acting on behalf of the covered person may submit a written grievance, unless the provider is prohibited from filing a grievance by federal or other state law. A health carrier shall review it as a second level grievance. In conducting the review, the health carrier shall ~~[adhere to time frames that are reasonable under the circumstances]~~ **make a decision and notify the covered person as expeditiously as the covered person's medical condition requires, but in no event more than 72 hours after the grievance is submitted.**

10 New Paragraph; Notice Required. Amend RSA 420-J:5, by inserting after paragraph IX the following new paragraph:

X. If the covered person has requested first or second level, standard or expedited review and the health carrier has not issued a decision within the required time frames, then the health carrier shall promptly provide the covered person with a statement of the covered person's right to file an external appeal as provided in RSA 420-J:5-a – RSA 420-J:5-e. The statement of appeal rights shall include a description of the process for obtaining external review of a determination, a copy of the written procedures governing external review, including the required time frames for requesting external review, and notice of the conditions under which expedited external review is available.

11 New Paragraph; Definition Added. Amend RSA 420-J:3 by inserting after paragraph III the following new paragraph:

III-a. "Authorized representative" means a person to whom a covered person has given consent to represent the covered person in an external review. Authorized representative may include the covered person's treating provider.

12 New Paragraph; Definition Added. Amend RSA 420-J:3 by inserting after paragraph XXIII the following new paragraph:

XXIII-a. "Independent review organization" means an entity that employs or contracts with clinical peers to conduct independent external reviews of health carrier determinations.

13 New Sections; External Review. Amend RSA 420-J by inserting after section 5 the following new sections:

420-J:5-a Right to External Review.

I. A covered person shall have the right to independent external review of a determination by a health carrier or its designee utilization review entity when all of the following conditions apply:

(a) The subject of the request for external review is an adverse determination;

(b) The covered person has completed the internal review procedures provided by the health carrier pursuant to RSA 420-J:5, III through VI, or the health carrier has agreed to submit the determination to independent external review prior to completion of internal review, or the covered person has requested first or second level, standard or expedited review and has not received a decision from the health carrier within the required time frames;

(c) The covered person or the covered person's authorized representative has submitted the request for external review in writing to the commissioner within 180 days of the date of the health carrier's second level denial decision provided pursuant to RSA 420-J:5, V or VI, or if the health carrier has failed to make a first or second level, standard or expedited review decision that is past due, within 180 days of the date the decision was due;

(d) The covered person's cost for the service, supply or drug that is the subject of the adverse determination is, or is anticipated in a 12-month period to be, equal to or in excess of \$400;

(e) The health carrier determination does not relate to any category of health care services that is excluded from the external review provisions of this chapter pursuant to paragraph II; and

(f) The request for external review is not based on a claim or allegation of provider malpractice, professional negligence, or other professional fault excluded from the external review provisions of this chapter pursuant to paragraph III.

II. Determinations relating to the following health care services shall not be reviewed under this chapter, but shall be reviewed pursuant to the review processes provided by applicable federal or state law:

(a) Health care services provided through medicaid, the state Children's Health Insurance Program (Title XXI of the Social Security Act), medicare or services provided under these programs but through a contracted health carrier.

(b) Health care services provided to inmates by the department of corrections.

(c) Health care services provided pursuant to a health plan not regulated by the state, such as self-funded plans administered by an administrative services organization or third-party administrator or federal employee benefit programs.

III. The external review procedures set forth in this chapter shall not be utilized to adjudicate claims or allegations of health care provider malpractice, professional negligence, or other professional fault against participating providers or medical directors.

420-J:5-b Standard External Review. Standard external review shall be conducted as follows:

I. Within 7 business days after the date of receipt of a request for external review, the commissioner shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person under the health benefit plan;

(b) The determination that is the subject of the request for external review meets the conditions of eligibility for external review stated in RSA 420-J:5-a, I; and

(c) The covered person has provided all the information and forms required by the commissioner that are necessary to process a request for an external review.

II. Upon completion of the preliminary review pursuant to paragraph I, the commissioner shall immediately notify the covered person or the covered person's authorized representative in writing:

(a) Whether the request is complete; and

(b) Whether the request has been accepted for external review.

III. If the request is not complete, the commissioner shall inform the covered person or the covered person's authorized representative what information or documents are needed to make the request complete and to process the request. The covered person or the covered person's authorized representative shall submit such information or documentation within 10 days of being notified that the request was incomplete.

IV. If the request for external review is accepted, the commissioner shall:

(a) Include in the notice provided to the covered person pursuant to paragraph II a statement that if the covered person wishes to submit new or additional information or to present oral testimony via teleconference, such information shall be submitted, and the oral testimony shall be scheduled and presented, within 20 days of the date of issuance of the notice. However, the notice shall also explain that oral testimony shall be permitted only in cases when the commissioner determines, based on evidence provided by the covered person, that it would not be feasible or appropriate to present only written testimony.

(b) Immediately notify the health carrier in writing of the request for external review and its acceptance.

V. If the request for external review is not accepted, the commissioner shall inform the covered person or the covered person's authorized representative and the health carrier in writing of the reason for its non-acceptance.

VI. At the time a request for external review is accepted, the commissioner shall select and retain an independent review organization that is certified pursuant to RSA 420-J:5-d, I to conduct the external review. The commissioner shall not select the same independent review organization for each external review, but shall rotate among the certified independent review organizations, using all organizations equally. The commissioner may select and retain an independent review organization regardless of the rotation if the commissioner determines that the use of such independent review organization is necessary for the fair adjudication of the case in question.

VII. Within 10 days after the date of issuance of the notice provided pursuant to subparagraph IV(b), the health carrier or its designated utilization review organization shall provide to the selected independent review organization and to the covered person all information in its possession that is relevant to the adjudication of the matter in dispute, including but not limited to:

(a) The terms of agreement of the health benefit plan, including the evidence of coverage, benefit summary or other similar document;

(b) All relevant medical records, including records submitted to the carrier by the covered person, the covered person's authorized representative, or the covered person's treating provider;

(c) A summary description of the applicable issues, including a statement of the health carrier's final determination;

(d) The clinical review criteria used and the clinical reasons for the determination;

(e) The relevant portions of the carrier's utilization management plan;

(f) Any communications between the covered person and the health carrier regarding the internal or external review; and

(g) All other documents, information, or criteria relied upon by the carrier in making its determination.

VIII. Failure by the health carrier or the covered person to provide the documents and information required in paragraph IV(a) or VII within the specified time frame shall not delay the conduct of the external review.

IX. The selected independent review organization shall review all of the information and documents received from the carrier pursuant to paragraph VII and any other information submitted by the covered person or the covered person's authorized representative or treating provider with the request for external review or pursuant to subparagraph IV(a) and any testimony provided. In addition to the information provided by the health carrier and the covered person or the covered person's authorized representative or treating provider, the independent review organization may consider any applicable, generally accepted clinical practice guidelines, studies or research, including those developed or conducted by the federal government, national or professional medical societies, boards and associations. The independent review organization shall consider anew all previously determined facts, allow the introduction of new information, and make a decision that is not bound by decisions or conclusions made by the health carrier during internal review.

X. The selected independent review organization shall render a decision upholding or reversing the determination of the health carrier and notify the covered person or the covered person's authorized representative and the health carrier in writing within 20 days of the date that any new or additional information from the covered person is due pursuant to subparagraph IV(a). This notice shall include a written review decision that contains a statement of the nature of the grievance, references to evidence or documentation considered in making the decision, findings of fact, and the clinical and legal rationale for the decision, including, as applicable, clinical review criteria and rulings of law.

420-J:5-c Expedited External Review. Expedited external review shall be conducted as follows:

I. Expedited external review shall be available when the covered person's treating health care provider certifies to the commissioner that adherence to the time frames specified in RSA 420-J:5-b would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function.

II. Except to the extent that it is inconsistent with the provisions of this paragraph, all requirements for the conduct of standard external review specified in RSA 420-J:5-b shall apply to expedited external review.

III. At the time the commissioner receives a request for an expedited external review, the commissioner shall immediately make a determination whether the request meets the standard set forth in paragraph I for expedited external review, as well as the reviewability requirements set forth in RSA 420-J:5-b, I. If these conditions are met, the commissioner shall immediately notify the health carrier. If the request is not complete, the commissioner shall immediately contact the covered per-

son or the covered person's authorized representative and attempt to obtain the information or documents that are needed to make the request complete.

IV. The commissioner shall select and retain an independent review organization that is certified pursuant to RSA 420-J:5-d, I to conduct the expedited external review.

V. The health carrier or its designated utilization review organization shall provide or transmit the documents and information specified in RSA 420-J:5-b, VII to the selected independent review organization by telephone, facsimile or any other available expeditious method within one business day of receiving the commissioner's notice of the request for expedited external review pursuant to paragraph III.

VI. When handling a review on an expedited basis, the selected independent review organization shall make a decision and notify the carrier and the covered person as expeditiously as the covered person's medical condition requires, but in no event more than 72 hours after the expedited external review is requested.

VII. If the notice provided pursuant to paragraph VI was not in writing, within 2 business days after the date of providing that notice, the selected independent review organization shall:

(a) Provide written confirmation of the decision to the covered person or the covered person's authorized representative and the health carrier; and

(b) Include the information set forth in RSA 420-J:5-b, X.

VIII. An expedited external review shall not be provided for determinations made by the health carrier on a retrospective basis.

IX. A covered person shall not be held liable to either the health plan, the hospital, the physician, or the services provider for the cost of services in excess of the applicable copayment, coinsurance, or deductible incurred, pending the independent review organization's determination of an expedited external review.

420-J:5-d Certification of Independent Review Organizations.

I. The certification of independent review organizations shall be conducted as follows:

(a) The commissioner shall certify independent review organizations eligible to be selected to conduct external reviews under this section to ensure that an independent review organization satisfies the minimum qualifications established under paragraph II.

(b) The commissioner shall develop an application form for initially certifying and recertifying independent review organizations to conduct external reviews.

(c) Independent review organizations wishing to be certified shall submit the application form and include all documentation and information necessary for the commissioner to determine whether the independent review organization satisfies the minimum qualifications established under paragraph II.

(d) The commissioner may determine that accreditation by a nationally recognized private accrediting entity with established and maintained standards for independent review organizations that meet or exceed the minimum qualifications established under paragraph II is sufficient for certification under this paragraph.

(e) The commissioner shall maintain and periodically update a list of certified independent review organizations.

(f) Whenever the commissioner determines that an independent review organization no longer satisfies the minimum qualifications established under paragraph II, the commissioner shall terminate the certifica-

tion of the independent review organization and remove it from the list of certified independent review organizations that is maintained by the commissioner pursuant to subparagraph I(e).

II. To be certified under paragraph I to conduct external reviews, an independent review organization shall meet the following minimum qualifications:

(a) It shall develop and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process.

(b) It shall establish and maintain a quality assurance program that:

(1) Ensures that external reviews are conducted within the specified time frames and required notices are provided in a timely manner;

(2) Ensures the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the independent review organization with suitable matching of reviewers to specific cases;

(3) Ensures the confidentiality of medical and treatment records; and

(4) Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of this section.

(c) It shall agree to maintain and provide to the commissioner such information as may be required to fulfill the provisions and purposes of this section.

(d) It shall assign clinical peer reviewers to conduct external reviews who are physicians or other appropriate health care providers and who:

(1) Are experts in the treatment of the covered person's medical condition that is the subject of the external review;

(2) Are knowledgeable about the recommended health care service or treatment through actual clinical experience;

(3) Hold a non-restricted license in a state of the United States and, for physicians, a current certification by a specialty board recognized by the American Board of Medical Specialties in the area or areas appropriate to the subject of the external review;

(4) Have no history or disciplinary actions or sanctions that have been taken or are pending by any hospital, governmental agency, or regulatory body; and

(5) Have agreed to disclose any potential conflict of interest.

(e) It shall be free of any conflict of interest. To meet this qualification, an independent review organization may not own or control or in any way be owned or controlled by a health carrier, a national, state or local trade association of health carriers, or a national state or local trade association of health care providers. In addition, in order to qualify to conduct an external review of a specific case, neither the independent review organization selected to conduct the external review nor any clinical peer reviewer assigned by the independent organization to conduct the external review may have a material professional, familial or financial interest in any of the following:

(1) The health carrier that is the subject of the external review;

(2) Any officer, director or management employee of the health carrier that is the subject of the external review;

(3) The health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

(4) The facility or institution at which the recommended health care service or treatment would be provided;

(5) The developer or manufacturer of the principal drug, device, procedure or other therapy being recommended for the covered person whose treatment is the subject of the external review; or

(6) The covered person or the covered person's authorized representative.

(f) Its charges for services provided shall be competitive and reasonable.

(g) For the purpose of allowing in-state health care providers to act as clinical peer reviewers in the conduct of external reviews, the commissioner may determine, in specific cases, that an affiliation with a hospital, an institution, an academic medical center, or a health carrier provider network does not in and of itself constitute a conflict of interest which is sufficient to preclude that provider from acting as a clinical peer reviewer, so long as the affiliation is disclosed to the covered person or the covered person's authorized representative.

(h) The following organizations shall not be eligible for certification to conduct external reviews:

(1) Professional or trade associations of health care providers;

(2) Subsidiaries or affiliates of such provider associations;

(3) Health carrier or health plan associations; and

(4) Subsidiaries or affiliates of health plan or health carrier associations.

420-J:5-e General Provisions Regarding External Review.

I. The health carrier against which a request for external review is filed shall pay the cost of the external review. Except under the circumstances described below in this paragraph, such costs shall not exceed \$1,500. The commissioner shall notify the independent review organizations of the cost limitation for conducting an external review. The cost for an external review may exceed \$1,500 if the commissioner determines an additional cost is necessary to ensure the fair adjudication of the case in question.

II. The external review decision of the independent review organization shall be binding on the health carrier and shall be enforceable by the commissioner pursuant to the penalty provisions of RSA 420-J:14. The external review decision of the independent review organization shall be binding on the covered person except to the extent the covered person has other remedies available under federal or state law. The external review process shall not be considered an adjudicative proceeding within the meaning of RSA 541-A, and the external review decision of the independent review organization shall not be subject to rehearing and appeal pursuant to RSA 541.

III. An independent review organization shall maintain all standards of confidentiality. The records and internal materials prepared for specific reviews by an independent review organization under this section shall be exempt from public disclosure under RSA 91-A.

IV. An external review organization acting in good faith shall have immunity from any civil or criminal liability or professional discipline as a result of acts or omissions with respect to any external review, unless the acts or omissions constitute willful and wanton misconduct.

V. The right to external review under this chapter shall not be construed to change the terms of coverage under a health benefit plan nor shall the health carrier retaliate against the covered person for exercising his or her right to an independent external review.

VI. When requested by the covered person, the commissioner shall provide consumer assistance in pursuing the internal grievance procedures under RSA 420-J:5 and the external review process under RSA 420-J:5-a – 420-J:5-e.

VII. The commissioner shall report annually to the governor and the legislature on the number of grievances subjected to external review, the number of decisions resolved wholly or partially in favor of the covered person, and the number of decisions resolved wholly or partially in favor of the health carrier. Such reports shall also include a separate statement of the number of cases in which the external review was terminated as a result of a reversal by the health carrier of its adverse determination after the receipt of new or additional information from the covered person or the covered person's authorized representative and the number of cases in which the covered person and the health carrier agreed to resolve the dispute prior to a final determination by the independent review organization.

VIII. If, based on the evidence presented during the external review process, the commissioner determines that the health carrier's medical director, in the conduct of his or her duties, may have committed misconduct as set forth in RSA 329:17, VI, the commissioner shall document such findings and transmit them in a separate report to the board of medicine.

14 New Paragraphs; Provider Contract Standards. Amend RSA 420-J:8 by inserting after paragraph VII the following new paragraphs:

VIII. No contract between a health carrier and a participating provider shall contain any payment or reimbursement provision the terms of which creates an inducement for the provider to not provide medically necessary care to covered persons. Nothing in this section shall be construed to prohibit the use of payment arrangements between a health carrier and a participating provider or provider group which involve capitation, withholds or other arrangements.

IX. The health carrier shall provide to covered persons, in the evidence of coverage, a description for the types of financial arrangements contained in its contracts with participating providers. Such descriptions shall be set forth in clear, understandable language.

X. Every contract between a health carrier and a participating provider shall provide that the health carrier may not remove a health care provider from its network or refuse to renew the health care provider with its network for participating in a covered person's internal grievance procedure or external review.

15 New Paragraph; Clinical Review Criteria. Amend RSA 420-J:6 by inserting after paragraph IV the following new paragraph:

V. The clinical review criteria used by the health carrier or its designee utilization review entity shall be:

(a) Developed with input from appropriate actively practicing practitioners in the health carrier's service area;

(b) Updated at least biennially and as new treatments, applications and technologies emerge.

(c) Developed in accordance with the standards of national accreditation entities;

(d) Based on current, nationally accepted standards of medical practice; and

(e) If practicable, evidence-based.

16 Clinical Review Criteria. RSA 420-E:4 VI is repealed and reenacted to read as follows:

VI. Any clinical review criteria that are utilized shall be:

(a) Developed with input from appropriate actively practicing practitioners in the health carrier's service area;

(b) Updated at least biennially and as new treatments, applications and technologies emerge;

(c) Developed in accordance with the standards of national accreditation entities;

(d) Based on current, nationally accepted standards of medical practice; and

(e) If practicable, evidence-based.

17 Repeal. RSA 420-J:5, VIII and IX, relative to external process and annual report, are repealed.

18 Effective Date. This act shall take effect 180 days after its passage.

2000-3137s

AMENDED ANALYSIS

This bill creates an independent external consumer appeal process to review certain determinations made by managed care entities. The bill requires health carriers that conduct utilization review and licensed utilization review entities to employ a medical director who shall be licensed as a physician. The bill prohibits contracts between health carriers and participating providers from including provisions that create financial incentives to deny medically necessary care. The bill requires that health insurers disclose certain information necessary for consumers to hold managed care entities accountable for health care treatment decisions. The bill also extends the jurisdiction of the board of medicine to include disciplinary action over medical directors for misconduct.

SENATOR WHEELER: I want to make it perfectly clear that we are voting on HB 640 as amended by the committee and as it is printed in your calendar starting on page 19. It's title also has been altered to suit what the bill actually does now. It is establishing certain standards of accountability for health maintenance organizations and other entities providing health insurance through a managed care system. This began its life as SB 199, the HMO accountability act, last year. It passed the Senate 20-4 and went to the House. I don't think that I will go through all of the action that happened with changing of numbers and so on. But anyway, it metamorphosed into 640. The House Commerce Committee spent the summer and fall working on it to reach consensus with all the parties. It then came to the Senate. Actually we had had it all along, but then we addressed the amendment drafted by the Commerce Committee. The Senate Public Institutions, Health and Human Services Committee also reached consensus on the amendment that you have before you. I think that we can really be excited about all voting for this bill unanimously. It definitely is an accountability bill, not a liability bill. At the beginning of the bill, sections one through five, are concerning HMO medical directors. We had a lot of discussion about how...to whom they should report... what board governs their conduct. The amendment on the top of page 20 says that "any referral by the insurance commissioner or any complaint alleging that a medical director has committed a misconduct as set forth in our statutes" that should be reviewed by the board of registration of medicine. Then in little 'b' on that same page 20, we separated it and said, "any complaint received by the board regarding an insurance coverage decision by a medical director" in other words, a planned decision, "shall be forwarded by the board to the insurance commissioner for review." So we separated the two forms of complaints about

the medial directors. We said that instead of just trying to define the practice of medicine...we said that "the medical director is not defined in the utilization review as the practice of medicine, rather the jurisdiction of the board is extended to cover not only the practice of the medicine, but also the exercise of medical directorship" and this is to achieve some degree of medical director accountability without imposing malpractice liability. That was the other very important issue that we wanted to address. If you look at page 20 down near the bottom of the page, V, at the bottom of it, it says, "Nothing in this section shall be construed as creating any civil liability to the medical director for the medical director's alleged negligent performance of the aforementioned responsibilities for utilization review." Section seven through 12 of the bill details the independent review process, which I believe that everyone is pleased that we have set that forth in statute, which I hope will be in statute. I urge you to support this. It has received a lot of scrutiny and a lot of work and a lot of people have come together on it. Thank you.

Amendment adopted.

Ordered to third reading.

SB 128, replacing the housing assistance fund trust fund with a homeless prevention fund. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to pass with amendment, Senator Squires for the committee.

2000-3160s

05/01

Amendment to SB 128

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

AN ACT replacing the housing assistance fund trust fund with a homeless prevention fund, and making an appropriation therefor.

Amend the bill by replacing section 2 with the following:

2 Homeless Prevention Fund. RSA 204-C:80-85 are repealed and re-enacted to read as follows:

204-C:80 Purpose. The purpose of this subdivision is to establish a homeless prevention program and a fund therefor to be used to provide housing assistance on behalf of very low income persons and families in order to help them meet their housing costs, thereby preventing homelessness resulting from their inability to meet such costs, and to maximize the opportunity for homeless families and individuals to obtain housing in the private market. This subdivision is also intended to assist persons and families who are receiving public assistance or have recently graduated from public assistance to low wage jobs and persons with disabilities to enable them to afford decent, safe housing.

204-C:81 Definitions. In this subdivision:

I. "Extremely low income persons or families" means individuals or families whose gross income is 30 percent or less of the median income of single persons or families as adjusted for family size, as applicable, as published periodically by the United States Department of Housing and Urban Development.

II. "Fund" means the homeless prevention fund.

III. "Housing assistance payments" means rent subsidies, security deposit advances, mortgage assistance payments, and any other shelter cost-related payments made on behalf of very low income households.

IV. "Minor child" means a person under 18 years of age.

V. "Severely rent burdened" means a household for which the monthly rent and utility costs exceed 50 percent of the gross monthly income.

VI. "Very low income households" means individuals or families whose gross income is 50 percent or less of the median income, adjusted for household size, as published periodically by the United States Department of Housing and Urban Development.

204-C:82 Fund Established.

I. There is hereby established within the authority a homeless prevention fund. The fund shall be comprised of sums appropriated from the general fund, donations from private persons or entities, grants, set-asides, and other appropriations authorized by law. All sums from government appropriations or grants shall be credited to the fund, but such sums shall not be deemed to be money received on account of the state, and nothing in this subdivision shall be understood as pledging the faith and credit of the state.

II. The authority shall use moneys deposited in the fund for the following purposes:

(a) Direct housing assistance payments to eligible very low income persons or households.

(b) Payments to property owners to reimburse them for certain financial losses associated with the rental of a housing unit to a participant in the homeless prevention program authorized by this subdivision.

(c) The provision and coordination of services, such as jobs, training, financial counseling, and other supportive services, which are made available to very low income households participating in the homeless prevention program.

(d) The creation of new or rehabilitated dwelling units to be made available to very low income households assisted under this subdivision.

(e) Matching grants to units of local government or local housing authorities established under RSA 203 to support homeless prevention programs for very low income households.

(f) The purchase of existing single family homes by or on behalf of low income households or to prevent the household occupants from becoming homeless.

204-C:83 Program Design. The homeless prevention fund shall be administered so as to promote the following goals and objectives:

I. Applications for the benefits provided under this subdivision shall be streamlined so as to enable the authority to provide assistance to the eligible households as quickly as practicable.

II. The program shall be as flexible as possible in order to maximize housing opportunities for very low income people.

III. Give priority to very low income persons or families who are:

(a) At households which include an employed person or a person in an employment training program.

(b) Households which include a minor child or children, and the household is homeless or at risk of homelessness due to severe rent burden.

(c) Households which are actually experiencing homelessness, and are currently residing in homeless or emergency shelters or receiving services as defined in rules adopted pursuant to RSA 204-C:85.

(d) Households which consist of one or more disabled person(s) as defined in 42 U.S.C. 121026(2).

IV. Only persons who have been residents of the state of New Hampshire for at least 6 months shall be eligible for assistance under this subdivision.

V. Assistance shall only be provided to eligible households for dwelling units located in New Hampshire.

VI. Assistance granted to a household under this subdivision shall terminate after 36 consecutive months, provided however that the authority shall extend the assistance beyond this time limit when it is necessary to:

(a) Enable a household member to complete an education, training or vocational rehabilitation program in which he or she is currently involved when the 36-month time limit expires.

(b) Provide reasonable accommodation for the disability of a household member.

(c) Prevent an employed household member from facing a serious risk of job loss due to inability to obtain affordable housing within a reasonable distance from his or her job.

VII. All households which receive assistance under this subdivision shall, within 60 days of obtaining such assistance, make an application to their local public housing authority or the authority for federal rental assistance.

VIII. No public housing authority created pursuant to RSA 203 shall reject an applicant for federal rental assistance or deny such applicant a priority on its waiting list for which such applicant would otherwise qualify, on the basis that such applicant is receiving rental assistance under this subdivision.

204-C:84 Investment of Funds. Moneys deposited into the fund may be invested by the authority. Income earned from such investments shall be returned to the fund, provided, however, that the authority may use up to 10 percent of any such investment income to defray the cost of administering this subdivision.

204-C:85 The authority shall adopt rules, pursuant to RSA 204-C:53, governing the homeless prevention fund. Such rules shall include:

I. The nature and extent of the rent subsidy authorized under this subdivision.

II. Qualifications of households eligible to receive direct housing assistance payments.

III. The nature and extent of ancillary payments on behalf of eligible households to prevent homelessness.

IV. The types of supportive services which may be eligible for payment from the fund.

V. The application process for benefits under this subdivision.

VI. The method of distribution of program funds.

VII. Any other matters necessary for the administration of this subdivision.

Amend the bill by replacing sections 5 and 6 with the following:

5 Appropriation; Department of Health and Human Services; Homeless Prevention Fund. The sum of \$1 shall be appropriated to the department of health and human services for the fiscal year ending June 30, 2001 for the purposes of section 2 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

6 Effective Date. This act shall take effect January 1, 2001.

2000-3160s

AMENDED ANALYSIS

This bill replaces the housing assistance fund trust fund with a homeless prevention fund, and makes an appropriation therefor.

SENATOR SQUIRES: This bill was a joint effort with Senator D'Allesandro. It grew out of the issue of affordable housing in New Hampshire in general. Specifically in Nashua and in Manchester. I was talking to a landlord last weekend and he told me that he can, without any problem, rent one bedroom for \$150 a week in Nashua. The average rental in Nashua is something in the area of \$700-\$800 a month for an apartment. The fact of the matter is that there are substantial numbers of individuals who cannot pay that, so they live in...in hearing of so in connection with our original bill, they live in circumstances that no one would desire. Initially we had in mind, a sort of state sponsored section eight program where the state would help offset those individuals for whom their monthly rent exceeded 50 percent of their income. The original plan was to put a surcharge on the real estate transfer tax. Well that was not successful, so we have changed the bill to simply put a \$1 into it. The reason for that is that there are, as you probably know, some funds in the TANF Program. The federal government made a block grant in affect to New Hampshire where TANF recipients, but the rolls dropped faster than the projections. So New Hampshire has at least on credit, a substantial amount of money. It is about \$9 million, I think, that is tied to the TANF Programs. So one of the thoughts here is that maybe, if we have a vehicle, we can keep this bill alive and explore some other way of funding it. So that is what we are asking you to do. It involves all communities, but it is a particular issue, and I am sure that Senator D'Allesandro might speak to this in his community. I know that it certainly is an issue in Nashua, and I know it to be so in Manchester. So we are asking for your support on this bill to pass it along and keep it here. It doesn't obligate the state to anything, to see if maybe, at some point in the future, if we can draw on the TANF money as a starter for this intractable problem.

SENATOR DISNARD: Doctor Squires, on page 30 of the amendment, is the amended analysis incorrect? "This bill replaces the Housing Assistance Fund"? Is that an error?

SENATOR SQUIRES: I don't think that it is an error. It simply is a change in the title. Initially there was an issue that this might be tied in with a state agency, that is gone away. It is just here, as I said, as a vehicle to try and address this issue.

SENATOR DISNARD: Do Housing Assistance Funds still exist then?

SENATOR SQUIRES: Well, it certainly reads that way, Senator Disnard.

SENATOR DISNARD: But it doesn't do that?

SENATOR SQUIRES: I honestly do not know.

SENATOR DISNARD: Thank you.

SENATOR SQUIRES: We can find out for you. We could have it laid on the table and find out for you if you would like, but I can't give you a direct answer at this point.

Senator Fraser moved to have SB 128 laid on the table.

Senator Fraser withdrew his motion.

SENATOR D'ALLESANDRO: Very briefly. As Senator Squires articulated, what we found during the process of these hearings was that there is a tremendous need for affordable housing throughout the southern tier of the state of New Hampshire. Our original premise, was to use a vehicle to help finance this situation. That was not acceptable to the committee, and as a result, was defeated. But after further discussion, what

we found through another process, and actually those were the hearings on SB 14, were that the TANF funds available to the state of New Hampshire were not all being used, and that there was a \$9 million allocation that was still available to New Hampshire. As a result of that, Health and Human Services, in conjunction with legal assistance, was looking at an opportunity to use those TANF funds in order to aid the homeless. It is a very worthy situation and by keeping this alive, we are able to do that. There is a \$1 appropriation and there is nothing else...there is that vehicle that is available to us, through Health and Human Services, the possibility of using some of the those TANF funds, or directing them in the direction of aiding the homeless. I hope that you will support this piece of legislation. There is a crying need in this state for affordable housing. Thank you very much.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

SB 225-FN, relative to a pharmaceutical program for low income individuals. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: We should do the same thing with this bill as we just did. It needs to go to Finance. As you know, there are now or soon to be, three programs in the state looking at the problems of pharmaceutical costs. 1) Medicaid, 2) the soon to be, enacted program for elderly, which is in fact the discount given by the pharmacist for people over the age of 65. 3) and the most interesting in many ways, the so-called farmer program, which is sponsored by pharmaceutical companies. I won't belabor you with the details of those. This would be a fourth attempt to look at this problem, but as is evident, there is no funding. It does seem to me, difficult to ask the pharmacists to again accept a discount. There is some spirited discussion about that regarding number 2; nevertheless, it needs to be looked at. This one is a little different, because it is in fact, addressed at a target population of low income, rather than an age. I would hope that we would pass it and send it to Finance and see what could be done there. Thank you.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 229-FN-L, relative to the supervision of juvenile delinquents on probation and parole and the operation and organization of the youth development center. Public Institutions, Health and Human Services Committee. Vote 5-0. Inexpedient to Legislate, Senator Squires for the committee.

SENATOR SQUIRES: I rise in support of the committee recommendation of inexpedient to legislate. This bill would form a new department of juvenile corrections. Senate Bill 229 would transfer all functions, powers, duties, personnel, etc. pertaining to juvenile delinquents and CHINS from DHHS to a new department known as the Department of Juvenile Corrections. This bill also provides for the Department of Youth Services to become a part of this new Department of Juvenile Corrections. Since this legislation was filed, a new commissioner was appointed to DHHS, Don Shumway. Commissioner Shumway has been working with the commissioner of YDC, and they have made some significant changes in authority and process within the agencies for dealing with juvenile delinquents and CHINS. At this time, the committee feels there is no need for a reorganization or for the establishment of a new department. Therefore, I would urge you to vote SB 229 inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 449-FN, requiring boating safety education. Transportation Committee. Vote 4-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3063s

01/10

Amendment to HB 449-FN

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

1 Minimum Age for Operation. RSA 270:30 is repealed and reenacted to read as follows:

270:30 Minimum Age for Operation. No person 18 years of age or under shall operate a motor vessel on the public waters of this state unless the person has a valid safe boater education certificate; or is accompanied by a person 18 years of age or older who has a valid safe boater education certificate, and such person shall be liable for personal injury or property damage which may result from such operation. Whoever violates this section shall be guilty of a violation.

2 Boat Safety Course. Amend the introductory paragraph of RSA 270:46-a, III to read as follows:

III. In addition to any other penalty imposed, any person who is convicted of violating any of the following boating laws or rules of the division of safety services, and who has not already successfully completed an approved boating safety course shall complete a boat safety course, at that person's own expense, within 6 months of conviction. Any person who fails to complete the boat safety course within 6 months may be prevented from reregistering the boat:

3 New Subdivision; Boating Safety Education. Amend RSA 270-D by inserting after section 9 the following new subdivision:

Safe Boater Education

270-D:10 Certificate Required.

I.(a) No person born on or after the dates provided in this section shall operate a motorized vessel with any type of power motor on the public waters of this state without first obtaining a certificate of boating safety education in accordance with this subdivision:

Date of Birth	Certificate Required
January 1, 1983	January 1, 2001
January 1, 1977	January 1, 2003
January 1, 1973	January 1, 2004
January 1, 1967	January 1, 2005
All	January 1, 2006

(b) If for any reason it becomes evident during the instructional program that the 5-year phase-in schedule is not appropriate, the commissioner may adjust the phase-in program as necessary.

II. The safe boater education course shall meet minimum standards established by the commissioner designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the safe operation of a motorized vessel and consistent with the public policies expressed in RSA 270. While the instruction shall cover conditions unique to New Hampshire, the curriculum shall be broad enough so that certificates awarded will be honored by other states on the basis of reciprocity.

III. The commissioner may enter into contracts with individuals, public or private corporations or institutions for assistance in developing, assisting, and conducting safe boater education courses.

IV. The commissioner shall establish minimum requirements for the qualification of safe boater education instructors. The minimum requirements shall include, but not be limited to, the following:

(a) The instructor shall be 18 years of age or older.

(b) The instructor shall have at least 2 years of recent boating experience.

(c) The instructor shall hold a certificate evidencing successful completion of a safe boater education course that meets or exceeds the requirements of this subdivision, a certificate from the United States Coast Guard, or a certificate from the United States Power Squadron.

V. The commissioner may appoint one or more training specialists who shall assist in establishing safe boater education courses throughout the state, support and implement program guidelines and supervise instructors.

VI. In establishing the safe boater education course of instruction and examination pursuant to this section, the commissioner may offer a correspondence course through electronic or other means that is consistent with the applicable standard of competency and safety established by this section.

270-D:11 Possession Required; Penalty.

I. Any person required to have a safe boater education certificate shall:

(a) Possess the certificate when operating a motorized vessel on the public waters of the state.

(b) Present the certificate upon the demand of a marine patrol officer.

II. No person charged with a violation of this section shall be convicted if, within a period of 48 hours, the person presents to the officer evidence that he or she held a valid safe boater education certificate which was in effect at the time of the violation.

III. Enforcement of this section shall be accomplished only as a secondary action when an operator of a motorized or registered vessel has been cited or charged with a violation or some other offense.

IV. Any person who violates this section shall be guilty of a violation punishable by a fine \$50 for a first offense and \$250 for any subsequent offense.

270-D:12 Exemption. A person who is licensed by the state of New Hampshire or the United States Coast Guard to operate a commercial vessel shall be exempt from the requirements of this subdivision.

270-D:13 Issuance of Safe Boater Education Certificate.

I. The commissioner or designee shall issue a safe boater education certificate to a person who:

(a) Passes a boating safety education course approved by the commissioner. The course shall provide a minimum of 8 hours of instruction. The minimum passing grade for the course shall be 80 percent; or

(b) Passes a boating safety equivalency examination administered by persons approved to offer boating safety education courses. The minimum passing grade for the examination shall be 80 percent. A certificate issued to a person passing the equivalency examination shall specify that the certificate is issued as evidence of satisfactory completion of a safe boating examination and entitles the holder to operate a vessel on the public waters of New Hampshire and may be recognized in other states.

II. Once issued, the certificate of safe boater education shall be valid for the lifetime of the person and may not be revoked by the department of safety or a court without cause and a hearing in accordance with RSA 541-A.

III. The commissioner, or designee, shall replace a lost or destroyed certificate upon written request of the person entitled thereto and payment of the prescribed fee, and such copy shall have the same form and effect as the original.

270-D:14 Temporary Certificate. The commissioner, or designee, shall issue a temporary certificate of safe boating education to a person who passes a temporary safe boater examination administered by the department or its agents and approved by the commissioner. The temporary certificate of safe boater education shall be valid for up to 14 days and shall entitle the holder only to operate a vessel on the public waters of New Hampshire. Any dealer or renter of boats or employee thereof, who has passed the boating safety education course as provided in RSA 270-D:13, I(a) and is approved by the commissioner, may administer the temporary safety examination and issue a temporary certificate.

270-D:15 Certificate Not Required. A person shall not be required to obtain a certificate of safe boater education if the person holds a certificate from another state indicating successful completion of boating safety education that meets or exceeds the requirements of this subdivision, a certificate from the United States Coast Guard Auxiliary, or a certificate from the United States Power Squadron.

270-D:16 Education Material. Upon request, the commissioner or agent authorized by the commissioner shall provide safe boater education materials to persons who plan to take the safe boater education course.

270-D:17 Course Fee. The department, or its agents, offering a safe boating education course may charge a fee for attendance at the course. The fee shall not exceed the costs incurred by the department, or its agents, in offering the course divided by the number of students attending the course and shall not exceed \$50.

270-D:18 Insurance Discount. The insurance commissioner may adopt rules under RSA 541-A requiring admitted insurers to provide a reduction in premium rates for vessel liability insurance to qualified vessel operators who provide proof of successful completion of an approved safe boater education course.

270-D:19 Voluntary Attendance. Nothing in this section shall prohibit any person over 18 years of age from attending a safe boater education course approved by the commissioner under this subdivision and obtaining a safe boater education certificate upon successful completion of the safe boater education course, prior to dates indicated on the phase-in schedule.

270-D:20 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. Approval of boating safety education courses.

II. Criteria for boating safety equivalency examinations.

III. The enforcement of provisions of this subdivision and the rules adopted pursuant to it.

270-D:21 Report. The commissioner of the department of safety shall submit a report to the governor, the president of the senate, and the chairpersons of the senate transportation committee and house resources, recreation and development committee not later than November 1, 2001.

4 Effective Date. This act shall take effect January 1, 2001.

2000-3063s

AMENDED ANALYSIS

This bill requires that persons born after a specified date possess a safe boater education certificate.

SENATOR GORDON: House Bill 449 brings resolution to an issue which has been pending in this state for many years. It establishes a program for boater education certification. Currently in this state there are over 90,000 vehicles that are registered, and boating safety needs to be addressed. Other states have already adopted programs where they require certification and in fact, New Hampshire boaters who do not have an approved program in this state, find themselves disadvantaged and in some cases, automatically declined boat(s) in other states. This would enable us to have reciprocal programs where people who are certified in this state would be able to boat in other states without having to go through other formalities and the same is true, people who have certifications in other states will be able to boat here. There is an amendment on this bill since the committee passed this bill, the amendment, which was adopted at the time, has been determined not to be a preferable alternative. I believe that Senator D'Allesandro will be offering a new floor amendment, or someone will be offering a new floor amendment here today. So I am asking you to please defeat the committee amendment and then there will be another amendment which will be explained at that time.

Amendment failed.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 3

Sen. D'Allesandro, Dist. 20

2000-3103s

01/09

Amendment to HB 449-FN

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

1 Minimum Age for Operation. RSA 270:30 is repealed and reenacted to read as follows:

270:30 Minimum Age for Operation. No person 16 years of age or under shall operate a motorized vessel having power in excess of 15 horsepower on the public waters of this state unless the person has a valid safe boater education certificate; or is accompanied by a person 18 years of age or older who has a valid safe boater education certificate, and such person shall be liable for personal injury or property damage which may result from such operation. Whoever violates this section shall be guilty of a violation.

2 Boat Safety Course. Amend the introductory paragraph of RSA 270:46-a, III to read as follows:

III. In addition to any other penalty imposed, any person who is convicted of violating any of the following boating laws or rules of the division of safety services, and who has not already successfully completed an approved boating safety course shall complete a boat safety course, at that person's own expense, within 6 months of conviction. Any person who fails to complete the boat safety course within 6 months may be prevented from reregistering the boat:

3 New Subdivision; Boating Safety Education. Amend RSA 270-D by inserting after section 9 the following new subdivision:

Safe Boater Education

270-D:10 Certificate Required.

I. No person born on or after the dates provided in this section shall operate a motorized vessel with any type of power motor in excess of 15 horsepower on the public waters of this state without first obtaining a certificate of boating safety education in accordance with this subdivision:

Date of Birth	Certificate Required
January 1, 1983	January 1, 2002
January 1, 1977	January 1, 2003
January 1, 1973	January 1, 2004
January 1, 1967	January 1, 2005
January 1, 1963	January 1, 2006
January 1, 1957	January 1, 2007
All	January 1, 2008

II. The commissioner may enter into contracts with individuals, public or private corporations or institutions for assistance in developing, assisting, and conducting safe boater education courses.

III. The commissioner shall establish minimum requirements for the qualification of safe boater education instructors. The minimum requirements shall include, but not be limited to, the following:

(a) The instructor shall be 18 years of age or older.

(b) The instructor shall have at least 2 years of recent boating experience.

(c) The instructor shall hold a certificate evidencing successful completion of a safe boater education course that meets or exceeds the requirements of this subdivision, a certificate from the United States Coast Guard, or a certificate from the United States Power Squadron.

IV. The commissioner may appoint one or more training specialists who shall assist in establishing safe boater education courses throughout the state, support and implement program guidelines and supervise instructors.

V. In establishing the safe boater education course of instruction and examination pursuant to this section, the commissioner may offer a correspondence course through electronic or other means that is consistent with the applicable standard of competency and safety established by this section.

270-D:11 Possession Required; Penalty.

I. Any person required to have a safe boater education certificate shall:

(a) Possess the certificate when operating a motorized vessel with any type of power motor in excess of 15 horsepower on the public waters of the state.

(b) Present the certificate upon the demand of a marine patrol officer.

II. No person charged with a violation of this section shall be convicted if, within a period of 48 hours, the person presents to the officer evidence that he or she held a valid safe boater education certificate which was in effect at the time of the violation.

III. Enforcement of this section shall be accomplished only as a secondary action when an operator of a motorized or registered vessel has been cited or charged with a violation or some other offense.

IV. Any person who violates this section shall be guilty of a violation punishable by a fine of \$50 for a first offense and \$250 for any subsequent offense.

270-D:12 Exemption. A person who is licensed by the state of New Hampshire or the United States Coast Guard to operate a commercial vessel shall be exempt from the requirements of this subdivision.

270-D:13 Issuance of Safe Boater Education Certificate.

I. The commissioner or designee shall issue a safe boater education certificate to a person who:

(a) Passes a safe boater education course approved by the commissioner in accordance with the criteria of the National Association of State

Boating Law Administration. The course shall provide a minimum of 8 hours of instruction. The minimum passing grade for the course shall be 70 percent; or

(b) Passes a safe boater equivalency examination administered by persons approved to offer boating safety education courses. The minimum passing grade for the examination shall be 80 percent. A certificate issued to a person passing the equivalency examination shall specify that the certificate is issued as evidence of satisfactory completion of a safe boater examination and entitles the holder to operate a vessel on the public waters of New Hampshire.

II. Once issued, the certificate of safe boater education shall be valid for the lifetime of the person and may not be revoked by the department of safety or a court without cause and a hearing in accordance with RSA 541-A.

III. The commissioner, or designee, shall replace a lost or destroyed certificate upon written request of the person entitled thereto and payment of the prescribed fee, and such copy shall have the same form and effect as the original.

270-D:14 Temporary Certificate. The commissioner, or designee, shall issue a temporary certificate of safe boating education to a person who passes a temporary safe boater examination administered by the department or its agents and approved by the commissioner. The temporary certificate of safe boater education shall be valid for up to 14 days and shall entitle the holder only to operate a vessel on the public waters of New Hampshire. Any dealer or renter of boats or employee thereof, who has passed the boating safety education course as provided in RSA 270-D:13, I(a) and is approved by the commissioner, may administer the temporary safety examination and issue a temporary certificate.

270-D:15 Certificate Not Required. A person shall not be required to obtain a certificate of safe boater education if the person holds a certificate from another state indicating successful completion of boating safety education that meets or exceeds the requirements of this subdivision, a certificate from the United States Coast Guard Auxiliary, or a certificate from the United States Power Squadron.

270-D:16 Education Material. Upon request, the commissioner or agent authorized by the commissioner shall provide safe boater education materials to persons who plan to take the safe boater education course.

270-D:17 Course Fee. The department, or its agents, offering a safe boater education course or exam may charge a fee. The fee shall not exceed the costs incurred by the department, or its agents, in offering the course or exam and shall not exceed \$50.

270-D:18 Insurance Discount. The insurance commissioner may adopt rules under RSA 541-A requiring admitted insurers to provide a reduction in premium rates for vessel liability insurance to qualified vessel operators who provide proof of successful completion of an approved safe boater education course.

270-D:19 Voluntary Attendance. Nothing in this section shall prohibit any person from attending a safe boater education course approved by the commissioner under this subdivision and obtaining a safe boater education certificate upon successful completion of the safe boater education course, prior to dates indicated on the phase-in schedule.

270-D:20 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. Approval of boating safety education courses.

II. Criteria for boating safety equivalency examinations.

III. The enforcement of provisions of this subdivision and the rules adopted pursuant to it.

4 Effective Date. This act shall take effect January 1, 2002.

2000-3103s

AMENDED ANALYSIS

This bill requires that persons born after a specified date possess a safe boater education certificate.

SENATOR JOHNSON: This floor amendment is offered in collaboration with Senator D'Allesandro and also the sponsors in the House. I am sure that Senator D'Allesandro will probably speak to this amendment also. What the floor amendment does is two things. In part one, where reducing the age to 16 instead of 18 years. We are having a horse power requirement of 15 horse power. The reason for that horse power is we recognize that a lot of smaller vessels, canoes, sailboats and so forth, do have horse power which is less than the 15. In paragraph 3, what we are doing phasing in age groups over a seven-year period instead of a five-year period. Also in that paragraph, I-b, we are deleting the broad powers of the commissioner that were going to phase in the program. Also in that paragraph 3, II, we are deleting the standards for the boating safety education curriculum because they are rewritten and covered in the following paragraph. That paragraph says, that the requirement that the course meet the criteria established by the National Association of State Boating Law Administrators. And that will still give us an ensure reciprocity within the other states. Then in the final paragraph of 270-D: 21, which required a follow-up report by the commissioner at DOS, that has been deleted. The last change is the effective date. That has been changed from January 1, 2001 to year 2002. If there are any other changes in there, it would probably be editorial changes. Those are the meat of the changes in the floor amendment. I would ask for your support of this floor amendment.

Recess.

Out of Recess.

GOVERNOR SHAHEEN: I didn't want to interrupt, but heard that you just passed the HMO accountability act, so I thought that I ought to come and say Thank you. It is nice when there is something that we can all agree on. Thank you for that. I won't interrupt anymore. I understand that you have a full day ahead of you.

SENATOR D'ALLESANDRO: Very briefly. As Senator Johnson said, the floor amendment was put together by all of the groups involved with one very specific purpose in mind, that everybody should go through this process of education. The schedule was altered to some extent in order to encompass that. The criteria was in accordance with the National Association of Safe Boating Laws and Administrators. Those were the key elements in the changes. Both the parties in the House and the Senate have agreed upon this. It is a good piece of legislation now and it does fulfill all of the items that were of concern, and I commend Senator Johnson on his ability to bring everyone together to get this done. Thank you very much.

SENATOR FRANCOEUR: Senator Johnson, if my wife was with one of my kids last year, in 1999, they could drive the boat as long as she is there, but if she doesn't have the certificate before she can do it this year, she has to take the course? Is that correct?

SENATOR JOHNSON: That is my understanding. Yes.

SENATOR FRANCOEUR: Thank you.

SENATOR F. KING: Senator Johnson, I am assuming that there is going to be a cost involved for taking this course, do we address that anywhere?

SENATOR D'ALLESANDRO: It is on page three, line 32 of the amendment. The course fee. The Department, or its agent offering the Safe Boater Education Course or exam, may charge a fee. The fee shall not exceed the cost incurred by the department or its agents in offering the course of the exam, it shall not exceed \$50.

SENATOR F. KING: Okay. So it could cost as much as \$50 to take this test?

SENATOR D'ALLESANDRO: Yes. But it could never exceed the cost of the course.

SENATOR FRANCOEUR: Senator D'Allesandro, going back to what I asked about adults supervising children. How many courses are planned between now and May before all of the boats start to hit the water?

SENATOR D'ALLESANDRO: I think that I really can't answer that. The Department of Safety is in charge of that. I understand that they are working on a program to get as many offered as possible, but again, that is something that is in their hands. We talked about maybe putting it on the web site so that the exam could be on the web site. There are other areas that would be offered, but I don't know the number that would be offered. That is why the phase-in period takes place. The act doesn't take effect until January 2002, so there is plenty of time. So you are okay for this summer. You are safe.

SENATOR FRANCOEUR: Okay.

SENATOR BROWN: Senator D'Allesandro, does this bill apply to sail boats, or just boats that are under motor power? And, if you have had a boat and you have had it for years, how soon are you going to have to have this certification, for the next season? I am a little confused.

SENATOR D'ALLESANDRO: This is for motorized vehicles and this bill doesn't take effect until January 1, 2002.

SENATOR BROWN: Thank you.

Floor Amendment adopted.

Ordered to third reading.

HB 109-FN-A-L, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor. Ways and Means Committee. Vote 8-0. Interim Study, Senator Below for the committee.

SENATOR BELOW: As you all know, HB 109 was passed twice by the Senate and rejected by the House both times and sent back to us. It is obviously a proposal for funding education that merits further consideration so the committee has recommended it for interim study.

SENATOR DISNARD: Senator Below, do I understand that if this is passed for interim study it would take a 2/3 vote of this body to take it out? To act on this year?

SENATOR BELOW: If we adopt interim study, my understanding would be that it would require a suspension of the rules to bring this bill back before the body. That would be a 2/3 vote.

SENATOR FERNALD: When we rereferred this last session, my understanding was that we were going to try and keep this as a vehicle **TAPE CHANGE** Thursday.

Senator Fernald moved to have **HB 109-FN-A-L**, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor, laid on the table.

A division vote was requested.

Yeas: 13 - Nays: 10

Adopted.

LAID ON THE TABLE

HB 109-FN-A-L, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor.

SB 127-FN-A-L, establishing a local property tax education homestead allowance against school taxes on residential real estate, establishing a fund to reimburse municipalities for such exemptions, and making an appropriation therefor. Ways and Means Committee. Vote 8-0. Interim Study, Senator Brown for the committee.

SENATOR BROWN: I would like to encourage you to support the 8-0 committee report for interim study for this bill. I am not going to say anything else. Thank you.

Committee report of interim study is adopted.

SUSPENSION OF THE RULES

Senator Trombly moved that the Rules of the Senate be so far suspended as to allow committee reports not previously advertised in today's calendar.

SENATOR TROMBLY: The committee on Public Affairs when we were discussing these bills, we needed to act on them in a time frame which is not sufficient for public notice. If we can, what I would like to do is to bring them in today and then have them laid on the table, because we can take them up next week without having to act on them today. So that way, the public would be warned that they are in the calendar. So if you could vote yes to bring them in, I would then move to table them and they would be considered next week.

Adopted by the necessary 2/3 vote.

SB 231, relative to public water supplies.

Senator J. King moved to have **SB 231**, relative to public water supplies, laid on the table.

Adopted.

LAID ON THE TABLE

SB 231, relative to public water supplies.

SUSPENSION OF THE RULES

Senator Trombly moved that the Rules of the Senate be so far suspended as to allow committee reports not previously advertised in today's calendar.

Adopted by the necessary 2/3 vote.

HB 251, relative to official ballot procedures.

Senator J. King moved to have **HB 251**, relative to official ballot procedures, laid on the table.

Adopted.

LAI D ON THE TABLE

HB 251, relative to official ballot procedures.

SB 313, establishing a commission to study the relationship between postsecondary education and recipients of temporary assistance to needy families. Education Committee. Vote 4-0. Ought to pass with amendment, Senator Squires for the committee.

2000-3140s

04/01

Amendment to SB 313

Amend the bill by inserting after the enacting clause the following and renumbering the original sections 1-6 to read as sections 2-7, respectively:

1 Purpose.

I. Since the start of the TANF program in 1996, New Hampshire has developed a welfare reform model emphasizing the importance of "work first". While many low income single parent families are now working, much of the employment is in jobs providing earnings below the poverty level. Typically, these jobs do not include employer benefits such as health insurance.

II. The success of welfare reform depends both on helping welfare recipients to work steadily and on finding better jobs. Not enough attention has been paid to how low income families will achieve long-term economic independence and self-sufficiency.

III. A key question facing New Hampshire's welfare reform program is the role of post-secondary education. Rigorous research on welfare-to-work programs shows that programs which have succeeded in helping welfare recipients find higher paying jobs with benefits have included a job training and post-secondary education component. Even though it is clear that education improves earnings, New Hampshire has minimized the role of education and has made it extremely difficult for welfare recipients to pursue education.

IV. The architects of welfare reform in our state must examine the role of post-secondary education in its welfare reform. New Hampshire must develop welfare reform that allows more recipients to escape low paying jobs and government dependency. Not enough attention has been paid either to the importance of post-secondary education nor the possible ways the state could support access to post-secondary education under TANF. Therefore, the general court finds it necessary to study the issue of post-secondary education as it relates both to the TANF and low-income population.

Amend the bill by replacing section 2 with the following:

2 Commission Established. There is established a commission to study the relationship between postsecondary education and recipients of temporary assistance to needy families.

Amend the bill by replacing section 4 with the following:

4 Duties.

I. The commission shall study the relationship between post-secondary educational opportunities in the state and their effect on recipients of temporary assistance to needy families, including but not limited to the effect of obtaining a postsecondary education on an individual's ability to thrive without the support or assistance of temporary assistance to needy families.

II. The commission shall study, take public testimony, make recommendations' and prepare a report on issues including, but not limited to: how successful New Hampshire's welfare reform program has been in helping recipients achieve long-term economic independence, what education options are currently open to recipients, and options are possible to increase access to post-secondary educate for low income parents. The study commission shall seek, and invite by letter, input from the departments of health and human services and employment security, the university of New Hampshire school of health and human services New Hampshire Legal Assistance, the regional community-technical college system, New Hampshire Job Training council, the New Hampshire Women's Lobby, and the commission on the status of women pursuant to RSA 19-B. The commission shall also welcome input from other interested parties.

III. The commission may study any related issues which they deem to be in furtherance of the commission's objectives.

SENATOR SQUIRES: The amendment expands and clarifies the commission's purpose and duties. In the last few years, legislation has been filed to allow TANF recipients to count time spent in postsecondary education towards their work requirement. These attempts have been unsuccessful. Establishment of this commission will enable an open dialogue between DHHS, the Community-Technical College System, TANF recipients and other interested parties to look into various issues, including how successful NH's welfare reform program has been in helping recipients achieve long-term economic independence, what education options are currently available to recipients, and possible ways to increase TANF recipients' access to postsecondary education. The Senate Education Committee voted unanimously that this bill ought to pass with amendment, and I urge your support. Thank you.

Amendment adopted.

Ordered to third reading.

SB 319, relative to interstate school districts. Education Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Last year, the town of Orford, New Hampshire entered into agreement with three communities in the state of Vermont to form a new cooperative school district called the Rivendale School District. It is the first K-12 interstate school district in the country. In order to do that, they require enabling legislation and the enabling legislation specifically allows students from New Hampshire to attend schools on a daily basis in the state of Vermont, public schools in the state of Vermont, subject to the state of Vermont curriculum. Now we passed that legislation, recognizing that it was only needed at the time for high school students because the grade school students were going to be attending schools on either side of the river. But what has happened because the school district has a single curriculum, that there are certain students in New Hampshire that need to attend and use the facilities in Vermont, and certain students in Vermont who need the facilities in New Hampshire and in particular, special education students. So in recognition to that, we need to amend that enabling legislation in order to allow students at all grade levels to attend school either in Vermont or the students in Vermont who attend here in New Hampshire. That is the purpose of SB 319 and I would urge passage.

Adopted.

Ordered to third reading.

SB 352, repealing the equipment challenge grant program within the New Hampshire community technical colleges. Education Committee. Vote 5-0. Ought to Pass, Senator Eaton for the committee.

SENATOR EATON: This bill is a request of the system. The equipment challenge grant program was enacted in 1992 with \$100,000 appropriation from the state with the requirement for matching funds to build up the system's equipment. The state has not funded that program since that first year and when audited, the system is consistently listed as out of compliance for non-participation in this unfunded program. The system raised over \$3 million in equipment last year without this program, and request that the program be repealed. The Education Committee voted unanimously that this bill ought to pass. This is my first Senator floor statement of a very controversial issue. I am very sensitive to rejection, and I urge all of you to pass this.

Adopted.

Ordered to third reading.

SB 392-FN, relative to the use of nonlapsed funds by the regional community-technical colleges. Education Committee. Vote 4-0. Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: I hope that I am afforded the same treatment as the previous speaker. Senate Bill 392 allows the New Hampshire Community Technical Colleges to use funds in their nonlapsing accounts to offset the impact of unforeseeable or emergency financial circumstances with the approval of the Fiscal Committee and the governor and council. Currently, any excess revenue must be placed in a nonlapsing account that may only be used to establish new academic programs or enhance existing programs. Passage of this bill will allow the system increased flexibility in dealing with unforeseen or emergency financial situations, such as the unanticipated increase in health insurance costs this year, which had a \$350,000 fiscal impact. The Education Committee unanimously recommends this bill as ought to pass. Thank you, Madame President.

Adopted.

Ordered to third reading.

SB 350, adding business development to the law governing industrial development authorities. Energy and Economic Development Committee. Vote 5-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: Senate Bill 350 came about as the result of a request that I received from the city of Berlin, actually. What this does is...there are several pages to this bill, but you will see that we are basically adding the word "business" to where the bill now refers only to industry. What happened, is the city of Berlin was entertaining a telemarketing company who was considering coming to the city to create some 200 jobs, and in consultation with the city's attorney, the attorney recommended that they could not use RSA 162-G in order to enable them to give some assistance to this company. If you look on page three of the bill, line 21, this defines the powers of the governmental unit, in this case, it would have been the city of Berlin. The question being, industrial facilities that are currently using the language, seems to be more related to the old smoke stack type industries, and e-commerce, and some of the new businesses, in the opinion of the city attorney, did not constitute an industry as defined in this bill. So by adding the word "business" and making it possible to expand the scope of this statute, the city can now enter into agreement with this

company and give them some assistance. It appears that the BFA authority, a few years ago, recognized the same situation. They had their statute changed. It also appears that there may be some communities in the state that perhaps are using this or stretching the definition more than they should. So to clear this up, I would recommend, and the committee recommends passage of this bill. Thank you.

Adopted.

Ordered to third reading.

SB 376, relative to the jurisdiction of the public utilities commission to determine consequential damages. Energy and Economic Development Committee. Vote 6-0. Ought to Pass, Senator Below for the committee.

SENATOR BELOW: Senate Bill 376 concerns the situation in which a municipality chooses under our current statute, to acquire the distribution system of an existing investor of utility within the boundaries of the municipality. If they do that, according to the procedures set forth in this statute, and if they can't agree with the purchase price with the utility, then the Public Utility Commission has a procedure by which the PUC establishes the value for the taking, it would be an eminent domain type process. There is a question in regard to what is called consequential damages. Sort of second tier damages that go beyond the value of the property, which may relate to stranded invest and/or supply arrangements which exist from the utility. What this bill does is clarify our statute so that we don't have a situation of jurisdiction shopping. It changes four words that say to the extent that it drops those and replaces them with the words "in matters over which the federal energy regulatory does not have jurisdiction, the commission shall determine the consequential damages." This also relates to the federal and state law. The point of this statutory change is to make clear that either FERC has jurisdictions or if they don't, the PUC makes its determination. Thank you.

Adopted.

Ordered to third reading.

SB 331, requiring a report from the public utilities commission and the department of environmental services evaluating whether existing regulatory structures encourage or discourage regional cooperation for water resources management and water conservation. Environment Committee. Vote 4-0. Ought to Pass, Senator Eaton for the committee.

SENATOR EATON: Feeling as an old hand now, I rise in support of SB 331. This bill directs the PUC and DES to analyze and report findings how existing regulatory structures for water utilities encourage or discourage regional cooperation for water resource management water conservation. A regional approach is recommended for the following reasons: Water supply and needs are exceeding the capacity of local public water systems. There is uncertainty regarding the adequacy of developing water supplies on a community by community basis. The cost associated with expanding or developing a regional water supply are significant, or perhaps inhibited in areas of sparse development, and the state could develop ways to more efficiently use limited resources. Senate Bill 331 directs the agencies most directly responsible for water resources to evaluate existing regulatory practices in order to identify current disincentives, if any, to regional cooperation and water conservation. The findings could then be the basis of future legislation if necessary. In addition, DES supports this legislation and believes that the proposed study will contribute to New Hampshire's

overall water strategy by identifying and ultimately eliminating regulatory barriers to regional water management and conservation. I urge you to join the Environment Committee in supporting this bill and vote ought to pass.

Adopted.

Ordered to third reading.

SB 340, extending the reporting date of the committee to study the problems and possible regulation of outdoor lighting. Environment Committee. Vote 4-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: I rise in support of SB 340. This is an important committee as outdoor light pollution is a real problem affecting many growing communities in New Hampshire. Currently, the committee members, myself included, are looking at mild ordinances or variations thereof for lighting guidelines or standards for communities to adopt voluntarily as a means of reducing light pollution and saving energy. The New Hampshire Municipal Association supports this bill, and will continue to work with the committee members on this issue. I would like to note that this bill was a request of the members of the study committee, and I urge your support. Thank you.

Adopted.

Ordered to third reading.

SB 384, establishing a committee to study pretreatment programs for reducing pollutant levels in sewage sludge. Environment Committee. Vote 7-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3234s

08/01

Amendment to SB 384

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

AN ACT establishing a committee to study pollution prevention and pretreatment programs for reducing pollutant levels in sewage sludge.

Amend the bill by replacing sections 1 and 2 with the following:

1 Purpose. The general court recognizes that there is an ongoing scientific debate about the potential for environmental contamination caused by pollutants associated with using sewage sludge for agricultural, land application, and reclamation purposes. The purpose of this study committee is to recommend pollution prevention and pretreatment programs that cities and towns can adopt that will reduce the levels of pollutants discharged to sewers and wastewater treatment plants, resulting in cleaner sewage sludge.

2 Committee Established. There is established a committee to study pollution prevention and pretreatment programs for reducing pollutant levels in sewage sludge.

Amend the bill by replacing paragraph I of section 4 with the following:

I. Recommend a pollution prevention program that will significantly reduce pollutant levels in sewage sludge at wastewater treatment plants around the state. The program should include a combination of strong industry regulation and pollution prevention to reduce and minimize the levels of pollutants that may enter sewer systems.

Amend the bill by replacing section 6 with the following:

6 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2001.

2000-3234s

AMENDED ANALYSIS

This bill establishes a committee to study pollution prevention and pretreatment programs for reducing pollutant levels in sewage sludge.

SENATOR WHEELER: I rise in support of SB 384 as amended. We in the legislature have had an ongoing debate about the potential for environmental contamination caused by pollutants associated with using sewerage sludge for agricultural land applications and reclamation purposes. This bill establishes a study committee to recommend pollution prevention and pre-treatment programs that cities and towns can adopt that will reduce the levels of pollutants discharged to sewers and wastewater treatment plants resulting in cleaner sewerage sludge. This legislation requires that a study committee recommend not only the pollution prevention programs, but also funding sources and the allocation of funds. DES supports this bill as amended and is committed to the reduction of pollutant levels and waste quantities generated by business, industry, government agencies and households to improve New Hampshire's overall environmental quality. DES stressed that pollution prevention is virtually always the most cost effective and environmentally sound means to improve overall quality. I urge your support of the unanimous report of the committee. Thank you.

Amendment adopted.

Ordered to third reading.

SB 401-FN-A-L, establishing the New Hampshire land and community heritage investment program and making an appropriation therefor. Environment Committee. Vote 7-0. Ought to pass with amendment, Senator Russman for the committee.

2000-3238s

08/09

Amendment to SB 401-FN-A-LOCAL

Amend RSA 227-M:3, II as inserted by section 1 of the bill by replacing it with the following:

II. The authority shall be governed by a board of directors (the board) composed of 16 members. Voting members shall not appoint designees to act in their places. The chairperson shall be elected from among the public members. Board membership shall be as follows:

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

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

(c) Six public members, 2 of whom shall represent natural resources and outdoor recreation interests, 2 of whom shall represent cultural and historic resource interests, one of whom shall represent business or real estate interests, and one of whom shall represent municipal and local planning interests, to be appointed by the governor and council.

(d) The director of the office of state planning, or designee.

(e) The commissioner of the department of cultural resources, or designee.

(f) The commissioner of the department of resources and economic development, or designee.

(g) The commissioner of the department of environmental services, or designee.

(h) The commissioner of the department of agriculture, markets, and food, or designee.

(i) The executive director of the department of fish and game, or designee.

Amend RSA 227-M:7, III(c) as inserted by section 1 of the bill by replacing it with the following:

(c) Restoration or rehabilitation of buildings or structures which are publicly-owned, or which are owned by a qualified publicly-supported nonprofit corporation.

Amend RSA 227-M:8, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Imminence of threat to the land or property, such that land conservation projects in rapidly developing areas of the state shall receive a higher ranking;

Amend RSA 227-M:8, I(e) as inserted by section 1 of the bill by replacing it with the following:

(e) Strength of local support, such that project applications accompanied by an affirmative vote of the governing body of the municipality or governing bodies of the municipalities in which the project is located shall receive a higher ranking;

Amend RSA 227-M:10, II as inserted by section 1 of the bill by replacing it with the following:

II. The authority is authorized to make funds available for resource stewardship, either in conjunction with protection activities or as a stand-alone request. Deferred maintenance on existing publicly-owned natural, cultural, and historical resources shall not be an eligible use of funds from the program. Historically significant buildings and structures which are publicly-owned, or which are owned by a qualified publicly-supported nonprofit corporation, shall be eligible for funding for restoration and rehabilitation work consistent with the historical nature of the structure.

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

5 Appropriation; New Hampshire Land and Community Heritage Authority. The sum of \$6,000,000 is hereby appropriated to the New Hampshire land and community heritage authority established in section 1 of this act for the purposes of this act for the biennium ending June 30, 2001.

6 Bonds Authorized. To provide funds for the appropriation made in section 5 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$6,000,000 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest on the bonds and notes shall be made from the general fund of the state.

7 Appropriation; Administrative Costs. The sum of \$200,000 is appropriated to the New Hampshire land and community heritage authority established in section 1 of this act, for the purpose of funding administrative costs of the authority for the biennium ending June 30, 2001. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated. This appropriation shall be nonlapsing.

8 Effective Date. This act shall take effect July 1, 2000.

2000-3238s

AMENDED ANALYSIS

This bill:

I. Establishes the New Hampshire land and community heritage investment program.

II. Establishes the New Hampshire land and community heritage authority, and establishes its powers, duties, and authority.

III. Establishes membership on the authority's board of directors.

IV. Establishes criteria for acquisition of lands and other natural, cultural, and historical resources.

V. Provides an appropriation to the program, \$6,000,000 of which shall be bonded.

VI. Transfers responsibility for the administration of the land conservation investment program and monitoring endowment under RSA 162-C to the office of state planning.

SENATOR RUSSMAN: This is probably the case for a consent calendar in the Senate at the rate that we are going here. This is an important bill and Megan has written a very stirring speech for me, but I am not going to read it all. I will save it for another time. Yes, it is less than two pages. So if there are any questions, I will be happy to answer them. The bill will be sent to Finance if passed today.

SENATOR F. KING: This bill is the bill that I testified on in the committee. There were two areas that I had felt there needed to be some considerable amendments. I fundamentally believe that this is a good bill, something that we need. Two issues that I raised had to do with communities required to vote on any project within their own geographical boundary. The second issue has to do with the issue that is at the basis of a lot of this legislation, and that is the fact that parts of New Hampshire are growing at such a rapid rate that open space is becoming scarce, and land is being overdeveloped, and the term is that it is being paved over. My concern about that is that in the interest of fair distribution of open space and green land and green areas in the state, that we ought to recognize that the protection of land, and I am talking about raw land, should take place, and direct proportion to where the development takes place. If there is 15,000 acres of land being developed every year in New Hampshire and essentially being paved over, one third of that... if that development takes place in Hillsborough county, then in Hillsborough county, one third of the land should be protected. Historically, what has happened is that the land gets paved over down here, in the interest of economic development, and better jobs, and it gets protected up where I live, and it ends up denying people that I represent, the opportunity to have a good job. So I think that it has been an unfair distribution. This is an issue that I have had. The committee that worked on this bill for a long time, has heard me speak about that. I want to thank the committee for the amendments that they have done. There have been two amendments put onto the bill that doesn't totally satisfy me, but I want to thank them, because I think that it goes a long way dealing with my concerns. On page 35 in the calendar, there is a statement that is going to be inserted into legislation in the amendment that says, "imminence of threat to the land or property, such that land conservation projects in rapidly developing areas of the state shall receive a higher ranking." I am assuming, and Senator Russman's the sponsor of the bill, that when the commission that is established will have to go through rules making to set up their process for operating this plan. Is that essentially true?

SENATOR RUSSMAN: I believe that is the case. I tried to get an exemption for Coos county, but I was unable to do that. They didn't think that it would be fair.

SENATOR F. KING: Since you mentioned Coos county, you know that I made it absolutely clear to you in previous discussions, that I am not looking for exemptions for Coos county, I just want them to stay in the program. I don't want 15,000 acres of land protected in Coos county because 15,000 has been developed in the southern part of the state, that is my concern, and you know that. The question is, I assume that this commission is going to be established, which never will be answerable to the legislature ever again, except to get money periodically, and it is going to go through the rulemaking process to set up the rules that will enable this to go forward?

SENATOR RUSSMAN: The short answer is yes, I could give you a longer one, but that is the shorter one.

SENATOR F. KING: Fine. And I am assuming, and I want to be on the record, that when they set up those rules, it is going to be clear that they are going to use projects that are going to come before them for consideration of approval, are going to have a ranking. They are going to be ranked. There are going to be certain things that they are going to set the ranking process by. In the case of the projects, if the town has voted in favor of a project, it will receive a higher ranking and therefore, it is probably going to be more accurately funded than one where the town hasn't voted for it.

SENATOR RUSSMAN: Yes. I can't prejudge what the rules are going to be, but obviously there will be public hearings. There will be rules in keeping with what we stated here. That is my understanding. If I have my way, it will all be in Rockingham county, but I don't know if that will happen either.

SENATOR F. KING: Well, I can only say 'good luck' to you. The other question that I have for you for the record, in the area where the land is going to be protected, it seems to indicate that if the property under consideration is in an area of the state where there is a high rate of development, that land will have a higher ranking for protection than an area, than a project, in the area in the state where there isn't a lot of development. That seems to be the second amendment?

SENATOR RUSSMAN: I think that the imminence of development now, for example, if it is a piece in your county that the choice is, it either gets developed, or it gets protected, and there is an imminent threat, and the people in that town want to do that, then my hope is that would get as high a ranking as any other piece frankly, because obviously, the people in that community want to do that. Obviously, that is part of what the amendment that you requested was for and that would protect that community. Now if the community doesn't care, then obviously, I would hope that that community would not...that their application would be bounced out. If they don't want to protect it, even though it is under imminent threat of development or what have you. The example, not to belabor this point, but the example is, in Kingston and Danville, we have a large tract that is about 1000 acres that one family owns. If that goes, we are talking about two or three hundred homes, and we are talking about a brand new school and all of the people that teach the kids for it. So we somehow would like to see that be imminent, and we would like to see that pro-

tected. Now maybe that is a good thing in the North Country, I don't know, but it would be up to the town to vote and so on. Hopefully, the rules will be set **TAPE CHANGE** but I think that the intent is clear in the bill.

SENATOR F. KING: I want to thank the committee for addressing the two concerns that I have had since day one. I think that they have gone a long way towards doing that. I just wanted to make sure, before I vote on this bill, that what I read here, is what in fact I think is going to happen?

SENATOR RUSSMAN: We are trying.

SENATOR F. KING: And I appreciate that.

Amendment adopted.

Referred to the Capital Budget Committee (Rule #24).

SB 434-FN-L, exempting the town of Tilton from hazardous waste cleanup fund fees associated with the removal of the municipal target range. Environment Committee. Vote 6-0. Ought to pass with amendment, Senator Johnson for the committee.

2000-3232s

08/09

Amendment to SB 434-FN-LOCAL

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

AN ACT exempting soil that is contaminated by lead due to use as a police training shooting range from hazardous waste cleanup fund fees.

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Hazardous Waste Cleanup Fund; Exemptions. Amend RSA 147-B:9 by inserting after paragraph IV the following new paragraph:

V. Soil that is a hazardous waste due to lead contamination resulting from the use of the area as a shooting range used exclusively for law enforcement training purposes.

2000-3232s

AMENDED ANALYSIS

This bill exempts soil that is contaminated by lead due to use as a police training shooting range from hazardous waste cleanup fund fees.

SENATOR JOHNSON: Senate Bill 434 proposes that the town of Tilton be exempted from paying approximately \$26,000 in associated fees to the Hazardous Waste Cleanup Fund. The municipal target range, located in the town of Tilton was used by local police officers for practice and training, as well as by officers from surrounding towns and the state police. As such, citizens throughout the state benefited from this establishment; therefore, the state should not require the individual taxpaying citizens of Tilton to bear the burden of the costly hazardous waste cleanup fees associated with the removal of the municipal target range. DES testified in support of this bill with an amendment. The amendment provides a similar exemption for other target ranges used exclusively for law enforcement training purposes; however, this exemption would not include police training at private gun clubs. By the way, that \$26,000 associated with about 85,000 pounds of shot that had to be removed from that target range. The committee voted 6-0 ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 372, relative to certain engineering businesses. Executive Departments and Administration Committee. Vote 4-0. Ought to pass with amendment, Senator Brown for the committee.

2000-3119s

08/09

Amendment to SB 372

Amend RSA 310-A:20, V as inserted by section 1 of the bill by replacing it with the following:

V. The secretary of state shall not issue a certificate of incorporation to an applicant for incorporation or for registration as a foreign business organization which includes the words "Engineer" or "Engineering" or any modification or derivative thereof in its corporate or business name or which includes the practice of engineering among the objects for which it is established unless the board shall have issued, with respect to such applicant, a certificate of authorization or eligibility for authorization, a copy of which shall have been presented to the secretary of state. Similarly, the secretary of state, after a reasonable transition period, shall decline to register any trade name or service mark which includes such words or modifications or derivatives thereof in its firm or business name except to partnerships, sole proprietorships and associations holding certificates of registration or authorization issued under the provisions of this subdivision, a copy of which shall likewise have been presented to the secretary of state. *However, the requirements of this subdivision shall not apply to any business which uses the words "Engineer" or "Engineering" or any modification or derivative thereof in its corporate or business name, and which does not perform or require the services of a professional engineer.*

2000-3119s

AMENDED ANALYSIS

This bill provides that the laws regulating engineering shall not apply to any business which uses the words "Engineer" or "Engineering" or any modification or derivative thereof in its corporate or business name, and which does not perform or require the services of a professional engineer.

SENATOR BROWN: The committee felt that rules recently adopted by the Engineering Board inadvertently affected companies who were completely nonengineers. The result of this would be to cause these businesses and corporations to have to change their name, have a loss of national advertising and company recognition, as well as undue costs for reestablishing their business relationships. The example that we had was adhesive engineering supply. These folks don't do any civil engineering, electrical or mechanical engineering. It simply 'engineers' and that is according to Webster, "the practical application of scientific knowledge with regard to adhesives." Therefore, we amended the bill to allow an exemption when the company has nothing to do with the board's oversight or the public protection. This could easily apply to other technologies such as software engineers and genetic engineers, and so we felt that they should be exempted from the licensure requirements. Thank you.

Amendment adopted.

Ordered to third reading.

SB 443-FN, relative to veterinarian reimbursement for the animal population control program. Executive Departments and Administration Committee. Vote 6-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: This bill will ensure that pre-surgical exams are covered by the spay/neutered program fees. The bill increases the coverage for shots from \$15 to the cost of full coverage, an increase of \$10 to \$15 per procedure. Covering the costs will increase the number of sterilization operations, which in turn, will reduce the number of shelter euthanasia procedures. This program assists those pet owners who otherwise would not have the resources to pay for sterilization operations. The coverage for these procedures comes from funds gathered through licensing fees. The committee recommends this bill ought to pass.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 351, making certain changes in the laws relative to fraternal benefit societies and health service corporations. Insurance Committee. Vote 7-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, fraternal benefit societies were an early source of life insurance, and remain an important segment of the life insurance market. This bill is designed to modernize laws that have been on the books for several decades, and make regulatory oversight easier for both the department and the societies. The bill does three things. 1) Eliminates archaic language concerning investment limitation for societies that do business in Canada. 2) It changes the date of license renewal. 3) It makes that section gender-neutral. This bill was a request of the Insurance Department, and the Insurance Committee voted 7-0 to recommend ought to pass.

Adopted.

Ordered to third reading.

SB 368, relative to insurance fraud. Insurance Committee. Vote 7-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill expands the scope and authority of the insurance fraud investigation unit of the insurance department. The changes made by this bill be the following: One that clarifies that the unit can draw upon the resources of the state and local law enforcement, thus enhancing its investigative capability. While referencing RSA 37, the insurance title, the bill clarifies that the investigative scope of the fraud unit includes insurance agents, premium finance companies and other entities involved in insurance, in addition to the covered person. Third, it allows the Insurance Department to assess fines or suspensions for insurers who fail **TAPE INAUDIBLE** to deter fraud. Fourth, it insures that if someone has co-insurance with another person who has been found guilty of insurance fraud, the innocent co-insurer won't lose their coverage. The Insurance Department requested this bill, and worked on it with the attorney general's office. There was no opposition at the hearing. The Insurance Committee recommends ought to pass.

Adopted.

Ordered to third reading.

SB 369, establishing a committee to conduct a study on the need for standards to protect health information privacy. Insurance Committee. Vote 4-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3071s

01/09

Amendment to SB 369

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

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

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

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

II. The committee shall solicit information and participation from representatives of affected groups, organizations, or agencies, including, but not limited to:

(a) The commissioner of insurance.

(b) The commissioner of health and human services.

(c) Health care consumers.

(d) Health care providers.

(e) Health insurers.

(f) The New Hampshire Health Information Management Association.

(g) The New Hampshire Hospital Association.

(h) Property and casualty insurers.

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

Amend the bill by replacing sections 5 and 6 with the following:

5 Report. The committee shall make an interim report on its findings together with any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2000 and shall make a final report on or before November 1, 2001.

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

2000-3071s

AMENDED ANALYSIS

This bill establishes a committee to conduct a study on the need for standards to protect health information privacy.

SENATOR WHEELER: This is a study committee, SB 369, I know that we are not really excited about more study committees, but I think that it is a really important one, and it does come at the request of the Insurance Department. Medical information is gathered today at an unprecedented volume. It can be used potentially by medical providers, insurers, pharmaceutical companies, employers, state and federal agencies, and others whose access to the information may or may not be appropriate. There are proposed regulations at the federal level mandating that the states meet certain privacy standards, but clearly, each state must address the issue for itself. It is a complex issue and one that will take some time to explore. I hope that you will support the committee recommendation of ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

SB 390-FN, relative to vested deferred retirement benefits for group II members. Insurance Committee. Vote 7-0. Ought to pass with amendment, Senator J. King for the committee.

2000-3150s

10/09

Amendment to SB 390-FN

Amend RSA 100-A:10, II(b) as inserted by section 1 of the bill by replacing it with the following:

(b) Upon the member's attainment of age 45, provided the member would then have completed 20 years of creditable service, otherwise the subsequent date on which such 20 years would have been completed, *or at any time after age 60*, a group II member who meets the requirement of subparagraph (a) may make application on a form prescribed by the board of trustees and receive a vested deferred retirement allowance which shall consist of: (1) A member annuity which shall be the actuarial equivalent of accumulated contributions on the date the member's retirement allowance commences; and (2) A state annuity which, together with the member annuity, shall be equal to a service retirement allowance based on the member's average final compensation and creditable service at the time the member's service is terminated.

SENATOR J. KING: This bill would help retired Group II firefighters and policemen by permitting them to receive benefits that they are eligible for when they reach age 60. Actually, it deals with those that have vested rights of ten years of creditable service or more. This bill changes it so that they can be eligible at the age of 60, as long as they have at least ten years of service. It won't cost the state anything, and the retirement consultant tells us that there is no effect on the Retirement System. It passed out of the Insurance Committee by a 7-0 vote.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

SB 417-FN-L, allowing a beneficiary of an optional allowance under the New Hampshire retirement system to renounce his or her benefits. Insurance Committee. Vote 4-0. Ought to pass with amendment, Senator Fraser for the committee.

2000-3060s

10/01

Amendment to SB 417-FN

Amend the bill by replacing section 2 with the following:

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

SENATOR FRASER: Madame President, this bill allows a person named as a beneficiary of an optional allowance elected by a member of the retirement system, to renounce his or her benefits. The committee heard testimony about a situation that happened recently, where a retirement system member got divorced. While he and his wife were still married, he had his wife as his beneficiary. Once they got divorced, she was willing to renounce the beneficiary status, but under current law, she can only be removed as beneficiary if she were to get remarried. In this particular case, apparently, she is enjoying the single life, and doesn't have any intention of remarrying. This situation really makes no sense. This bill adds the option that a contingent beneficiary can voluntarily renounce his or her status as a beneficiary by notifying the retirement system. The value of the benefits so renounced would then revert to the retirement system member. The Legislative Budget office indicated that the fiscal

impact on the retirement system would be negligible. The Insurance Committee amended this bill only to make it effective upon passage, and on behalf of the committee, I urge you to vote this bill ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 410-FN-L, relative to payment for overtime by salaried employees. Internal Affairs Committee. Vote 3-2. Inexpedient to Legislate, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill would have required employers to pay salaried employees that work more than 50 hours a week overtime. This legislation will be burdensome to some employers, causing unnecessary extra costs. The salaried employees are compensated fairly, and this legislation will go against the fair labor standards act. The committee recommends this bill is inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 304-L, relative to emergency meetings in towns and school districts. Public Affairs Committee. Vote 5-0. Inexpedient to Legislate, Senator Trombly for the committee.

SENATOR TROMBLY: What this bill would have done is remove the requirement that the school district appeal to the Superior Court and the committee felt that requirement for an emergency had an extra level of protection for the people of the school district, so we voted to kill it. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 385-L, relative to fees for copies of checklists. Public Affairs Committee. Vote 4-1. Inexpedient to Legislate, Senator Eaton for the committee.

SENATOR EATON: Madame President and members of the Senate, SB 385-L would have limited the fee which may be charged for paper copies of a voter checklist to \$25 per city or town. While statute already indicates that cities and towns are to charge only the cost of duplicating documents, in cities with multiple wards, \$25 clearly would not cover the cost. The city of Manchester has done a cost analysis and determined that it costs \$25 per ward to duplicate voter checklists. The Public Affairs Committee applauds the sponsor's desire to ensure that checklists are available to all citizens at nominal costs, and that these fees not be a mechanism to subsidize municipal budgets; however, SB 385 cannot be written to accomplish the sponsor's desire without being problematic to multi-ward municipalities; therefore, the Public Affairs Committee recommends that SB 385 be inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 402-FN, relative to employee reimbursement for work-related expenses. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator Krueger for the committee.

2000-3152s

10/09

Amendment to SB 402-FN

Amend RSA 275:57, IV as inserted by section 1 of the bill by replacing it with the following:

IV. An employer who willfully violates the provisions of this section may be assessed interest and a civil penalty of up to \$1,000 per violation.

SENATOR KRUEGER: Madame President and members of the Senate, SB 402 offers an important protection for members of the New Hampshire work force. Currently, some employers require that all travel and business expenses be paid for by the employee and then submitted for reimbursement. As shown in the public hearing, these expenses can amount to thousands of dollars each month. What happens too often is that these reimbursements get tied up in bureaucratic red tape or waiting for supervisor's approvals while the employee receives past due statements from credit card companies. Beside the late charges which accrue, this situation can negatively affect the employee's credit rating. As we all know, credit ratings have become a cornerstone of our nation's financial infrastructure. Senate Bill 402 merely requires that an employer reimburse the employee within 30 days of expenses being submitted to the company. Senate Bill 402 is supported by the Labor Department. Under this legislation, the Department of Labor is authorized to enforce the provisions under the statutes covering wages, which currently offer no protection for employees. At the request of the department, the committee amended the fine to "up to \$1,000" in order to be consistent with other fines in this statute. The Public Affairs Committee recommends that SB 402 be ought to pass as amended.

SENATOR F. KING: Senator Krueger, there are employers who assign responsibilities to people from time to time that results in them having to be away from their office, or having lunch, and maybe buy gas for their car as part of their job. Are they going to be forced now, to reimburse their employees for that?

SENATOR KRUEGER: No. Senator King, that is a very good question. If I understand, and I hope that the chair of the committee, Senator Trombly will correct me if I am wrong, but I believe that this particular bill applies to expenses that were agreed to that would be prepaid by the employee, and then reimbursed by the employer, not expenses that are part of an employee's responsibility.

SENATOR F. KING: So I can assume that where this law would apply would be where an employee and an employer had a clear understanding as to what was going to be reimbursed as part of their travel expenses?

SENATOR KRUEGER: Yes.

SENATOR F. KING: Someone can't all of a sudden come to an employer and say that they owe them for all of the lunches that they had last week? It doesn't automatically compel employers to reimburse expenses, unless it is part of the agreement when they hire someone?

SENATOR KRUEGER: I would say, no, Senator King, but I am interested in your analysis of the bill. It would be my feeling that when one reads it, "An employee who incurs expenses in connection with his or her employment, and at the request of the employer, which are not paid for by wages, cash advance or other means from the employer, shall be reimbursable." But I understand your interpretation.

SENATOR F. KING: It is more of a concern than an interpretation.

SENATOR KRUEGER: In fact it may be.

SENATOR BROWN: Senator Krueger, did you have testimony in the public hearing from employees who were not being reimbursed in a timely manner? I guess my concern is that are we creating something here for small employers that may get caught up in this not realizing...because there is 30 days, and accounting cycles, and things can go on?

SENATOR KRUEGER: We did. In fact, we saw actual credit card statements that were in the thousands, quite frankly, where an employee had incurred these expenses. This particular one that I noticed, was on an American Express Card, and we all know that those have to be paid within 30 days or you are literally in trouble with that particular company because that is their standard of payment. In fact, it was my feeling that I was worried that sometimes things pass through a cycle, and that 30 days was a very, very long time. I think that this bill was meant, quite frankly, to address the fact that certain employers, small or larger companies, were lagging a bit. But I feel very strongly that whether it is a small business or a large business, they have a responsibility not to let an employee risk a credit rating, or not reimburse, if in fact that is something agreed up to. I would imagine that if there were a problem with a small employer, that maybe something could be worked out between that small employer and that employee, and perhaps that could be part of their employment contract. I think this was basically brought up because of the lag time.

SENATOR GORDON: Just very briefly. Actually, this bill came to life as a result of an initiative of a constituent, and a particular concern that they had in regard to reimbursement. What they found themselves in was a difficult situation, because they were required by their employer to incur expenses on behalf of the employer, only to thereafter be reimbursed, and the employer was not reimbursing them in a timely manner. In fact, taking some very lengthy period of time to reimburse them. Their concern was that their credit rating would be affected if that were the case. But it puts that employee in a very awkward position to then have to go to their employer, and then have to complain about it, and at risk of their own employment, in some cases. So it created a very awkward situation. The bill is very clear in that this is only for expenses that are incurred at the request of the employer. So this is not... to answer Senator King's query, this is not an attempt to allow expenses to be taken that would not ordinarily be incurred or were not previously consented to by the employer. The second concern is that the 30 day period of time doesn't tick from the time that you incur the expense, it incurs from the time that you actually present the expenses to your employer for reimbursement. Most employers have some type of form that they use, that you have to fill out and then present to them. Then an employer has the opportunity to question those. Of course what is happening... I worked for AT & T for 15 years, and of course you would submit your vouchers at the time, which we had to fill out to AT & T. They are headquartered in New Jersey. I can tell you that they did not have a very difficult time turning them around in a month, but I can assume that maybe some companies might have some distant headquarters, and it might be difficult for them to process or whatever, but 30 days seems to be a very reasonable period of time. I honestly don't think that this thing will be enforced very often, but what I think what it does, is set a policy, an expectation, that if you are an employer and you are operating in this state, and you ask your employees, or the citizens of this state to incur an expense on your behalf, that it is reasonable, that you ought to reimburse them within 30 days.

SENATOR FRANCOEUR: Senator Gordon, I understand that you are trying to put the owners of the business to pay within 30 days, but having dealt with some employees and things over time, I have people come in with slips that are six months or literally 12 months old. Trying... I am sure that companies like AT & T probably close their books on certain periods and dates and to go beyond them is almost impossible. Was there any discussion that an employee, within 30 days of incurring these expenses, must get them in also, so that they will be fresh on the companies? I am sure those that were approving them, could do so?

SENATOR GORDON: No, I don't think that was really any part of the discussion, as we didn't feel that that was necessary, because an employer has a certain relationship with an employee, and it is not an equal relationship. Basically, the employer is in a position of authority with the ability to either discipline or terminate the employment of an employee who does not operate under proper procedures, or get their job done on time. Where an employee doesn't have that same ability, it is a coercive relationship. It is a one-way relationship. What this is intended to do is to protect the employee and not the employer who would ordinarily have more regress in the relationship.

SENATOR FRANCOEUR: Senator Gordon, wouldn't that stand to make it that it is more important for the individual to turn in their slips within 30 days, since they already incurred the expense, and that it should be to their best interest to do so also?

SENATOR GORDON: Well I know that it certainly, probably would be in their best interest. I know that I never hesitate to get my vouchers in on time because I wanted to be reimbursed for my expenses. But this bill doesn't deal with that situation at all, because there is no obligation on the part of the employer until the employee does present the voucher or the expense for reimbursement.

SENATOR BROWN: Senator Gordon, my question concerns how the department is going to enforce this and specifically, a lot of times something will trigger an audit for an employer, and the department comes and looks at various things. Often times, I have found it especially with small companies, they don't know that they are violating something until that happens. An employee may not be complaining, there may not be anything except that they are unaware of this and their routine may be quarterly payments or something like this. So how does this get triggered and how do the employers know about this?

SENATOR GORDON: That is a very good question. I practice a little bit in front of the Labor Department although not very often. In cases like this, I can tell you that with this type of statutory obligation, virtually the only way that the Department of Labor becomes involved in these and perhaps Senator Trombly can correct if I am misstating this, but the only way that they become involved in these is if somebody issues a complaint. Generally, what will happen is that somebody will issue a complaint to the department telling them that they are not being treated fairly. Then the department will deal with it and probably talk to the employer and ask what is going on first. That gives the employer the opportunity to correct something, if in fact there is a problem. But if in fact, the employer is in transition, and if in fact they don't correct and they continue this practice, then there is a good possibility that there will be a hearing and enforcement practice. Generally the Department of Labor, doesn't on a regulation or a statute of this type, doesn't go out of its way, and it doesn't have the resources to go out of its way to enforce...it is generally done by complaint only.

SENATOR FRASER: Senator Gordon, I think the key word, if I am reading the bill correctly here, is "willful". An employer who "willfully" violates the provision. I think that is the key word.

SENATOR GORDON: I think that you are right, Senator Fraser.

SENATOR TROMBLY: Just very briefly, just by a way of explanation. The reason why the amendment went into place was because the Labor Department testified that if... it is an innocent violation by the employer. They don't take the first step, so they wanted a great deal of latitude for employers so as the number of transgressions increased, they would be able to increase the penalty, so that is why it was \$1000. I think that the testimony and the evidence that we saw from the committee with an employee of several thousands of dollars worth of foreign trips, quite frankly, were enough to make us want this. I feel comfortable that the Labor Department knows full well what the nature and type of expenses are in order to enforce this type of provision. I would urge you to adopt this bill.

Amendment adopted.

Ordered to third reading.

SB 407-FN-L, relative to dog licensure. Public Affairs Committee. Vote 3-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: Madame President and members of the Senate, SB 407 requires town and city clerks to include **TAPE CHANGE** with the annual list of owners, who failed to renew a dog license, a list of those dog owners who have failed to license a new dog. The bill also extends the return date of the warrant in which the number of dog owners is recorded, who received and paid a civil forfeiture, the number of dogs in the town or city which have been seized, and the number of owners who have received a summons for failure to pay the civil forfeiture, or failed to license a dog. The legislation is a result of the Pet Overpopulation Committee. Senate Bill 407 is the result of work done by many in an effort to enhance dog licensure. City and town clerks had significant input into the drafting of this bill and are in full support of it. The Public Affairs Committee recommends that SB 407 be ought to pass. Thank you.

SENATOR FRASER: Senator Roberge is there any 28-a problems involved with this bill on some of the mandates? Unfunded mandates?

SENATOR ROBERGE: No, not at all. It is already in place. You already have to license your dog.

Adopted.

Ordered to third reading.

SB 341, extending the reporting date of the committee to study the licensure of radiographers and radiologic technologists. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3068s

10/09

Amendment to SB 341

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

AN ACT extending the reporting date and changing the name of the committee to study the licensure of radiologic technologists.

Amend the bill by inserting after section enacting clause the following and renumbering the original sections 1 and 2 to read as 3 and 4, respectively:

1 Committee Name Changed. Amend 1999, 96:1 to read as follows:

96:1 Committee Established. There is established a committee to study the licensure of [~~radiographers and~~] radiologic technologists.

2 Duties. Amend the introductory paragraph of 1999, 96:3 to read as follows:

96:3 Duties. The committee shall study the licensure of [~~radiographers,~~] radiologic technologists, and the inclusion or exception for persons operating x-ray systems designed for the irradiation of part of the human body for diagnostic or therapeutic purposes. The committee shall seek input from persons or representatives of the following:

2000-3068s

AMENDED ANALYSIS

This bill extends the reporting date and changes the name of the committee to study the licensure of radiologic technologists.

SENATOR WHEELER: I rise in support of SB 341. We have made some important progress including learning that the term is "radiologic technologists" and not X-ray tech. Licensure bills, as those of you who serve on the ED & A Committee or have ever been to ED & A know, they take a lot of time. This study committee is actually eager to continue working. I hope that you will vote to authorize this enthusiasm. Thank you.

Amendment adopted.

Ordered to third reading.

SB 342, extending the reporting date of the committee studying the impact of federal welfare reform on the cities and towns of New Hampshire. Public Institutions, Health and Human Services Committee. Vote 3-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: I rise in support of the committee recommendation of ought to pass on SB 342. This study committee has met several times to discuss welfare issues, and has received a great deal of information from the Department of Health and Human Services, the NH Housing Authority, the Concord Welfare Director and many others. Senator D'Allesandro, the chairman of this study committee, has requested an extension to allow more time for his members to review the data that they have received, to complete their report, and to make recommendations. I urge your support of this legislation. Thank you.

Adopted.

Ordered to third reading.

SB 357, extending the reporting date of the study committee reviewing field activities conducted by the department of health and human services in investigating reports of abuse and neglect. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: As many of you know, we have been in the process of having a joint legislative committee on investigating the field activities of DCYF. The committee has been working very hard over the course of the summer and fall. It has proved to be a massive undertaking, but we are on the verge of completing the findings and making the

recommendation. I think that the committee will have done good work. As a result of that, I think that we will see improvements. But the committee was supposed to have reported by November 1 and it wasn't able to do so, so the bill that you have in front of you, would extend the reporting date until January 31, 2000, which as you can see, has already passed. So if you would indulge me and pass the bill as it currently is, I will have a floor amendment which will then amend the date at the end of February.

Adopted.

Senator Gordon offered a floor amendment.

2000-3293s

04/01

Floor Amendment to SB 357

Amend 1999, 29:5 as inserted by section 1 of the bill by replacing it with the following:

29:5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before ~~November 1, 1999~~ **February 29, 2000**.

2000-3293s

AMENDED ANALYSIS

This bill extends the reporting date of the study committee established in 1999, 29, relative to field activities conducted by the department of health and human services involving children, youth, and families from November 1, 1999 to February 29, 2000.

SENATOR GORDON: I rise to offer a floor amendment. The floor amendment, I am not sure that you need to read it, but basically it extends the reporting date to the end of February, 2000.

Floor Amendment adopted.

Ordered to third reading.

SB 314, establishing a committee to study the feasibility of driver education programs by correspondence school. Transportation Committee. Vote 5-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 314 would create a study committee to look at the feasibility of providing driver education programs by correspondence school. Actually it is not at all as silly as you think. In fact, there are programs which are offered off of the Internet currently, for people to take the program part, the classroom, textbook part of the driver education program today. This may sound a little bit silly, but we have a lot of home schoolers in this state. This perhaps may be the only means that they would have available to them, other than going out and acquiring the services of a private driving school to have this course as the same fashion that someone would receive it in the public schools. We received two bills. Senate Bill 314, which would create the study committee and the next bill, SB 317, which would have authorized the use of these correspondence courses immediately. As you can see, we have elected to go forward with the study committee and recommend that we have one, then I will address SB 317 next.

SENATOR D'ALLESANDRO: Senator Gordon, what kind of an impact is this going to have on the driver education programs that we now sponsor at our high schools?

SENATOR GORDON: That would be something for the study committee to answer.

SENATOR FRANCOEUR: Senator Gordon, can we expand this to include the boating safety course too?

SENATOR GORDON: I think that is an excellent idea. My understanding is, from the testimony received in the committee, that may be in fact, the intent, to allow people to actually take the course over the Internet and in fact, in other states, I understand that that course is up and available for people to take and the only thing that you would have to arrange for is a place to be properly tested.

Adopted.

Ordered to third reading.

SB 317, allowing driver education correspondence courses to be accepted and approved by the department of safety. Transportation Committee. Vote 5-0. Inexpedient to Legislate, Senator Gordon for the committee.

SENATOR GORDON: This is the second bill which would have authorized, immediately, the ability for people to take driver's education by correspondence courses. I just want to indicate that this was a bill that was put in by Senator Krueger, and she had a constituent come in and testify, a young man who was being home schooled, who has taken the program, and feels capable and confident, and he was very articulate and made a very positive impression, and he certainly convinced me, and I think other committee members that there is merit to the idea of using correspondence classes to teach driver's education. But because we don't think that it should go into effect before being studied, we are recommending that this bill be inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 333, relative to signs for churches. Transportation Committee. Vote 2-0. Ought to pass with amendment, Senator Roberge for the committee.

2000-3062s

01/10

Amendment to SB 333

Amend the bill by replacing section 1 with the following:

1 Signs for Churches; Rulemaking. Amend RSA 236:84, I(a) to read as follows:

(a) Informational and directional signs; *provided that the commissioner shall adopt rules relative to signs for churches.*

SENATOR ROBERGE: Madame President and members of the Senate, SB 333 directs the Commissioner of Transportation to adopt rules addressing signs for churches. Some local communities have very tight regulations and ordinances which can totally preclude churches from being able to have off-premise signs. Even though the Department of Transportation has begun the process of adopting rules addressing this, the Senate Transportation Committee recommends that SB 333 be adopted as amended in order to positively affirm their support for this legislation. Thank you.

SENATOR TROMBLY: Senator Roberge, I don't understand where these signs would be placed and why local communities shouldn't be allowed to regulate what signs go where?

SENATOR ROBERGE: Well as a point of fact, the regulations do list a number of different groupings that can have signs, but churches are not included among them. Also, it is to be located on state signs. For instance, Bedford has a sign that is probably a block away from the church that says, "CATH Church" and it is a little blue sign...on a state sign. But for some reason, another town that I represent, Amherst, has decided that they don't want to do that, and churches are not specifically listed in law. That is why they do that.

SENATOR TROMBLY: Maybe my confusion is that I am not certain on which sign the church sign would be placed? Are these state signs?

SENATOR ROBERGE: They are state signs.

SENATOR TROMBLY: They are state signs that are located in the communities and somehow the communities have developed regulations of the state signs through their zoning ordinances? Is that what it is? I just don't understand.

SENATOR ROBERGE: Some signs for instance, in Bedford, it says, "CATH Church" and this doesn't happen to be a Catholic Church in Amherst, but the people in Amherst have just removed that sign. It has been up, the church put it up, and they just removed it because the law doesn't specifically say 'Church'. Colleges have them, different groups have them, but churches don't. There is a new church in Amherst, and they would like to have a little sign directing people from the main road to some other road. Just one sign so that they know where to make a turn.

SENATOR GORDON: Having been familiar with the testimony, the Department of Transportation supports this. It does not preempt local zoning regulations. At this point in time, or up until now, the Department of Transportation, you have seen the Annie's Antique signs and Whatever Bed and Breakfast signs. The Department of Transportation up to this time, has not allowed signs or similar signs for churches. What this would allow to happen, and they are willing to develop this, is to allow those types of directional signs for churches as well.

Amendment adopted.

Ordered to third reading.

SB 335, allowing physicians to make a report when a person is unfit to drive a motor vehicle. Transportation Committee. Vote 5-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-3172s

05/10

Amendment to SB 335

Amend RSA 263:59, II as inserted by section 1 of the bill by replacing it with the following:

II. Physicians who make reports to the department regarding patients in their care whom they believe, in good faith, to be physically or mentally unfit to operate motor vehicles shall be given immunity from any suits brought by patients so affected.

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

2 New Section; Physician Immunity Regarding Reports of Patient Fitness to Drive to Department of Safety. Amend RSA 329 by inserting after section 25-a the following new section:

329:25-b Physician Immunity Regarding Reports of Patient Fitness to Drive. Persons authorized to practice medicine under this chapter or under the laws of any other state who make reports to the department of safety regarding patients under their care whom they believe, in good faith, to be physically or mentally unfit to operate motor vehicles, shall be given immunity from any suits brought by patients so affected.

3 Effective Date. This act shall take effect 30 days after its passage.

2000-3172s

AMENDED ANALYSIS

This bill provides immunity to physicians making reports to the department of safety regarding a patient's physical or mental fitness to drive.

SENATOR PIGNATELLI: New Hampshire physicians have been put in an uncomfortable position on those rare occasions where they believe that a patient is a danger to the public or themselves when driving a vehicle. Very simply, this bill gives immunity to any physician who in good faith, believes that a patient is mentally or physically unfit to drive, and notifies the Department of Safety. As it is now, doctors have a tough choice, and we should make that easier. If they don't report an unfit driver, they fear a tragedy. If they do, they fear being brought before the Board of Medicine, or a court, for violating a patient's confidence. That isn't right. I hope that you will support this effort to encourage reporting, because it may save some lives on our roads. Thank you.

SENATOR F. KING: Senator Pignatelli, if I vote in favor of this legislation, will I be able to go home and tell my constituents that I finally voted for court reform?

SENATOR PIGNATELLI: You can do whatever you want, Senator King.

SENATOR BROWN: Senator Pignatelli, does this in any way, increase any liability on physicians who do not report patients? For example, someone diagnosed with Alzheimer's or whatever, is there any requirement for that?

SENATOR PIGNATELLI: It does not. There is no requirement that they must report.

SENATOR SQUIRES: My question was essentially the same. I can picture myself taking care of a patient that I have reason to think that is an alcoholic. They have cirrhosis of the liver or whatever. And they are engaged or have a vehicular accident and someone is injured or killed. The state of New Hampshire has by this bill, said clearly that "encouraging physicians to report the condition to the state." I want more reassurance here, that I won't get hauled into court by the attorney for the injured party and say you did not follow the desires of the state legislature in dealing with this issue. So it is the same question. Can you just reassure me, that is all that I want?

SENATOR PIGNATELLI: Well I can tell you that it certainly is not the intent of this legislation. So if people in the future are looking at leg-

islative intent, that is not my intent as the sponsor of that bill. It says, "physicians who make reports to the Department of Motor Vehicles." It is actually the Department of Safety now with the amendment, shall be given immunity.

Amendment adopted.

Ordered to third reading.

SB 348, extending the committee to study the establishment of a permit system for vessels registered in another state temporarily using the waters of New Hampshire. Transportation Committee. Vote 3-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: As was indicated in an earlier testimony today, there are 90,000 boats registered in this state, but no one really has a clear idea of how many boats are brought in from out-of-state and are used here on New Hampshire lakes and ponds. This committee was established last year to look at a permit system which would allow us to track the number of out-of-state users. But the committee has not been able to come to a resolution yet and is asking that the date for which they report, be extended from November 1, 1999 to November 1, 2000. We would ask for your support.

Adopted.

Ordered to third reading.

SB 356, extending the committee to study and identify or establish the duties of the fish and game commission. Wildlife and Recreation Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill simply extends the reporting deadline until November 2000.

Adopted.

Ordered to third reading.

SB 181-FN, relative to the licensure of geologists. Finance Committee. Vote 5-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill was referred to Senate Finance from the Executive Departments and Administration Committee. This bill establishes the Board of Professional Geologists and authorizes the regulation of the practice, examination, licensure, and discipline of professional geologists. The joint board is unable to estimate how many new licenses will result; however, the joint board estimates one new license clerk, with benefits, office rent, supplies and one time costs for computer and furniture total approximately \$50,000. The joint board has stated the new board will be a 125 percent board; therefore, estimated revenue in the amount of \$62,500 from fees will be generated to offset the costs incurred. Senate Finance recommends SB 181-FN ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 553-FN-A, establishing a commission on the status of men. Finance Committee. Vote 5-0. Ought to Pass, Senator Klemm for the committee.

SENATOR KLEMM: This bill as amended by ED & A replaces the establishment of a commission on the status of men with a study committee, consisting of three members of the House and Senate. The commit-

tee will address various issues of concern to men in the state, including health problems unique to them and personal development needs. The bill as amended, has no fiscal impact.

Adopted.

Ordered to third reading.

RECONSIDERATION

Senator Trombly having voted with the prevailing side moved reconsideration on **SB 89-L**, relative to library trustees, whereby we nonconcur with the House amendment and requested a Committee of Conference.

Adopted.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 89-L, relative to library trustees.

Senator Trombly moved concurrence.

Adopted.

2000-3230-eba

05/09

Enrolled Bill Amendment to **SB 222-FN-A-LOCAL**

The Committee on Enrolled Bills to which was referred **SB 222-FN-A-LOCAL**

AN ACT relative to guarantee of loans to local development organizations.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to **SB 222-FN-A-LOCAL**

This enrolled bill amendment corrects the effective date of the bill.

Enrolled Bill Amendment to **SB 222-FN-A-LOCAL**

Amend the bill by replacing section 5 with the following:

5 Effective Date. This act shall take effect July 1, 2000.

Senator McCarley moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendment to the following entitled House Bill and Resolution sent down from the Senate:

HB 422, relative to advertising by rent-to-own businesses.

HJR 6, encouraging the revitalization of the northern rail corridor from Concord to Lebanon and recognizing its interim recreational uses.

HOUSE MESSAGE

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

- HB 1105**, ratifying article 9 of the 1999 Seabrook annual town meeting.
- HB 1149**, commemorating the anniversary of the founding of certain branches of the United States armed forces.
- HB 1156**, establishing June 20th each year as Destroyer Escort Day.
- HB 1169**, relative to gates and bars on class VI roads.
- HB 1198**, establishing a procedure for the 2001 voter checklist verification.
- HB 1334-L**, relative to posting municipal roads.
- HB 1368-FN**, establishing a Civil War memorials commission for the construction and maintenance of New Hampshire Civil War monuments and memorials.
- HB 1381**, relative to the dissolution of the Pawtuckaway cooperative high school district.
- HB 1435**, establishing a committee to study the immediate and long-term impact of changing methodology of communications and information technology as it applies to the right-to-know law.
- HB 1471**, relative to the department of employment security's power to approve building projects.
- HB 1594-FN**, relative to the allocation of moneys in the tobacco use prevention fund.
- HCR 21**, urging the federal government to increase the pay to military personnel.
- HCR 22**, urging the federal government to ensure that defense appropriations are spent in support of defense programs.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered HB 1105-HCR 22 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

- HB 1105**, ratifying article 9 of the 1999 Seabrook annual town meeting. **Public Affairs**
- HB 1149**, commemorating the anniversary of the founding of certain branches of the United States armed forces. **Internal Affairs**
- HB 1156**, establishing June 20th each year as Destroyer Escort Day. **Internal Affairs**
- HB 1169**, relative to gates and bars on class VI roads. **Transportation**
- HB 1198**, establishing a procedure for the 2001 voter checklist verification. **Public Affairs**
- HB 1334-L**, relative to posting municipal roads. **Transportation**
- HB 1368-FN**, establishing a Civil War memorials commission for the construction and maintenance of New Hampshire Civil War monuments and memorials. **Internal Affairs**
- HB 1381**, relative to the dissolution of the Pawtuckaway cooperative high school district. **Education**

HB 1435, establishing a committee to study the immediate and long-term impact of changing methodology of communications and information technology as it applies to the right-to-know law. **Judiciary**

HB 1471, relative to the department of employment security's power to approve building projects. **Capital Budget**

HB 1594-FN, relative to the allocation of moneys in the tobacco use prevention fund. **Public Institutions, Health and Human Services**

HCR 21, urging the federal government to increase the pay to military personnel. **Public Affairs.**

HCR 22, urging the federal government to ensure that defense appropriations are spent in support of defense programs. **Public Affairs.**

Recess.

Out of Recess.

SUSPENSION OF THE RULES

Senator Brown moved that the Rules of the Senate be so far suspended as to referral to committee, advertising in the calendar, holding of a hearing, and a committee report in the calendar, and that the rules be further suspended to allow the bill to be on second reading at the present time.

Adopted by the necessary 2/3 vote.

HB 1105, an act ratifying article 9 of the 1999 Seabrook annual town meeting.

Senator Brown moved ought to pass.

Adopted.

Senator Brown offered a floor amendment.

2000-3360s

08/10

Floor Amendment to HB 1105

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

AN ACT ratifying article 9 of the 1999 Seabrook annual town meeting and the 1999 Epping annual town meeting.

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

2 Ratification of the 1999 Epping Annual Town Meeting. All acts, notices, votes, and proceedings of the Epping annual town meeting held on March 16, 1999 are hereby legalized, ratified, and confirmed.

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

2000-3360s

AMENDED ANALYSIS

This bill ratifies all acts, votes, notices, and proceedings relating to the 1999 Epping annual town meeting and article 9 of the meeting warrant of the first and second sessions of the 1999 Seabrook annual town meeting.

SENATOR BROWN: This amendment is very short. It says that the proceedings of the Epping, annual town meeting held on March 16, 1999 are hereby legalized, ratified and confirmed. There was a reason that this had to be done for Saturday, for their school budget meetings. I would hope that you would all support it.

Floor Amendment adopted.

Ordered to third reading.

MOTION OF RECONSIDERATION

Senator Johnson having voted with the prevailing side, moved reconsideration on HB 449, an act requiring boating safety education, whereby we ordered the bill to third reading.

HB 449, an act requiring boating safety education.

Senator Johnson moved to have on **HB 449**, an act requiring boating safety education, laid on the table.

Adopted.

LAIID ON THE TABLE

HB 449, an act requiring boating safety education.

COMMITTEE REPORTS

HB 542-FN-A, repealing the legacies and succession tax. Finance Committee. Vote 3-3. Without Recommendation, Senator J. King for the committee.

Senator J. King moved to have **HB 542-FN-A**, repealing the legacies and succession tax, laid on the table.

Question is on the tabling motion.

A roll call was requested by Senator Francoeur.

Seconded by Senator Pignatelli.

The following Senators voted Yes: F. King, Johnson, Fraser, Below, McCarley, Disnard, Larsen, J. King, Russman, D'Allesandro, Klemm, Cohen.

The following Senators voted No: Gordon, Trombly, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Wheeler.

Yeas: 12 - Nays: 11

Adopted.

LAIID ON THE TABLE

HB 542-FN-A, repealing the legacies and succession tax.

SB 72, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws. Finance Committee. Vote 5-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President and members of the Senate, SB 72 would resolve issues regarding the requirement that citizens who reside in specific areas obtain permits to develop their properties. Madame President, I believe that we passed this once before and sent it to the House. The bill came out of the Senate Finance Committee unanimously as ought to pass.

Adopted.

Ordered to third reading.

SB 128, replacing the housing assistance fund trust fund with a homeless prevention fund, and making an appropriation therefor. Finance Committee. Vote 6-3. Ought to pass. Senator Squires for the committee.

SENATOR SQUIRES: This bill has come back from the Finance Committee. We discussed it last week. I will address myself to at least one

specific point. Senator Disnard inquired as to whether or not the bill does away with the Housing Assistance Fund and the answer to that question is yes, it does. It replaces it with a new fund. At this point in time, there has been no financial commitment to the Housing Assistance Fund and so the point is essentially moot. The issue about this bill is at once sense, the state's obligation to address issues of affordable housing. It is correctly pointed out that housing, welfare and et ceteras, is the ultimate responsibility of the cities and towns. On the other hand, we learned in the hearing that there are 18,000 people in New Hampshire that pay more than 50 percent of their income in rent. I am not sure that looking ahead, that the cities and towns can meet that obligation. All that aside, I am asking for your support for the bill, because it keeps alive this issue. It allows a mechanism, if at some point in time, a funding source can be found to assist and address this problem. Thank you very much.

Adopted.

Ordered to third reading.

SB 203-FN-A-L, authorizing electronic games of chance at racetracks. Finance Committee. Vote 3-3. Without Recommendation, Senator Klemm for the committee.

Senator Klemm moved to have **SB 203-FN-A-L**, authorizing electronic games of chance at racetracks, laid on the table.

Question is on the tabling motion.

A roll call was requested by Senator Francoeur.

Seconded by Senator Trombly.

The following Senators voted Yes: F. King, Johnson, Fraser, McCarley, Trombly, Disnard, Roberge, Eaton, Squires, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm, Cohen.

The following Senators voted No: Gordon, Below, Fernald, Pignatelli, Wheeler.

Yeas: 18 - Nays: 5

Adopted.

LAI D ON THE TABLE

SB 203-FN-A-L, authorizing electronic games of chance at racetracks.

SB 206-FN-A-L, establishing the tobacco use prevention fund and continually appropriating a special fund and relative to the health care fund. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill has emerged from somewhat now distant and murky paths, and we were trying to address issues of what to do about the tobacco money. It is not appropriate to what happened. I have a floor amendment, however, that is appropriate. So I would ask that you pass the bill so that I could offer my floor amendment.

Adopted.

Senator Squires offered a floor amendment.

2000-3300s

01/09

Floor Amendment to SB 206-FN-A-LOCAL

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

AN ACT relative to distribution of tobacco settlement funds.

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

1 Distribution of Tobacco Settlement Funds. The distribution of funds received by New Hampshire as a result of the settlement in 1998 litigation against tobacco companies shall be as follows:

I. In fiscal year 2000:

(a) Of the initial bonus payment, \$16,000,000 to the education trust fund, established in RSA 198:39, in accordance with 1999, 17 and any amount over \$16,000,000 shall be deposited as unrestricted revenue to the general fund.

(b) Of the annual payment, \$40,000,000 to the education trust fund, established in RSA 198:39.

(c) Any remainder shall be deposited as unrestricted revenue to the general fund.

II. Beginning in fiscal year 2001 and in each year thereafter:

(a) The first \$3,000,000 to the tobacco use prevention fund, established in RSA 126-K:15.

(b) The next \$40,000,000 to the education trust fund, established in RSA 198:39.

(c) Any amount over \$43,000,000 shall be deposited as unrestricted revenue to the general fund.

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

2000-3300s

AMENDED ANALYSIS

This bill sets forth the annual distribution of the tobacco settlement funds.

SENATOR SQUIRES: First of all, I would like to say how much I appreciate the support of the Senate in struggling with the use of the tobacco funds. I need hardly remind you that these funds were obtained by the state of New Hampshire to try and deal with the outcomes of tobacco use. The best way to deal with that is to try and prevent our youth from smoking tobacco. The information data seems relatively clear. If someone is not addicted to or heavily engaged in smoking by the age of 20, they stand an excellent chance of not adopting the habit of a life-long consumption of cigarettes, which leads to all of the troubles that we know. The initial recommendation of the bill, of the funds, as it came in, was that New Hampshire devote 25 percent of its funds to cessation and prevention. It is of no surprise to any of you that that goal is not achieved. Instead, we are devoting about 8 percent. The problem is, given the way that the money is coming in and given the financial strait in which the state finds itself, even though we committed \$3 million and we have, in the course of the legislative process, a design on how to spend that money. My fear is that somehow it won't come about, and New Hampshire will end up not spending anything on tobacco cessation and prevention. So what this amendment does is similar to defining the line of creditors for companies in bankruptcy and whatnot. The stockholders are last, probably the principal banks are first and

so forth. So if I could just call your attention to the bill. It says first of all, it deals with the initial bonus payment that is not involved. That is all gone already to the school funding problem. Then we come around to what happens to the \$40, although it may not be \$40. You must understand that the amount that the state receives is adjusted depending on the sales of cigarettes, which if nationwide, and New Hampshire going down, then the money comes down. What the bill says is, and the most important part to me, line 18, the first \$3 million of the settlement comes in, goes to cessation and prevention. Then the next \$40 million goes to the education trust fund, and any amount over that goes to the general fund. So I hope that you will support this amendment. At least to preserve what we have agreed upon, and to make it clear to ourselves and to the public that we, the legislature, are committed to the greatest extent possible, to cessation and prevention in youth. Thank you.

SENATOR FERNALD: The amendment says "amend by replacing all after the enacting clause" and when I look at the bill, it looks like the amendment gets rid of the various statements of purpose and the tobacco use prevention fund? Did you already touch on this and I may have missed it?

SENATOR SQUIRES: I probably didn't touch upon it with sufficient clarity. There is another bill that has defined the tobacco use prevention fund and laid out the distribution of the \$3 million when it comes...

SENATOR FERNALD: Is this a House bill?

SENATOR SQUIRES: It came out in a joint study committee in which I participated and it is in the House now.

SENATOR FERNALD: Thank you.

Floor Amendment adopted.

Ordered to third reading.

SB 210-FN-L, relative to payment by the state for certain court-ordered placements of special education students. Finance Committee. Vote 3-3. Without Recommendation, Senator Below for the committee.

SENATOR BELOW: Senate Bill 210 requires the state to pay the full cost of special education services provided to all court ordered placements of special education students. This was one of three bills filed as the result of the special education commission's work during the summer and fall of 1998. The Finance Committee was unable to find a majority for any particular motion on this. So the Finance Committee reports this without recommendation.

Senator Gordon moved ought to pass.

SENATOR FERNALD: Senator Below, am I correct in understanding that there are certain towns that happened to be home for a youth shelter of some sort and I have forgotten now, which town that I had in mind, but I think that it is Nelson or somebody in Cheshire or Sullivan county that has one of these youth homes in it for troubled kids. It is my understanding...I guess that I am looking for confirmation from the committee, that if the kids are in this facility, in this town, that town has to pay for any special education needed for those kids, rather than the towns where the kids came from? Is that correct?

SENATOR BELOW: I think that there is some confusion about that. Right now as I understand it, the district would have to pursue reimbursement from those towns where the child originated from, but some-

times it is not very clear what that case is; if they are in the custody of the state, if DCYF, if they are in the custody of the state and there is a court order placement. So sometimes that reimbursement is very late or doesn't occur because they can't achieve it. The intent of this bill would be to have the state provide that reimbursement. I think that there was some ambiguity about the intent of the bill, whether the state would just end up picking up those costs, and there would be substantial financial impact, or that the state can turn around and seek reimbursement from the so-called sending school district.

SENATOR FERNALD: So am I correct in understanding that the current state of the law is the town where the facility is located has to provide the services, and pay for them in the first instance, and then they have to go out looking for the money for reimbursement from the sending districts?

SENATOR BELOW: Yes. That is my understanding.

SENATOR FERNALD: Then is it my understanding that this bill would shift the burden from the receiving town, if you will, to the state? Then the state has to pay, and then they have to chase the sending districts?

SENATOR BELOW: Yes. That is why I supported ought to pass and will support it in this instance; however, in the last Finance Committee discussion, I will say that there was confusion about whether the state would in fact, in all cases, pursue that reimbursement, or whether the state was assuming responsibility for children that were in the custody of the state where Health and Human Services has financial responsibility, and that the state would pick up those costs. Maybe Senator Gordon will clarify that when he speaks to the bill.

SENATOR GORDON: As was indicated by Senator Below, this was one of the three bills that came out of the commission, which was established to look at issues involving special education. Actually, now at this point in time, and the year before last, 1998. The other two bills have already passed and been enacted into law and this is the last bill. I think that the issues have been pretty well honed out by the discussion between Senator Fernald and Senator Below, but the issue is this, that when the state decides or the courts in this state decide that a child needs to have alternative placement, usually outside of their home, that child is sent to a facility or a foster home in another community. I will give you a particular example because this is near and dear to my heart. That is the town of Rumney. One of the 32 towns that I represent. In that particular town there is a facility that provides services to children who come from troubled circumstances, and they do a superb job, but they do not have an independent educational facility of its own, so that kids that actually go there, attend the public school in the town of Rumney. When they attend the public school, many of these children, as you know, have learning disabilities, and they immediately become the responsibility of the school district in Rumney to provide for those special education services. Under the current law, the Rumney school district is then entitled to seek reimbursement from the sending school district, but they have to spend the money in the first place, so although they are a small town and they don't have their own high school, they only have an elementary school, they might have a budget of \$2 million, they find themselves each year, budgeting \$2.5 million or more in order to provide for the services of the children who are placed by the state. Then they are able to seek reimbursement after the fact, but then they have to

decide where the child came from. That is not always an easy task. As we know under the current law, it is where that child last resided before the court order. It might not necessarily be where the child last went to school. It also has to be some agreement whether or not the IEP was proper, because the other school district that they are coming from might disagree with Rumney as to whether or not their IEP is correct. So there are all sorts of troubles with this. In the meantime, the people of Rumney are paying for these costs out-of-pocket, for children which the state is sending to Rumney to be educated. I believe that is wrong. The Special Education Commission, when it did its study, said that in conjunction with our education funding solution, we should address that issue so that we should use what funds that we raise to make sure that towns like Rumney and other towns weren't financially inconvenienced because the state has made a decision to place a child in their town. Unfortunately, that wasn't addressed in the entire solution, but clearly we raised sufficient funds in order to do that. So what this bill would say is that the town of Rumney will continue to provide those educational services and make its schools available, but the state is going to take responsibility for that educational cost. The bill doesn't address specifically, whether or not Rumney can go back to the other school districts, but clearly if that is the state's desire to do that, it can do so. The testimony that we had in the Education Committee, I wasn't at the Finance Committee meeting, but in the Education Committee, Pat Busselle indicated that there was state funding available in order to cover the costs. I think that this is an important policy for the state to adopt, that if we are going to in fact, be making court ordered assignments, we should be taking responsibility for them. I would encourage you to support the bill and then pass it onto the House.

SENATOR MCCARLEY: Just very, very briefly. I was not able to attend the Finance Committee either, and I have spoken to both DOE and LBA. I think that there continues to be some concerns and lack of clarity on some of the language in the bill relative to the whole reimbursement issue and how that is indeed going to work. Having said that, I totally agree with Senator Gordon that it is time that we took this issue head on. What I would encourage is those of us that are really interested in this, to spend some time when the House gets this bill, tracking some other things that may need to happen to it, but I would encourage its passage as well.

SENATOR F. KING: I rise in support of the bill and also to thank Senator Gordon for pursuing this. The first year that he and I shared an office, he started working on this issue. I have a school district in my district that has the same affect as the town of Rumney. I think that he has chased this for at least five years that I know of, and I am very pleased to support it. I thank you for doing that.

SENATOR D'ALLESANDRO: Senator McCarley, if we pass this piece of legislation, is it clear in the statutes, that if the state is responsible for the payment to the district, does the state then have the authority to go back to the sending district and try to recover the costs?

SENATOR MCCARLEY: I think that is the part of the legislation that I am not sure that we have gotten a straight answer on because obviously, if indeed the state is able to do that, we have indeed relieved the issues around the receiving district, but we really haven't done anything for the sending district. We are shifting the dollars, it is the old deck chair idea. That is the part, that I think, that we need to look further into, because I think that many of us do believe that fundamentally, the

state should be accepting this obligation, because it is the court system that is placing these children. So that is the part that I think that we need to follow up on when it gets to the House.

Adopted.

Ordered to third reading.

SB 225, relative to a pharmaceutical program for low income individuals. Finance Committee. Vote 9-0, Interim Study, Senator McCarley for the committee.

SENATOR MCCARLEY: This bill would establish a discount prescription drug program for persons with limited incomes to be administered by the Department of Health and Human Services. The bill would also establish a fund to offset the costs of the pharmaceuticals, and an advisory council to oversee the administration of the program. At this time, however, there is some question as to how this program may be funded. The Health and Human Services Committee voted 4-0 that this bill ought to pass. The bill will go on to the Senate Finance Committee, where perhaps we may further discuss how to fund such a program. As an aside, there are other programs soon to begin in this state that may help to address the cost of pharmaceuticals. Starting in mid-February, eligible New Hampshire residents will qualify for free prescription medication, thanks to a grant to a nonprofit agency. The Patient Assistance Program will be backed by the Pharmaceutical Research and Manufacturers of America. Also beginning this month, the National Pharmaceutical Association will provide reduced-cost prescriptions for people age 65 or older. This program is an initiative of the governor and Commissioner Shumway of the Department of Health and Human Services. Through this program, eligible participants will receive a card they can use to buy their prescriptions at reduced rates. Lowering the costs of prescription drugs and making prescription drugs available to those in need is an important issue for many residents of New Hampshire. I would urge you to support this legislation. Thank you.

Adopted.

Committee report of interim study is adopted.

TAKEN OFF THE TABLE

Senator Trombly moved to have **HB 251**, relative to official ballot procedures, taken off of the table.

Adopted.

HB 251, relative to official ballot procedures.

Senator Trombly moved ought to pass.

SENATOR TROMBLY: This bill simply gives the authority of towns and school districts to hold their annual meetings, up through and including May. At the hearing, there was some opposition relative to teacher contracts. That was a concern of Senator Disnards. Senator Disnard's concerns have been cleared up as I understand it. Those of us who had voted against the bill are now in favor of it. It is a home-rule type of thing and it will be up to those districts and towns to decide whether they want to do it; therefore, I think that while if you went back to the calendar, you would have seen two votes against the bill, those of us who opposed it, now are in favor of it. I would ask passage of this bill.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Trombly moved to have **SB 231**, relative to public water supplies, taken off of the table.

Adopted.

SB 231, relative to public water supplies.

Senator Trombly moved ought to pass.

SENATOR TROMBLY: Senate Bill 231 was a bill that was brought in late last session by Senator Fraser relative to a problem which was occurring in his town of Pittsfield, and water users being connected to a public water supply which if somebody got off of it, it could cost exorbitant rate increases etc. There was some opposition to that bill from Senator Francoeur. He and Senator Fraser and the interested parties have been negotiating a resolution of that and I believe that Senator Fraser has a floor amendment that he would offer. I would yield to Senator Fraser.

Adopted.

Question is on the committee amendment (3280)

2000-3280s

08/01

Amendment to SB 231

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

AN ACT relative to termination of water service from a water utility.

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

1 Public Utilities; Water Utilities; Right of Customers to Terminate Service. Amend RSA 362:4, IV(a) to read as follows:

IV.(a) Any customer of a water utility *with more than 750 service connections* shall have the right to terminate water service and secure water from an alternate source, if the customer can demonstrate the ability to comply with the requirements of RSA 485-A:29 and RSA 485-A:30-b, and the administrative rules adopted to implement these sections.

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

2000-3280s

AMENDED ANALYSIS

This bill provides that only a customer of a water utility with more than 750 service connections shall

Amendment adopted.

Senator Fraser offered a floor amendment.

Sen. Fraser, Dist. 4

Sen. Francoeur, Dist. 14

2000-3368s

08/10

Floor Amendment to SB 231

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

AN ACT relative to termination of water service from a water utility in the town of Pittsfield.

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

1 No Right of Customers to Terminate Service From a Water Utility in the Town of Pittsfield. Notwithstanding RSA 362:4, IV(a), no customers of a water utility serving the town of Pittsfield shall have the right to terminate water service and secure water from an alternate source.

2 Repeal. Section 1 of this act, relative to the right of customers of a water utility in Pittsfield to terminate water service, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect 2 years after the effective date of the remainder of this act.

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

2000-3368s

AMENDED ANALYSIS

This bill provides that no customers of a water utility serving the town of Pittsfield shall have the right to terminate water service and secure water from an alternate source for a 2-year period.

SENATOR FRASER: The amendment guts the entire bill first of all. Secondly, it refers to Pittsfield only. Thirdly, it is now a session law rather than an amendment to the RSA's. There is also a sunset provision in here of two-years. That is going to give the town of Pittsfield ample time to put some regulations in place to cure an ill that is currently taking place in my community. I would hope that you would all support it. Thank you Madame President.

Floor Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Trombly moved to have **HB 228**, clarifying permissible political expenditures, taken off of the table.

Adopted.

HB 228, clarifying permissible political expenditures

Question is on the motion of ought to pass.

SENATOR TROMBLY: Madame President and members of the Senate, the origin of HB 228 is to clarify a gapping hole in our campaign spending laws. When the legislature saw fit to put in some sort of controls under regulation of contributions and campaign expenditures through voluntary and involuntary methods, it left silent the issue of when do you start calculating expenditures for the purposes of applying them to the cap? That becomes relevant, not if somebody stays within the cap, but if somebody exceeds the cap. That is relevant, because if you take the voluntary limit, you agree to go to the cap, and if you don't, you get fined. That hole was interpreted by the attorney general prior to December 9, 1999 to be when some candidate made a statement as to when they were a candidate for office. Not an official declaration, but a statement. I have passed out for you, the letter from the attorney general to the attorney for Mr. Lucas, Jay Lucas, when the attorney general revisited their prior interpretation of the statute. Now mind you, prior to December 9, 1999 the attorney general said **TAPE INAUDIBLE** of when someone declared their candidacy and from there on in, monies spent on their campaign would be credited against the account. The attorney general re-looked at that in view of the Lucas situation, and said that leaves things to be a little bit too arbitrary, a little bit too unclear, and perhaps

it would be unfair to some candidates who might perhaps misspeak and say that they are a candidate for governor, intending to mean that well, if all goes well, they will be a candidate in a month, but not intending to declare their candidacy that day. So the attorney general, if read the opinion, it is specifically laid out on the second page, "we need a clearer benchmark for the implementation of this statute", because the legislature has been unclear. The attorney general opted for the date that we file because it seemed to them, to be a clear delineation of when someone is a candidate. Now if you want to accept that interpretation of the law, that is fine. If you want to aggregate your responsibilities to legislate campaign finance reform to the attorney general, that is fine and you should vote against this legislation, but if you want to set a clear date, yourself, then I think that you should vote for this legislation which sets, what I think, a much fairer and appropriate time. That would be January 1 of the year of the election. Why? The problem that we are facing. Time and time and time again, our people are going out campaigning for office, spending money, raising money, doing everything that they need to do as a candidate and then going under the cap and redoing everything under the ostracism of good government by taking this voluntary limit on expenditures. Well they have already spent \$500,000 doing what should be counted against their cap, which is campaigning. If you are going to campaign folks, and you are going to say that you are for good government and for limiting your expenditures, then you ought to include it all. A clear way to do that, because most people are out campaigning during an election year, is as of January 1 of that year. It simply makes sense. Any date that we pick at the legislature is going to be arbitrary, whether it is the day the candidate first says, "I am a candidate, I might be a candidate, etc" but the thing is, people are out here spending tens of thousands of dollars before they file in June and then in June they say, "Hey, I can spend all of this money, and I am for good government because I am taking the cap." That is baloney. That is hooley. If you're campaigning in January of an election year, that should be counted against your cap. That is what this bill does. I say to you, if you voted for Bradley or Gore or McCain, you have to support this bill in the favor of good government, and be consistent with your presidential candidate's position. If you voted for someone else, you ought to vote for this bill just because you stand for good government. Thank you, Madame President.

SENATOR PIGNATELLI: Senator Trombly, is it correct that our filing date is sometime in June for us, for state Senate?

SENATOR TROMBLY: Yes, it is.

SENATOR PIGNATELLI: So is it possible, if something like this doesn't pass, that if I choose to run for state Senate again, that I can order all of my signs, all of my literature, everything that I am going to use in terms of paperwork, and also start sending out information to my constituents on May 30, and have that not count towards my campaign, and I would be free to spend another \$20,000 on the primary from June to September?

SENATOR TROMBLY: And \$20,000 from the primary until the general election.

SENATOR BROWN: Senator Trombly, in listening to her question, it says for "candidates for governor, U.S. Senator and Representatives to Congress. Total expenditures shall include any expenditures made after January 1." Where does the state Senate come in?

SENATOR TROMBLY: I am sorry, I meant the federal candidates, but I would gladly accept an amendment for us, because I don't think that we should let the horse out of the barn.

SENATOR LARSEN: Senator Trombly, you may recall Lyndon B. Johnson? I understand that Lyndon B. Johnson once described the campaign finance laws as more loophole than law. Would you agree that this is closing a loophole in our law?

SENATOR TROMBLY: Yes. Sometimes I think that loopholes are nooses, and I think that we ought to close them as quickly as possible.

Recess.

Out of Recess.

SENATOR JOHNSON: Senator Trombly, would you be amenable to an amendment that would include the state Senators, Representatives and the executive council, and also have the effective date upon passage?

SENATOR TROMBLY: Yes. Would you vote for it then?

SENATOR JOHNSON: Yes, I would.

SENATOR TROMBLY: If you would vote for it, then sure, absolutely.

SENATOR JOHNSON: Thank you.

SENATOR TROMBLY: Senator Johnson, who will be drafting that amendment, and do you know when it might be ready?

SENATOR JOHNSON: I believe that Senator Russman has offered his services to drafting the amendment.

SENATOR TROMBLY: Senator Russman, do you know when that might be ready?

SENATOR RUSSMAN: As soon as I can get down to Legislative Services. We can call them and tell them what we want to do, and then they can begin work on it. Perhaps we can do it today if possible.

SENATOR TROMBLY: I would like to vote on this today.

SENATOR PIGNATELLI: I am glad that I asked the question that brought this amendment forward.

SENATOR FRANCOEUR: Senator Trombly, I am just a little confused and maybe you can help me with this part. It talks about total expenditures. Now if I am running for the state Senate, I am only allowed to spend \$20,000 in the primary. Let's say that I have a fundraiser at the Sheraton Tara and I raise \$40,000, but I spent \$20,000 to do it, so that means that I had a profit of \$20,000, so does that mean that I am already capped out and can't do anything? Is that part of the total expenditures?

SENATOR TROMBLY: I would have to check, Senator Francoeur, but I believe that on total of expenditures are those for the campaign and not on raising fundraising costs. I will check that out for you. I will go downstairs and see the secretary of state.

SENATOR FRANCOEUR: If you could, when you bring the bill back to be voted on, put it on the record that there is a distinction between the fundraising and the expenditures on campaigning?

SENATOR TROMBLY: Yes.

SENATOR GORDON: Senator Trombly, I don't know how it would be applied, but it has a passage date of 60 days?

SENATOR TROMBLY: I think that Senator Johnson said that he was going to make it effective upon passage in the floor amendment being drafted.

SENATOR GORDON: Let's say that it becomes effective on whatever date that it is agreed upon by the House, and goes to the Governor and that it is a month from now. The question is, how does that apply to the people in this current election cycle? Do the expenditures that they have incurred prior to that date of passage get included?

SENATOR TROMBLY: My opinion would be because we can't pass retroactive legislation and that the people who are spending that money will be spending it pursuant to the attorney general's interpretation of December 9, 1999, didn't know, and it wouldn't count against this cap, but, I would suggest that Senator Russman make that absolutely clear. I most certainly wouldn't object to say that any money spent prior to.. if it is the will of the Senate...Now if the Senate wants to do something else, I am all in favor of including it. But if the will of the Senate is not to include that, so that it wouldn't be unfair to candidates who have spent it. If you add that to your amendment, to say that any money spent prior to the effective date, of this year, shall not be included for the purpose of this chapter, that is fine.

SENATOR GORDON: I guess I am concerned about that and are you concerned as well, that that might give someone an advantage if they have already done some?

SENATOR TROMBLY: My personal feeling, Senator Gordon, is whatever they spent as of January 1 of this year should be included. That is my personal feeling. I am sympathetic, however, to the argument that people may have spent that money under the impression that December 9, the letter of the attorney general stood, and I don't mean to be unfair to them, I would leave that up to the will of the Senate, quite frankly. I think there is an argument that you can make that people were operating under the attorney general's interpretation as of passage and therefore, they shouldn't be penalized because they were doing what the attorney general said the law allowed them to do. I do, however, think that in order to make it absolutely certain, to the attorney general and secretary of state, the statement saying that it is the will of the Senate... money spent prior to this becoming law, shall not be included. I can support that. I can also support the other. It is the will of the Senate as to how we deal with it.

SENATOR RUSSMAN: It would seem that there is no question that, I don't think that you can count the monies that have already been spent irrespective to what we say in the bill. The issue that Senator Francoeur raised, I think, is a more pressing question in terms of whether or not... obviously, if someone spends thousands of dollars raising money, we ought to know what that means in terms of the cap. I would hope that perhaps we can find that out. I am not sure who we should talk with. They have been handling that over to the attorney general's office. Maybe Senator Trombly is aware of that, but we ought to get a sense of that, because on one hand it doesn't seem as though it should count towards the cap, but at the same time, if you spend \$300,000 and you have raised \$1 million, somehow, those numbers are quite staggering. I think that we ought to have Senator Trombly inquire to the appropriate people as to how to deal with that component, and we will deal with it when the bill comes back here after it is drafted from Legislative Services.

Senator Russman moved to have **HB 228**, clarifying permissible political expenditures, laid on the table.

Adopted.

LAI D ON THE TABLE

HB 228, clarifying permissible political expenditures.

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session and that the business of the last session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

CACR 20, relating to the election of governor and senators. Providing that beginning with the 2002 general election, and every 4 years thereafter, the governor and senators shall be elected.

Question is on the adoption of the final passage of CACR 20.

A roll call is required.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No: Pignatelli, Francoeur.

Yeas: 22 - Nays: 2

Adopted by the necessary 3/5 vote.

Ordered to third reading.

HOUSE MESSAGE

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

HB 1130, relative to persons conducting alcohol concentration tests.

HB 1136, (New Title) relative to the university system of New Hampshire board of trustees.

HB 1141, relative to access highways to public waters.

HB 1150, relative to voter registration for official ballot meetings.

HB 1161, making technical changes to the New Hampshire Aeronautics Act and establishing a committee to study revisions to the state aeronautics laws.

HB 1175, relative to license renewal for dental hygienists.

HB 1186, extending the reporting date of the Sullivan county regional refuse disposal district issues study committee.

HB 1206, extending the reporting date of the committee studying alcohol and drug abuse prevention.

HB 1212, relative to extending the reporting date of the open adoption study committee.

HB 1223, changing the name, amending the duties, and extending the reporting date of the committee to study the unclassified salary structure for state officers.

HB 1225, relative to the name of the department of fish and game.

HB 1233, relative to interest on judgements.

HB 1256, clarifying certain health care laws.

HB 1272, allowing school nurses to possess and administer epinephrine for certain emergency treatment.

HB 1287, relative to the membership of the water council.

HB 1301, relative to regional appointments to the state committee on aging.

HB 1337, repealing the New Hampshire foundation for mental health.

HB 1378, establishing a task force to conduct an ongoing study of the feasibility of reestablishing passenger rail service on the Eastern Line from Newburyport, Massachusetts to Kittery, Maine.

HB 1409, establishing a committee to study the feasibility to reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire rail service line and the Concord to Lebanon Northern passenger rail service line.

HB 1386, designating segments of the Souhegan River as protected under the rivers management and protection program.

HB 1397, relative to naming a certain island in Lake Winnepesaukee in the town of Moultonborough.

HB 1448, relative to the partition of real property.

HB 1455, (New Title) relative to the authority of the fish and game department for the electronic issuance of licenses, permits, stamps, and tags.

HB 1566, relative to perambulation between states.

HB 1588, relative to the authority of the department of transportation regarding rail safety inspections.

HCR 25, opposing the President's action to establish vast roadless areas in the White Mountain National Forest without the consultation or input of the New Hampshire citizenry.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered **1130-HCR 25** shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 1130, relative to persons conducting alcohol concentration tests. **Judiciary**

HB 1136, relative to the university system of New Hampshire board of trustees. **Education**

HB 1141, relative to access highways to public waters. **Environment**

HB 1150, relative to voter registration for official ballot meetings. **Public Affairs**

HB 1161, making technical changes to the New Hampshire Aeronautics Act and establishing a committee to study revisions to the state aeronautics laws. **Transportation**

HB 1175, relative to license renewal for dental hygienists. **Executive Departments & Administration**

HB 1186, extending the reporting date of the Sullivan county regional refuse disposal district issues study committee. **Environment**

HB 1206, extending the reporting date of the committee studying alcohol and drug abuse prevention. **Public Institutions, Health & Human Services**

HB 1212, relative to extending the reporting date of the open adoption study committee. **Judiciary**

HB 1223, changing the name, amending the duties, and extending the reporting date of the committee to study the unclassified salary structure for state officers. **Internal Affairs**

HB 1225, relative to the name of the department of fish and game. **Wildlife & Recreation**

HB 1256, clarifying certain health care laws. **Public Institutions, Health & Human Services**

HB 1233, relative to interest on judgements. **Judiciary**

HB 1272, allowing school nurses to possess and administer epinephrine for certain emergency treatment. **Public Institutions, Health & Human Services**

HB 1287, relative to the membership of the water council. **Executive Departments and Administration**

HB 1301, relative to regional appointments to the state committee on aging. **Executive Departments & Administration**

HB 1337, repealing the New Hampshire foundation for mental health. **Public Institutions, Health & Human Services**

HB 1378, establishing a task force to conduct an ongoing study of the feasibility of reestablishing passenger rail service on the Eastern Line from Newburyport, Massachusetts to Kittery, Maine. **Transportation**

HB 1386, designating segments of the Souhegan River as protected under the rivers management and protection program. **Environment**

HB 1397, relative to naming a certain island in Lake Winnepesaukee in the town of Moultonborough. **Wildlife & Recreation**

HB 1409, establishing a committee to study the feasibility of reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire rail service line and the Concord to Lebanon Northern passenger rail service line. **Transportation**

HB 1448, relative to the partition of real property. **Judiciary**

HB 1455, relative to the authority of the fish and game department for the electronic issuance of licenses, permits, stamps, and tags. **Wildlife & Recreation**

HB 1566, relative to perambulation between states. **Public Affairs**

HB 1588, relative to the authority of the department of transportation regarding rail safety inspections. **Transportation**

HCR 25, opposing the President's action to establish vast roadless areas in the White Mountain National Forest without the consultation or input of the New Hampshire citizenry. **Energy & Economic Development**

LATE SESSION RESOLUTION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn.

Adopted.

Third Reading and Final Passage

SB 72, exempting certain portions of Seabrook Beach Village District and certain portions of Hampton Beach from certain provisions of the excavating, filling, and construction permit laws.

SB 97, relative to charitable trusts which are institutional funds.

HB 97, relative to the right to farm.

SB 128, replacing the housing assistance fund trust fund with a homeless prevention fund, and making an appropriation therefor.

SB 181-FN, relative to the licensure of geologists.

SB 185, relative to the partition of real or personal property.

SB 206-FN-A-L, relative to distribution of tobacco settlement funds.

SB 210-FN-L, relative to payment by the state for certain court-ordered placements of special education students.

SB 226, relative to the real estate practice act and the powers and duties of the real estate commission.

SB 231, relative to termination of water service from a water utility in the town of Pittsfield.

HB 251, relative to official ballot procedures.

SB 313, establishing a commission to study the relationship between postsecondary education and recipients of temporary assistance to needy families.

SB 314, establishing a committee to study the feasibility of driver education programs by correspondence school.

SB 319, relative to interstate school districts.

SB 331, requiring a report from the public utilities commission and the department of environmental services evaluating whether existing regulatory structures encourage or discourage regional cooperation for water resources management and water conservation.

SB 333, relative to signs for churches.

SB 335, allowing physicians to make a report when a person is unfit to drive a motor vehicle.

SB 340, extending the reporting date of the committee to study the problems and possible regulation of outdoor lighting.

SB 341, extending the reporting date and changing the name of the committee to study the licensure of radiologic technologists.

SB 342, extending the reporting date of the committee studying the impact of federal welfare reform on the cities and towns of New Hampshire.

SB 348, extending the committee to study the establishment of a permit system for vessels registered in another state temporarily using the waters of New Hampshire.

SB 350, adding business development to the law governing industrial development authorities.

SB 351, making certain changes in the laws relative to fraternal benefit societies and health service corporations.

SB 352, repealing the equipment challenge grant program within the New Hampshire community technical colleges.

SB 356, extending the committee to study and identify or establish the duties of the fish and game commission.

SB 357, extending the reporting date of the study committee reviewing field activities conducted by the department of health and human services in investigating reports of abuse and neglect.

SB 368, relative to insurance fraud.

SB 369, establishing a committee to conduct a study on the need for standards to protect health information privacy.

SB 372, relative to certain engineering businesses.

HB 375, relative to substitutions for disqualified and deceased candidates.

SB 376, relative to the jurisdiction of the public utilities commission to determine consequential damages.

SB 384, establishing a committee to study pollution prevention and pre-treatment programs for reducing pollutant levels in sewage sludge.

SB 392-FN, relative to the use of nonlapsed funds by the regional community-technical colleges.

SB 402-FN, relative to employee reimbursement for work-related expenses.

SB 407-FN-L, relative to dog licensure.

SB 417-FN-L, allowing a beneficiary of an optional allowance under the New Hampshire retirement system to renounce his or her benefits.

SB 434-FN-L, exempting soil that is contaminated by lead due to use as a police training shooting range from hazardous waste cleanup fund fees.

HB 553-FN-A, establishing a commission on the status of men.

HB 640-FN, relative to grievance procedures of managed care organizations.

HB 690-FN-L, relative to charter schools and open enrollment districts.

HB 1105, ratifying article 9 of the 1999 Seabrook annual town meeting.

Adjournment.

February 10, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

I always feel bad when I start my nine o'clock service at about 9:04, but coming here makes me feel much better.

A few weeks ago a friend of mine made the statement that there is no such thing as "too much justice". That notion appeals to me, for it speaks to the innate desire found within each of us to be treated fairly, honestly and with dignity. There is a problem, though, that we do not seem to have that same natural predisposition when it comes to how we treat others. Legislation, which is your business, at its basement foundational level, has to do with finding ways to implement guidelines and guard rails which will enhance and increase justice in how we all behave toward ourselves and toward one another. No matter the subject of the bill, remember that that is what it is really about - or else it isn't worth your consideration. To my friend who made that observation about justice, my response was a truth that I think is even more important. There is no such thing as too much love. That is something you cannot legislate, but it is something you can exercise. So have to.

Lord, You are a very mysterious God, for You only show us what we need to know for today. You seem content to leave the details of tomorrow clouded in the mists. Help us as we think and speak and listen, to see what genuine justice looks like, and to apply it in a way that shows what authentic love looks like. And for the rest, let us just trust You. Amen

Senator Squires led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

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

SB 228-FN, relative to spousal benefits upon the death of certain retired group II members of the New Hampshire retirement system.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 228-FN, relative to spousal benefits upon the death of certain retired group II members of the New Hampshire retirement system.

Senator J. King moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives accedes to the request of the Senate for a Committee of Conference of the following entitled Senate Bill:

SB 143, relative to penalties for incest.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: David Welch
 Donnalee Lozeau
 John Tholl
 William Knowles

TAKEN OFF THE TABLE

Senator Larsen moved to have **SB 136-FN**, allowing certain state employees to take paid leave to participate in disaster relief service work, taken off the table.

Adopted.

SB 136-FN, allowing certain state employees to take paid leave to participate in disaster relief service work.

Question is on the committee report of inexpedient to legislate.

SUBSTITUTE MOTION

Senator Larsen moved to substitute ought to pass for inexpedient to legislate.

SENATOR LARSEN: Senate Bill 136 was actually something that might look familiar to you from last session. It was a bill which passed the Senate in a previous session. It was introduced again last session and then put on interim study so that we could look at it in a more peaceful setting and not having Claremont on top of us this year. Senate Bill 136 actually allows for state employees to receive days of leave in order to be trained in disaster assistance. The Red Cross has been congressionally mandated to provide disaster relief in our state and throughout the nation. They are required to maintain a relief capacity for 24 hours a day, 365 days a year. It is the state's advantage to have people in our state, state employees, who like other states, have been trained in disaster relief. A disaster could hit New Hampshire just as it has hit other states, and these people are highly trained individuals who are ready to step in when there is a need for mass care, when there is a need for mass food offerings, when there is a need for housing. There are many instances in which New Hampshire could find itself in a disaster. This would allow for us to have some trained employees on our staff ready to go. This allows employees 15 days of leave, and it is only with the supervisor's approval. It also is not expected or required that a temporary employee would be hired to substitute for that employee when they are on disaster relief training, but in fact, would allow for these people to take leave if their supervisor believes that for those two weeks, they can operate their division-department, without that individual. It makes huge sense that we join the other 40 states in having our own state employees be trained in these skills. I urge you to vote ought to pass on SB 136. Senator Fraser was the original sponsor of the bill as well. I encourage your yes vote on this ought to pass motion.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator McCarley moved to have **SB 219-FN-L**, establishing a procedure for providing educational improvement assistance to local school districts, taken off the table.

Adopted.

SB 219-FN-L, establishing a procedure for providing educational improvement assistance to local school districts.

Senator McCarley offered a floor amendment.

Sen. McCarley, Dist. 6

Sen. D'Allesandro, Dist. 20

Sen. Cohen, Dist. 24

2000-3395s

04/01

Floor Amendment to SB 219-FN-LOCAL

Amend the bill by deleting RSA 193-E:7 as inserted by section 3 of the bill and renumbering the original RSA 193-E:8 to read as RSA 193-E:7.

SENATOR MCCARLEY: I would like to offer at this time, a floor amendment to SB 219. This is the school improvement accountability bill. There are a number of concerns around one section of the bill, 193-E:7, which involved the enforcement issue, and the enforcement powers of the attorney general's office. I have removed that section from the legislation so the floor amendment itself, simply deletes that section, leaving the rest of the bill in place as it was passed with an amendment last week. I guess just to speak really briefly, I think that we have had all of these discussions. I think that this is a really important piece of legislation, as I am sure that you all know, and I think that it is time that we do speak to school improvement. I, personally, have never been remotely concerned that any local school board in this state would ever have to worry about the attorney general turning up on their doorstep, because I know that local districts are about trying to improve what they do, but certainly, if it is language that is troublesome to people, I would much rather see us pass this and delete that language, from my perspective, was never a major concern anyway. So at this time, I would ask for support for the floor amendment. Thank you.

Floor Amendment adopted.

Recess.

Out of Recess.

Ordered to third reading.

Senators Gordon and F. King are in opposition to SB 219-FN-L.

COMMITTEE REPORTS

SB 318-FN, relative to proposed joint maintenance agreements. Education Committee. Vote 6-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: Senate Bill 318 is the result of the study committee which met over the summer to look into issues surrounding the creation of joint maintenance agreements. The study committee and the Education Committee believe that joint maintenance agreements may provide districts an additional educational option at the local level. Senate Bill 318 provides the districts that adopt joint maintenance agreements may jointly raise and appropriate funds, engage in collective bargaining and receive building aid in the same manner as cooperative school districts. It also repeals the statutes specific to building aid for the proposed Pittsfield, Barnstead and Gilmanton joint maintenance agreement. Passage of these provisions will allow districts to realistically utilize the joint maintenance agreement statute. The Senate Education Committee

voted unanimously that this bill pass. Senator Johnson has put in a huge amount of time on this effort, and I think that it does truly give districts another option in terms of dealing with the providing of education at a most efficient cost manner. So I would urge your adoption.

Adopted.

Ordered to third reading.

SB 414-FN, reorganizing the divisions of the department of corrections. Executive Departments and Administration Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: At the time, in the 1980's when the Department of Corrections operated with basically the state prison in Concord, the organizational model under which they now operate was effective. Now that we have prisons all over the place and have even advanced to the point where we have a prison for women, the managerial style in place for the mid 80's is no longer effective for the year 2000. This bill is something that the late Commissioner Risley was working on. It is the result of total quality and management input. It allows for more effective organization within the department. I believe, Madame President, that this bill would probably be going to Finance after passage. Thank you.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 437-FN, relative to retail selling. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: This bill was filed to correct a law passed last year that is not in compliance with federal law. The bill brings New Hampshire's phone solicitation law into compliance. The bill states that if a seller uses the phrase "satisfaction guaranteed", then the buyer is entitled to a full refund for the goods or services. The bill also requires telephone solicitors to provide an address or telephone number for the purposes of consumer complaints. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 442-FN, establishing an equipment depository and disabled person's employment fund in the department of administrative services. Executive Departments and Administration Committee. Vote 3-0. Ought to Pass, Senator Brown for the committee.

SENATOR BROWN: This bill is the recommendation of a study committee from 1999. The bill creates a fund to assist departments in the acquisition of adaptive equipment for disabled employees. A fund of this nature is important because departments can't predict in a line item what adaptive equipment may be necessary to accommodate a disabled employee. The bill is equally important because if a department denies employment because it is unable to accommodate a disability, the department could be accused of discriminating against the prospective employee. This fund will help to ensure equal access to employment in state agencies. The bill, as written, does not have an appropriation, but the division may accept private donations for the fund. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 390-FN, relative to vested deferred retirement benefits for group II members. Finance Committee. Vote 9-0. Ought to Pass, Senator J. King for the committee.

SENATOR J. KING: This bill allows those with vested rights in the retirement system, that is ten years or less than 20, who start taking their retirement at the age of 60 which regular employees can do now that are not invested. It is of no cost to the state and no cost to the system.

Adopted.

Ordered to third reading.

SB 403-FN-A, making an appropriation to the department of agriculture, markets, and food for the inspection of apiaries and honeybee swarms. Finance Committee. Vote 9-0. Ought to pass with amendment, Senator F. King for the committee.

2000-3378s

08/09

Amendment to SB 403-FN-A

Amend the bill by replacing section 1 with the following:

1 Appropriation; Department of Agriculture, Markets, and Food; Inspection of Apiaries and Honeybee Swarms. The sum of \$6,000 is appropriated to the department of agriculture, markets, and food for the fiscal year ending June 30, 2001, for the purpose of inspection of apiaries and honeybee swarms. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

SENATOR F. KING: The state entomologists testified that a function of the Division of Plant Industry to inspect and regulate bees. These inspections have not been done over the last 10 years for lack of inspectors. It is important to inspect the colonies and protect our bees from mites and other related problems that could lead to seriously diseased bee population. The original appropriation was \$30,000. They told us in committee that \$6,000 is really all that they need on an annual basis. So there is an amendment in the calendar to reduce the appropriation to \$6,000. The Senate Finance Committee recommends ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 336, relative to the issuance of fire permits. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill clarifies when people need to get permits to burn. Actually it closes a loophole and will allow a closer enforcement of burning permits in the safety of the people in towns. This is supported by our local firefighters. We would ask that you would pass it. Thank you.

Adopted.

Ordered to third reading.

SB 344, relative to appointment of housing consumers to housing authority boards. Public Affairs Committee. Vote 4-0. Ought to Pass, Senator Eaton for committee.

SENATOR EATON: Senate Bill 344 allows for the appointment of a sixth commissioner to a municipal housing authority board. It further provides that this sixth appointee be a resident in the public housing over which

the board has authority. Senate Bill 344 is permissive, not mandatory, in the appointment of this local person, providing for local control. The representatives of the great city of Keene and many others were on hand at the hearing to speak in support of SB 344. The Public Affairs Committee recommends that SB 344 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 325, relative to denial, revocation or suspension of a child care provider license, permit or registration for a felony conviction. Public Institutions, Health and Human Services Committee. Vote 2-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 325 allows the Department of Health and Human Services to deny childcare licenses in certain circumstances where people are found to have been guilty of committing a felony. The current law only allows the bureau to deny licenses if the felony crimes involve violence to children. This would allow a more expanded denial. The specific purpose for this has to do with certain crimes, particularly selling drugs. You may be familiar with a certain case, recently, where a childcare provider was convicted of having either possessed or marketed narcotic drugs. The Department of Health and Human Services doesn't feel that it has the authority to deny a childcare license on this basis. By expanding the law to allow them to look at all felonies, this would take care of that problem.

Adopted.

Ordered to third reading.

SB 367, establishing a prescription drug access study committee. Public Institutions, Health and Human Services Committee. Vote 2-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: I rise in support of SB 367, which continues to try to look at the nagging difficult problems of the cost of prescription drugs. Many of us, but particularly you, Madame President, have been involved in this issue. There has been some progress with two new programs, hopefully to come into existence within the next month or two are two examples. But the problem remains that the costs are astonishing and thus, we need to continue to look at and to continue to seek new ways of which there are many, to see if we can't somehow address this problem; therefore, I urge you to pass this bill and establish this committee and continue to focus on this issue, which is of concern to every citizen in New Hampshire.

Adopted.

Ordered to third reading.

SB 377, relative to peer support programs within the department of health and human services. Public Institutions, Health and Human Services Committee. Vote 2-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: Senate Bill 377 relates to peer support for individuals with disabilities. We heard in the committee, very compelling testimony as to the worth and value and the excellence of peer support. Its benefits, I will mention briefly. It promotes dignity and self confidence. It supports one another through shared experiences and it gives someone, someone to talk to. It helps people feel validated, and it pro-

motes learning skills. There are no increases in expenditures. I hope that the Senate will adopt this bill and once again, focus on this problem for those of us who are far less fortunate than most of us here.

Adopted.

Ordered to third reading.

SB 449-FN, clarifying that employees in certain department of health and human services' positions are entitled to certain salaries and raises. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill focuses on a problem that Senator Larsen called to our attention in December. It relates to the change that took place under HB 32 within the Department of Human Services, whereby these individuals who are reclassified into a different department, but the effect being, that their salaries were frozen, both then and for the foreseeable future. At the time that happened, there were, I think, 25 individuals involved. About seven or eight have left the department, so I think that there are now 18 people who find themselves in this dilemma, no matter how hard they work they can't look forward to any salary increase. The issue was reviewed with the commissioner of Administrative Services. There exists funds in the budget currently, to pay for this, because of unfilled positions. This is an issue of fairness. One of these individuals that we have heard from has worked for the department for 25 years doing the same excellent job, and suddenly finds herself trapped. I hope that you will pass this bill and we can pass it over to the House as expeditiously as possible and correct this injustice. Thank you very much.

Adopted.

Ordered to third reading.

SB 362, relative to the length of buses and single unit vehicles. Transportation Committee. Vote 3-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill is in response to the vehicles that you now see towing cars down a highway, rather than having to hook and hoist, wreckers are now basically those flatbed trucks, and they can put two cars on them. They are made to the length of 45 feet to accommodate putting two vehicles on at one time. The current standard length limit is 40 feet. The committee felt that it was a far safer way to transport those types of vehicles and to transfer wrecks in general, besides the stranded cars. We vote that this bill be ought to pass in the interest of the safety of the people of New Hampshire.

Adopted.

Ordered to third reading.

SB 328, making corrections to statutory references in certain fish and game laws and adding a rulemaking provision. Wildlife and Recreation Committee. Vote 4-0. Ought to Pass, Senator Disnard for the committee.

SENATOR DISNARD: Senate Bill 328 was at the request of the Fish and Game Department. It honestly is essentially, a housekeeping bill. It clarifies three statutes. The bill requires the executive **TAPE CHANGE** a license carried by those who help a lobsterman. These rules must conform to trap limits of the management plan adopted by the Atlantic States Marine Fisheries Commission. The bill extends the restriction on the sale of fresh lobster meat from holders of retail licenses through holders of

resident and non-resident wholesale licenses. The very important part, for you people that were very active in the 40's, the bill exempts members of the armed forces and coast guard on active duty who are entitled to special licenses, when on leave or on furlough from purchasing a wild-life stamp.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Johnson moved to have **HB 228**, clarifying permissible political expenditures, taken off the table.

Adopted.

HB 228, clarifying permissible political expenditures.

Question is on the committee report of ought to pass.

Adopted.

Senator Johnson offered a floor amendment.

2000-3410s

04/09

Floor Amendment to HB 228

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

1 Elections; Political Expenditures and Contributions; Political Expenditure Limitation Amounts; Total Expenditures Defined. Amend RSA 664:5-b, VI to read as follows:

VI. For the purposes of this section, RSA 664:5-a, and the enforcement provisions of this chapter, "total expenditures" shall mean the sum of all expenditures made to influence either a state primary or a state general election made by a candidate and those made on [his] *the candidate's* behalf by [his] *the candidate's* committee or committees, [his] *the candidate's* party, and [his] *the candidate's* immediate family. *For candidates for governor, United States senator, representative to Congress, state senate, state representative, and executive council, "total expenditures" shall include any such expenditures made after January 1 of the election year, regardless of when the person actually declares his or her candidacy.* Each campaign expenditure limitation amount shall apply solely and independently to either the state primary election or the state general election.

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

2000-3410s

AMENDED ANALYSIS

This bill specifies that any expenditures made after January 1 of the election year shall be counted towards expenditure limitations for governor, United States senator, representative to Congress, state senator, state representative, and executive councilors, regardless of when the person actually declares his or her candidacy.

SENATOR JOHNSON: What this floor amendment does is what we discussed earlier, that it covers candidates for governor, United States Senator, Representatives of Congress, state Senate, state Representatives and executive council and also the effective date will be upon passage.

Floor Amendment adopted.

SENATOR FRANCOEUR: Senator Trombly...

SENATOR TROMBLY: Senator Francoeur, I am anticipating that your question is that money spent on campaign fundraising included in the cap? The answer to the question is yes it is. The reason is this, if you don't do that, someone would be able to put on a \$300,000 television campaign ad let's say, extolling all of the virtues of them as a candidate. At the end, if they put a ten second tag that said, 'please send money to Francoeur for U.S. Senate', it would then be entirely exempted from this legislation. I don't think that is really what we intended to have this bill do.

SENATOR FRANCOEUR: So my understanding is, any money spent, whether it is on fundraising, would be included in the cap?

SENATOR TROMBLY: Money spent to raise funds, after January 1 of that year, would be included against the cap.

SENATOR PIGNATELLI: I support this amendment and assume that this was part of the original bill. It bothers me to no end when Congress or U.S. Congress passes bills and then exempts themselves from any bills that they pass and so I think that this just makes sense to pass a bill to apply to Congress, and then to apply to us as well. So I hope that you will support this amendment. Thank you.

SENATOR LARSEN: I only want to add that I think that this amendment dramatically improves it. I think that this will restore voter confidence in our laws; that we are closing a large loophole and I think that it will be exciting to see the support of the Senate for this. I am hoping that we will get concurrence to move forward.

Ordered to third reading.

Senator Squires (Rule #42).

2000-3350-EBA

08/09

Enrolled Bill Amendment to SB 147

The Committee on Enrolled Bills to which was referred SB 147

AN ACT relative to self-referrals for chiropractic care under managed care organizations.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 147

This enrolled bill amendment corrects an RSA section reference in amending language.

Enrolled Bill Amendment to SB 147

Amend section 1 of the bill by replacing line 1 with the following:

1 New Section; Chiropractic Care. Amend RSA 420-J by inserting after section 6-a the following

Senator Trombly moved adoption.

Adopted.

Recess.

Out of Recess.

TAKEN OFF THE TABLE

Senator Roberge moved to have **CACR 23**, relating to the responsibility and authority of the general court to determine the content, extent, and funding of a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education, and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state or the political subdivision in which they are imposed, taken off the table.

Adopted.

CACR 23, relating to the responsibility and authority of the general court to determine the content, extent, and funding of a public education. Providing that the general court shall have the exclusive authority to determine the content, extent, and funding of a public education, and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state or the political subdivision in which they are imposed.

Question is on the committee report of inexpedient to legislate.

SUBSTITUTE MOTION

Senator Krueger moved to substitute ought to pass for inexpedient to legislate.

SENATOR KRUEGER: I would like to explain that I would need a positive motion ought to pass in order for you to accept a floor amendment that we have prepared at this time. I would hope that the Senate members will vote yes on the question of ought to pass so that we can offer a floor amendment that has been circulated.

Adopted.

Senator Krueger offered a floor amendment.

Sen. Krueger, Dist. 16
 Sen. Below, Dist. 5
 Sen. Johnson, Dist. 3
 Sen. Roberge, Dist. 9
 Sen. Fraser, Dist. 4
 Sen. Brown, Dist. 17
 Sen. F. King, Dist. 1
 Sen. Squires, Dist. 12
 Sen. Eaton, Dist. 10

2000-3411s

04/09

Floor Amendment to CACR 23

Amend the title of the resolution by replacing it with the following:
 RELATING TO: the responsibility and authority of the general court to determine the content, extent, and funding of a public education and the use of moneys received from the enactment of a new personal income tax.

PROVIDING THAT: (a) If the general court enacts a new personal income tax, all moneys received from such income tax and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively to fulfill the state's duty to cherish the interest of public schools under article 83 of part second, and no part of such moneys shall be transferred or diverted to any other purpose whatsoever.

(b) The general court shall have the authority to determine the content, extent, and funding of a public education and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state or the political subdivision in which they are imposed.

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

I. That the second part of the constitution be amended by inserting after article 6-b the following new article:

[Art.] 6-c. [Use of Income Tax Revenues Restricted to Educational Purposes.] If the general court enacts a new personal income tax, all moneys received from such income tax and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively to fulfill the state's duty to cherish the interest of public schools under article 83 of part second, and no part of such moneys shall be transferred or diverted to any other purpose whatsoever.

II. That article 83 of the second part of the constitution be amended to read as follows:

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.; *Authority of General Court to Determine Content, Extent, and Funding of Public Education; State's Responsibility to Provide for Public Education; Powers; Duties; Delegation.*] Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination. Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or

domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.

The general court shall have the responsibility to provide to all citizens of the state the opportunity to receive a public education, and in furtherance thereof, it shall have the authority to determine and set forth the content, the extent, and the funding of that education. The general court shall fulfill its responsibility, in whole or in part, to its political subdivisions through the exercise of its power to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, and judicial review shall be limited to whether or not there is a rational basis therefor. The general court shall provide for the funding of said education through its power to directly impose and levy assessments, rates, and taxes, or through a delegation of such power, in whole or in part, to the political subdivisions of the state, provided that the resulting assessments, rates, and taxes are reasonable and proportional throughout the state or political subdivision whose legislative body imposes the assessment, rate, or tax. Nothing in this article shall be construed to limit the amount the state or any political subdivision may expend on the funding of education or to deny, disparage, or infringe any other right of the people as set forth elsewhere in this constitution.

III. That the above amendments proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2000.

IV. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2000 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2000 session of the general court shall be approved.

V. That the wording of the first question put to the qualified voters shall be:

Are you in favor of amending the constitution to provide that the following new article shall be inserted after article 6-b of part second?

[Art.] 6-c. [Use of Income Tax Revenues Restricted to Educational Purposes.] If the general court enacts a new personal income tax, all moneys received from such income tax and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively to fulfill the state's duty to cherish the interest of public schools under article 83 of part second, and no part of such moneys shall be transferred or diverted to any other purpose whatsoever.

VI. That the wording of the second question put to the qualified voters shall be:

Are you in favor of amending article 83 of the second part of the constitution to read as follows?

[Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.; *Authority of General Court to Determine Content, Extent, and Funding of Public Education; State's Responsibility to Provide for Public Education; Powers; Duties; Delegation.*] Knowledge and learning, generally diffused through a

community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination. Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.

The general court shall have the responsibility to provide to all citizens of the state the opportunity to receive a public education, and in furtherance thereof, it shall have the authority to determine and set forth the content, the extent, and the funding of that education. The general court shall fulfill its responsibility, in whole or in part to its political subdivisions through the exercise of its power to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, and judicial review shall be limited to whether or not there is a rational basis therefor. The general court shall provide for the funding of said education through its power to directly impose and levy assessments, rates, and taxes, or through a delegation of such power, in whole or in part, to the political subdivisions of the state, provided that the resulting assessments, rates, and taxes are reasonable and proportional throughout the state or political subdivision whose legislative body imposes the assessment, rate, or tax. Nothing in this article shall be construed to limit the amount the state or any political subdivision may expend on the funding of education or to deny, disparage, or infringe any other right of the people as set forth elsewhere in this constitution.

VII. That the secretary of state shall print the questions to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the questions shall include 2 squares next to each question allowing the voter to vote "Yes" or "No" on each question. If no cross is made in either of the squares, the ballot shall not be counted

on that question. The outside of the ballot shall be the same as the regular official ballot except that the words "Questions Relating to Constitutional Amendments proposed by the 2000 General Court" shall be printed in bold type at the top of the ballot.

VIII. That if either or both of the proposed amendments are approved by 2/3 of those voting on the amendments. Such amendment or amendments shall become effective when the governor proclaims the adoption of such amendment or amendments.

2000-3411s

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that if the general court enacts a new personal income tax, all moneys received from such income tax and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively to fulfill the state's duty to cherish the interest of public schools under article 83 of part second, and no part of such moneys shall be transferred or diverted to any other purpose whatsoever; and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes or by delegating this power, in whole or in part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the political subdivision in which they are imposed, and that the general court shall have the authority to determine and set forth the content, extent, and funding of public education in this state.

SENATOR KRUEGER: I would at this time, rise to offer a floor amendment, which is currently being passed out. Before I make very brief remarks, I never know if it is a good thing to be at the end or it is a bad thing. I certainly hope that today, it is a good thing. I want to say one thing, Madame President, I have without question, learned to respect my fellow Senators even more during the process of the last month. I have seen people that have contributed, people who were willing to come forward, and people who were willing to say that it is time that we did something. The public is clamoring out there, and you are now seeing courage on the part of Senators. I even must tell you that the Senators who will not be able to support this, Madame President, have really wrestled hard in their hearts and consciences to do the right thing for their own constituents. For that, I will be grateful. They didn't just say no, Pat. They said, "Let's talk about it, come in, sit down, what can I do?" I never once felt that anyone in this room was anything but anxious to finally do something. I think that it has frustrated everyone in this room more than the public will ever know to feel as if maybe we are a little bit part of the problem because we could do more than put out a temporary solution. So again, I just want to say thank you to all of my fellow Senators. You have earned even more of my respect than you will ever imagine. I want to also say that you will notice when you look at this floor amendment, that we are doing something that I as far as I can tell, is history in the making. What we have done here, because we know full well, that in one corner in the world of ultimate solutions, there are just not enough people to do anything. It is very, very hard, when you look especially at constitutional amendments, because they take so much. This CACR basically does two things. In one CACR, we have enveloped two constitutional amendments which will reach the voters in November of the year 2000. The debate can be based on these amendments. Races can be won or lost on these amend-

ments, but finally, the people will have a say. I know that we all believe in representative government, we have all spoken about this. I know that I represent the 65,000 or 75,000 people, some of which have sent me here, but they all have a say. I feel now, that this is the time to do this. So what does this amendment do very briefly? This amendment allows the states obligation to provide the opportunity for all citizens of New Hampshire to receive an education. How can anyone argue with that? Secondly, it restores the power to determine the content, the extent and the funding of a public education to the body, that is us, whose members are duly elected through the democratic process. In addition, to the restoration of separate powers and balance, it will eliminate decades of constant litigation as is currently going on in the state of New Jersey, causing enormous state expenditures, tax dollars gone and virtually no improvement in the quality of education. But you know what it doesn't do? It does not, and I repeat that, it does not, totally remove the court from its traditional role of reviewing statute to determine their rational basis. That is what the court does with all of our other statutes, and that is what they would have the ability to do and we would encourage them to do that with this. A system which all citizens rely on in all pertinent matters, because this amendment means that we don't go back. Some people are not going to like that. You will see that from the vote. Some people may want to go back to zero. Some people don't want the state to have a commitment. I don't feel that way. I feel very strongly that the state should have a commitment. I think that the state needs to have pulled itself up by its bootstraps, and I will commend the people of the plaintiff towns for forcing the state to wrestle with something that was overlooked through former governors, former legislator bodies. I feel culpable in that. This also makes sure that the legislation doesn't totally usurp local control. There is no problem in this piece of legislation that would do that. By passing this constitutional amendment, we will give the people of the state, the opportunity to restore power back to the legislature and fairly, logically and realistically, address the need for the state's commitment to funding education through the democratic process. So that is the second thing that it does. What is the first thing that it does? The first thing that it does is to address the revenue; if a newly passed personal income tax comes into being, then people like me would like it dedicated to education, again you are going to see a split in the vote. You are definitely going to see people who wish the income tax, if it comes down the road, go into the general fund. We have a problem now. The problem was brought to us by the people in towns who didn't have enough money to give their students a proper education. I would love more money in the general fund. There are many of us that are committed to issues of conservation. There are people who are committed to issues in health and human service, but right now, we have a problem. I would like to think that we could ask the people of this state if there is an income tax, do you, the people, want it to go in a dedicated fund to education? Do you, the people, want to think that we have solved the problem? Quite frankly, what will that do for those of us who support lowering property taxes, I would hope that it would lower property tax. For those of us that would hope that having the income tax dedicated to education, we would in fact, end up with more money in the general fund, because we have already raised taxes over \$200 million, that certainly I don't see anyone anxious to repeal. So the general fund would come out ahead. I really, in conclusion, again, ask everyone in this room, to think about what we always think about, the people out there. There is no hidden agenda out there. As everyone in this room knows, I have been open

about any changes. I have been willing, even at the last moment, and I do apologize for the delay, to incorporate any changes that I agreed with and some maybe that I would not have liked, but I tried to be as accommodating as I could be with everyone, because I need all of you. We all know that I need 15 votes. You know what my hope was a few days ago? That I would have 20. I was even so naive to think that I could have 24, because I have really hoped that we might be able to move it along and then maybe we would have the mandate that I think that it is going to take so that we can't say that the problem is a couple years out there. So, I thank you all again for listening, and I thank you again, for everything that you have done to at least help us get this to the table. I say that if we pass it, let the games begin. Thank you.

SENATOR TROMBLY: I want to ask those of you who are going to support this amendment what the courts have done? What have they done that is so egregious to us, as legislators, that we believe that they have taken authority and power away from us? They haven't done a thing. They have done what they are supposed to do. They have interpreted the constitution. Did the Supreme Court say that we needed to go to a property tax? No. Did they say an income tax? No. They didn't say a sales tax, they didn't say anything, except for one thing. Time and time and time again. That one thing was "legislature, do your job." Now we are presented with a constitutional amendment that somehow is supposed to reinforce that. That somehow we will get the courage and the House will get the courage, to do what the court's been telling us to do all of the time. Our job. So let's pass this amendment, and we can go to the voters and the voters can say to us exactly what the court has said to us, "do your job." You know what? Not one ounce of courage is going to come from that. Not one ounce of courage, because if we were going to do our job, we would have done our jobs. I was just looking at the constitution while Senator Krueger spoke, and I do have to say, Senator Krueger, I think that you are to be commended on the way that you have approached this. You have been open, you have been fair, you have been out there and I think that you should be commended. But let's read what people out there, 200 years ago said. "It shall be the duty of the legislators and magistrates and all future periods of this government to cherish the interest of literature and the sciences and all seminaries and public schools." That is what they said. They told us what to do. Now the courts told us what to do. What does this amendment say? It says that the content, extent and funding of public education and the state is going to do that. Well it is the same thing that the constitution already tells us to do, so this is an exercise in what? Nothing. If you vote for this today, don't you dare go home and tell your constituents that you did one thing to solve Claremont, because it doesn't move us one inch further to helping those communities that need help. It doesn't go one inch further in helping those communities that are now donor towns. It doesn't move education one inch forward. Welcome to the year 2000 in New Hampshire, we are going back to 1990 when by the way, the legislature refused to fund fully Augenblick. You know, we have broken our promises so many times to the people of this state that we ought to put in an amendment saying "do you want to abolish the legislature?" Do you want to take the power away from the legislature and then give it to the courts, or do you want to act on that locally, because time and time again, we have broken the promises? We haven't done what we are supposed to do. I am going to say something. I don't feel that I am included in that. I have always voted to fund Augenblick. When there is a lawsuit to get

us to fund education, we came up with the Augenblick Formula and then refused to fund it. The legislation was passed ordering us to do what we ought to have been doing. We didn't do it. This amendment does nothing except to push this thing along. I think that is what the voters are tired of seeing, this issue. I don't think that campaigns are going to be won or lost on this issue, because it doesn't do a darn thing. So everybody that has been sitting here and standing here saying that we need to do something, you ought not to vote for this. I think that there are two Senators, there is a very long list of my friend and colleagues on this amendment, but there are two Senators that are not listed. Senator Jeckyl and Senator Hyde, because you can't do one and do the other. It is not a quid pro quo here, while the voters get to choose this. This is nothing but a field day so that the reporters can try and figure out what the voters meant when they vote for two of these or if they vote for one of them and one of these or they reject both of them. The bottom line is folks, that when we convene here next year, the responsibility is still going to be ours. Passing an amendment so that the voters can kick us and our collective butts to do what we should have been doing 20 years ago, ain't gonna amount to one hill of beans. So don't sell this to your constituents as you did something for education. If this were a car, it would need an engine, it would need gas and it would need tires. This is not a compromise. This is do nothing for the sake of doing nothing, that is all that it is. I have stood up here, Madame President, and I think that I have voted for almost everything that has come down the pike, and I have voted for things that up to the point where I sat in this chair and you called the roll, I said that I was not going to vote for, because I think that we need to move forward. I did not go through what I went through in my campaign, and make the promises that I made to my constituents simply to say to them, "gee my knees are knocking, I have to go to the bathroom, let me pass it over to you." I supported a referendum with the timeframe for that referendum would have given us time to do something this session, but I am not in favor of amending the constitution so that it hurts the children of the state of New Hampshire. I am not going to do that, especially if it is because we are cowards.

SENATOR BROWN: I respectfully, disagree with Senator Trombly. I understand his point of view. I think that this amendment moves us much further ahead, whether it passes or not. I want to explain why. There are three things that we can accomplish with this amendment. When I am out there talking to people, especially people in the donor towns, they want and express a vehement desire to have a say. When the court made their decision, and I do not disagree that the tax issue that the court ruled on is correct. I think they were correct, but they went further than that and they talked about Kentucky style state schools. They told us that they were going to scrutinize our work. We, as the legislature, need to reassert our authority, not shrug it. The people of New Hampshire feel that this has been imposed on them without their consent. Our constitution clearly says "no tax under any pretext whatsoever should ever be imposed on the citizens of this state without their consent." I have no illusions that these amendments will pass. One of them or both of them. With 80 percent of our towns in the receiver status, to get 2/3 votes is probably very unrealistic, but it gives people the opportunity to have a say. It also does something else for us. It gets us past an obstacle. You are going to come back here in January, just like we did two years ago, with this huge problem facing us. We can't drag

our feet and stall and wait till the last minute. The decision, the solution, needs to be done immediately. If you put these amendments out there, you have removed that obstacle. No one can come back here and say that all that we need is an amendment, and then stall on everything that we do. So you need to remove that obstacle. The third thing that this does, which I think is extremely important, is that it brings the people into the debate. They are going to know that these questions are out there, and they are going to ask questions. We and the news media and everybody, is going to have the opportunity to educate people on the tough decisions that we wrestle with, right here. They are going to talk about income tax, they are going to talk about sales tax, they are going to talk about the statewide property tax. They are going to get involved in the next election, like they never have before. I don't want to go back and I don't think that these amendments go back. They do not go back to the days when we said to the citizens of our state, "the state of New Hampshire will provide 15 percent of the funding of public schools", which I happen to believe is obscene. We put the burden on the backs of the taxpayers until it drove them to file a lawsuit, and we have to deal with it. I also want to point out to you that these two questions will be separate, even though this is one bill. People can vote on one or the other or on both or on none. I hope that you will help us move forward and to get past some of the obstacles that we have and bring some of the citizens into the debate and educate them. Thank you.

SENATOR JOHNSON: I will be brief because Senator Brown covered most of the issues that I was going to discuss. I am going to support this amendment and I was hoping to see 14 co-sponsors on here. I spoke **TAPE CHANGE** and is in my district. I was the designated hitter for Senator Brown because she could not be there. Senator Fernald was there and Fred Bramante was there. We spent two and a half hours going over the income tax, the constitutional amendment and the statewide property tax. I can tell you that I think that the message was loud and clear from the people there that they wanted to be part of the process, and they feel left out of that process. That is why I am going to support this amendment, because I am hearing from my constituents that is what they want to happen. So, Madame President, I am here to ask the members of this body to support this amendment so that we can allow that to happen. Thank you.

SENATOR BELOW: I rise in support of the floor amendment to CACR 23. I will say right up front, I think that I agree with about 99.2 percent of what Senator Trombly just said, but I disagree with his conclusion about whether this will move this process forward. Unfortunately, I don't think that we are going to adopt a permanent sustainable solution for funding education in this session of the legislature. I think that we will have to go through the election cycle and continue to work on that issue between now and then and a year from now. My hope is, that we will solve it, and that most of us will be back, and we will be back to solve it next year in a more permanent way. I think that this moves the process forward because a number of people have been clamoring for the opportunity to consider an amendment. I think that a couple of amendments are being offered here. The second amendment, would, I believe, allow a reversion to the old system. It very clearly, on page two, lines 36 and 37, allows the general court to delegate, in whole or part, the tax responsibility to the subdivisions of this state. Essentially, that would allow us to say that the cost of funding education has to be raised at the local level

through taxes that are proportional and reasonable at the local level. I happen to strongly disagree with that. I think that would be going back. I will personally campaign against this second question, if it goes on the ballot. But I know that there is a portion of the population that believes that we should have that option, and the only way to do that is through a constitutional amendment. I think that it would help clear the air to find out whether there is two-thirds of the people that support that position or not. With regard to the first question, as many of you, as all of you know, I have been a strong advocate of a personal income tax as a fair way to fund education. I have, from the get-go, believed that we should dedicate such an income tax to education, and I think that this is a way to get that question before the voters. Let's not make any mistake, this is not a referendum on whether we should have an income tax, because some people who believe that we have an income tax will vote against this, believing that it should be for other purposes, and some people who may oppose an income tax will vote for it because they would want to see it dedicated, although I believe that many people may feel that it should be dedicated, and this is an opportunity to make that statement. As a cosponsor of the floor amendment, and someone who helped draft the language, I would like to say just a little bit about the specific legislative intent so that it is clear, should this go on the ballot and become part of the constitution. It states, on line 27, of the proposed amendment, "that the use of an income tax revenue shall be restricted to education purposes." That is the title. It doesn't carry the force of the constitution. To elaborate that, it provides that "if the general court enacts a new personal income tax", the word "new" is there because we already have a personal income tax, it is the interest and dividends tax. The intent here is not to disturb how the interest and dividends tax is used, but rather to say that if we enact a new personal income tax, that it affects that. The word "personal" is used because it refers to personal income as opposed to corporate income. This does not direct how corporate income taxes or business income tax might be used. It provides that all monies received from such income tax, meaning a new personal income tax, and the interest received on such monies after deducting the necessary cost of administration, be appropriated for the specific use. The term "deducting the necessary cost of administration" certainly allows the Department of Revenue Administration other governmental expenses of administering the tax to come out of the proceeds. In addition, it would allow refunds that are due to taxpayers to come out of the money that the state holds as refunds that may be due to taxpayers for overpayment or tax credits or things that apply to money being returned to taxpayers as opposed to money being kept by the state. So the net money that is kept by the state, after the cost of administration refund would then be used exclusively to fulfil the state's duty to cherish the interest of public schools under Article 83, II, which is the basis for the Claremont decision. I think that language should be interpreted broadly. The court said that it is the duty of the legislature to determine the extent of and essentially the perimeters of an adequate education of how we fulfill this duty. I think that the intent is...how the legislature determines those perimeters of an adequate education, our duty to cherish the public schools, is how the money would have to be used. I just want to give a couple of examples to clarify legislative intent. Right now, many of the school districts when they have special education costs, will arrange for a private school to provide that special education. I think even though the words "public schools" are used, the intent would allow a

public school district to use the money to pay for special education in a private school because it is through a public school district in terms of legislative intent. Finally, the question arises, does this mean just primary and secondary education, or could it mean higher education? That is a function of how the legislature defines the duty to cherish the interest to public schools. I think that at present, we all understand that need for primary and secondary education, but I think that in the future, if the legislature were to take the language of Article 83, II of the constitution, and say that our duty to cherish the interest of literature and the sciences and all public schools **TAPE INAUDIBLE** 1-12 or K-12, that would be within the perimeters of the legislature to make that definition of what that duty is.

SENATOR F. KING: I was not going to speak on this question, but, frankly, I rise now for two purposes. One, I want the record to show that I resent the lecture that was presented by my good friend from District 7. I think that this was an attack on my credibility and the credibility of this body when that type of a message is given, and I resent it, and I think that it is improper and I want to say so. I don't need someone to tell me how my constituents think. I don't need someone to tell me whether I have done my job or not. I will let my constituents make that determination. I supported and voted for two amendments earlier in the year because one of them, I believe very strongly in, and the other, I voted for because I thought that in order to pass any amendment out of this body that we had to offer two. I have had a great number of my constituents say that they want us to send them an amendment so that they at least have a chance to participate in this process. If they can't pass the amendment, then they recognize that the legislature will make the decision. I have constituents who want to have an opportunity to vote on an amendment. The amendment that I will favor, regardless if I run for reelection or not, I will be advocating, working and promoting, the amendment that recognizes that we will have an income tax in this state. I do not believe that we will ever see the proper amount of money raised for local education by this legislature. I don't believe that we will ever see the amount reduced below \$825 million, because politically, it is not popular. I voted against HB 117, because I think that it was wrong to raise \$825 million to solve a \$300 million problem. I think that we are faced with that, we are not going back. The statewide property tax will bankrupt communities in this state and drive people and businesses from this state if we don't correct that. There is only one way to fix it and that is an income tax. I have constituents that tell me that they would support an income tax, they want to know that it is going to be spent on education, and that it is not just going to go into the pork barrel to be spent by future legislatures, all of the state, the way that they see fit. So on page three, line 15-20, is the reason that I am going to support this. I believe today, that before this problem is solved, there will be an income tax in this state. If that is true, it should be dedicated to education and not be allowed to be available to spend on everything that this future legislature want to spend it on, and I will promote that as I campaign for this, if it passes. Thank you.

SENATOR D'ALLESANDRO: I rise to speak against the amendment. I want to be brief. I fully respect the comments and concerns of every one of my fellow Senators. I think that they are well articulated and certainly very well stated. Let's look at this in the context of good government. When we talk about amending the constitution, we are talking

about something that is a gigantic move. It is a gigantic move. Something that we would have to take extremely seriously. Amending the constitution. Our constituents have an opportunity every two years to participate in a process. That process is whether or not they concur with what we have done as their representative in this body, and in every body across the state. So people have a constitutional right, they have a constitutional responsibility, they can vote. They can vote based on what you articulate on what you plan to do, and what you have done for your constituents. The constituency that I represent, is not in favor of an income tax. That has been articulated over and over again. They are in favor of doing more for education. This body did something along those lines, and certainly, the area that I represent has been the beneficiary of that. One thing that troubles me about this, is the dedication of revenues. There are those of us who throughout our legislature careers, have always heard dedicated revenues is a very difficult situation. There may come a time when there is a need for revenue across the board. This eliminates the opportunity to perform responsibly in addressing those needs. In this proposed amendment, it says, "if" "if the legislature is to pass", which is a very questionable situation. If the legislature is to do this, then the legislature has to do this. I find that to be really inconsistent. You are asking people to vote on an "if". If is a little, little word with a very, very large meaning. I find that, again, to be a questionable situation in addressing the voters that I represent in terms of moving this situation forward. With regard to education. We realize that we have a responsibility. There are those who perceive of that responsibility as a problem represented by X number of dollars. There are those who perceive of that responsibility as being represented by Y number of dollars. The purpose of bringing legislators together is ascertain of what is in the best interest of the public. I think that we are moving along those lines. I don't think that this constitutional amendment does anything to address either one of those things. People participate in a process through an open dialogue. In this state, we have a body of 400, which means that every 1400 people in this state, have a representative whom they can address. We have 24 Senators. People can call us, people can write us, people can drop by our doors. They know where we are. They are capable of fully articulating to us, what they believe they want in terms of government. This is a truly direct democracy, and we are putting an "if" before them. I just can't see the logic in that. People want the problem solved. There is no question about that. Is the solution a permanent one? We have said from the beginning. Are there any things in this life that are truly permanent? There is only one thing that I know of and that is our eventual death. That is the only thing that I know of that is really coming to all of us. So the purpose of moving forward legislatively, the purpose of us coming here every year, is to make things better and to improve things. I don't think that this will do that. I think that we have within our power, the ability, the desire, and the momentum to do that. I will vote against this amendment for those reasons. Thank you very much, Madame President.

SENATOR BROWN: Senator D'Allesandro, if I may, I would like to ask you a two part question. As you know, we, in our constitution, dedicate highway dollars for our highways. I am curious, do you think that our school children deserve dedicated money less than our roads do?

SENATOR D'ALLESANDRO: No, I don't, Senator Brown. I think that is an excellent point. Do you know what we keep doing to that highway

trust? We keep breaking it. Time after time. I know that you being a former member of the House and those battles that we went over when I was on Public Works. Why are we diverting monies from the highway trust to do this and to do that? Sure. Obviously, I think that our children deserve the same.

SENATOR BROWN: Thank you. The second question if I may. I hadn't thought much about this dedicated money until I visited my son in Hawaii, they have kind of a reversed problem. They fund their schools 85 percent with general fund dollars. What I discovered in talking to the folks out there, was that those school needs compete with the rest of the general fund, and it has eroded their public schools, rather than help their public schools. Do you think that we run the risk of that if we don't have the money separate for education?

SENATOR D'ALLESANDRO: I think inherent in this life, Senator Brown, are risks. That is why people elect us to represent them; to take that risk reward ratio and limit it to the best interest in the people. There is always a risk. I agree with you. But I think that we are here to make sure that that risk is as finite as possible.

SENATOR BROWN: Thank you.

SENATOR SQUIRES: I rise as one of the architects of the section having to do with the income tax. I thought that Senator Below's analysis was correct. The word "new" is in there to avoid any confusion of the interest and dividends tax, which despite the rhetoric, is an income tax. I would also like to point out, in regard to the issues about dedication, the statement by my friend from Manchester that dedicated funds are difficult. So I say for whom? They are difficult for the legislature, they are not difficult for the people. The people did not, evidently, in the 1990's, find the dedication of lottery funds to education fund, the least bit difficult. I will read that to you because it is from that that we modeled the income tax as part of this amendment. It says, "All monies received from the state run lottery and all interest and so forth, and taking out the cost of administration, be appropriated and used exclusively for the school districts for the purpose of state aid to education." That is clear. Nothing could be more clear than that, and we have lived happily with that. Now so far as I know, no state, has of yet, decided to dedicate a broad based tax to education. So I say to you, why not? What is the matter with that? The court charged us to solve the education problem. It did not charge us to solve a general fund problem, it charged us with solving education. Now I have stood here in the last three years, along with many of the rest of you, and have tried to solve the problem. I have been unable to do so. So we need to try something different. Now finally, there is a misconception as I have listened to people speaking, that voting for... the vote today supports the content of the amendment. That is not true. A vote today, says that we will lay this before the people. There are parts in the first portion of this amendment that I don't agree with. I am probably not going to support, and I will educate my constituents and tell them what I think the flaws are and lay it out and have them answer the question. But to listen here, to debates about what this amendment is saying, where it is going, that is not what we are talking about. We are talking about laying it before the public and have them help us solve this problem, which we have been unable to do so. So I am going to vote for this, particularly the part that dedicates this fund. I think that the arguments against doing that, are not in greater force than the argument in support of it. Thank you.

SENATOR GORDON: Just briefly. Just a couple of things. I did want to add my concern as well in regard to comments made by Senator Trombly. I do appreciate what he had to say and in large part, I think that I agree with him, but the fact that we can disagree over particular issues, I don't think is justification for berating fellow Senators. I don't view myself as doctor Jeckyl or Mr. Hyde. Whether you support or you don't support that bill, I don't believe is a reflection on anyone's character. I am going to support the amendment today, not because I entirely agree with the language that appears in the amendment itself, but because I think that it is sorely needed. I have, as I am sure that many of you have been, out to meetings within your district. As you know, I have a very broad district with the 32 towns. I have donor towns, I have receiver towns who benefit generously, and I have a lot of towns in the middle. But I have consistently, comments from my constituents, in regard to constitutional amendment and their ability to be able to vote on one. I am going to tell you that I have one great disappointment in the educational debate. That great disappointment is, over the course of the last two years, it has been rare that this Senate and the House of Representatives and the executive branch of government, in particular, the governor's office, have been able to come together, work together, and come up with what would appear to be a common proposal to meet the needs of my constituents. I have been asked in the past, what I think the highlights of my career here in the Senate have been, I have told other people this, that even though I have had a lot of legislation and have had some projects in my district, which I think have been important, the single most important effort, and the thing that I probably am most proud of, took place at the end of 1998. That was a combined effort, with the governor's office and the leadership in the House, both Republican and Democrat, and the leadership, here in the Senate, both Republican and Democrat, that craft a constitutional amendment. We all worked together to do that and we were all on the same wavelength. When this bill was in the committee, I commented that I had seen a movie recently call "On Any Given Sunday." I wouldn't advise it for everybody, the language is a little harsh and it is a little violent, but it is about football. In there the coach is talking about a player. When the player got done with football, he asked the player what the player really missed? The player told him that it really wasn't the money that he missed. It really wasn't the women that he missed. It really wasn't the drugs that he missed. It really wasn't winning or losing that he missed. What he really missed was eleven players lining up together on the line, with a common goal. Unfortunately, what I have seen too little of over this last two years, is us all lining up together with a common goal. I would hope that even though I don't necessarily agree entirely with the language in this bill, that when this goes over to the House, that maybe the House would be receptive to lining up together and crafting some type of language that we could present to the people of this state, to give them an opportunity to participate and an opportunity to vote. Beyond that, perhaps the governor's office would be willing to participate in that effort as well, to make sure that we craft something that we can agree on, that would be reasonable, to come out in November. I think the worse possible thing that can happen is through our political mechanism, here today, we present our constituents with nothing, and they would have every reason in the world to be disappointed with us. One other issue in regard to the dedicated revenues, I don't have any concern about that. The reason that I don't have any concern with that is because I chair the Transportation Committee and

I happen to know that we dedicate the transportation revenues in this state, the gas tax revenues, the toll revenues and we have, since the 1930's, when we decided that something was important to us, so important that we needed to invest in it and make sure that that investment stayed whole. We created a highway trust fund. I don't know if there has been any other dedicated fund that has been as successful as that highway fund. I can assure you today, that if we hadn't done that, you would not be driving on the highway system that you are driving on in the state of New Hampshire today. That every single time that we found ourselves tightening our belts, that the governor and the legislature would have dipped into those revenues, any time that they could, to solve whatever financial problem that we might have had. I think that the people of this state would expect us to create a dedicated fund, that if in fact, we do end up with an income tax, whether you believe in it or not, that that money ought to be used exclusively for education. I believe that the vast majority of people, whether it is 2/3 or not, I don't know, but I believe that the vast majority of people in this state, believe that. So, I guess having spoken all together too long, I would say that I am going to support this today because I want to see my constituents have an opportunity to vote in November, and whether you agree with it or not, that is your prerogative, and it is not a reflection on you individually. I would hope that if we can get this out of the Senate, that the House will come together, and not simply dismiss it and say, "we have to have our own - if it doesn't come from the House, it doesn't work", but that the House will say, yes, let's work together and put something on the ballot for November. Thank you.

SENATOR COHEN: I first want to address something that was said very early on in this now somewhat lengthy debate. A suggestion was made that this is cowardice. I strongly disagree. I think the fact that we all remember being here a lot this summer, a lot in the fall and going at this again and again and again. People disagreeing, not being as a football line as Senator Gordon described. Honestly disagreeing, pushing against each other sometimes, fighting hard for what we sincerely believe the best solution is. You know what? We didn't come up with the solution, did we? We have something that is just barely held together with bailing wire that isn't really working. We need to have a permanent solution. The statewide property tax isn't that. I have spoken to people in my district that feel that this is something that is being done to them. We need the consent of the governed here. We are at a point in New Hampshire history, where there is really a wrenching moment for all of us. We do not lack courage here. We are all trying to do the right thing. We legitimately have disagreements as to what the right thing is. People in my district want to have confidence that we have a real solution. People say to me, and I am sure that you have all heard this, "Well if you have an income tax you are just going to use it for who knows what". If we can put this before the voters and let them see, and have a voice, and making sure, and this is my opinion, others may disagree, that this money will be dedicated to education. We enhance the confidence of the people in the state of New Hampshire. I do think that this does move us forward. I would urge my colleagues to support this.

SENATOR PIGNATELLI: I want to start off my talk by saying that I may be wrong on this. I am certainly in opposition with a lot of members of this Senate who I admire greatly, but I am not going to be able to support this amendment. Some of you have told me that you don't like

the amendment, you are going to vote for it, but you are going to campaign against it. I don't believe that we have a referendum form of government in this state. I don't believe that this is a referendum, I think that this is a lot more serious than that. From my perspective, I am my constituent's referendum. They know what I am doing and I hear from them regularly. They tell me when they are not happy with what I have done. They offer me suggestions, advice and counsel and I appreciate that. So I feel very strongly that if they do not like what I am doing there, I am their referendum, and they can get rid of me very easily. They probably ought to if I am not doing the job that they sent me to do. I don't so much object to the first part of this amendment, Part A, but I do object to Part B, because unlike a lot of you, who feel like there is no way that this is going to pass, I am thinking to myself, what happens if this does pass? The way that I read it, and I am just going to read it because it is pretty short. "The general court shall have the authority to determine the content, extent, and funding of a public education, and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes" so far so good, but here is the kicker, "or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state or the political subdivision in which they are imposed." So that allows us, as a legislature, to go back to the ways things were before Claremont. Now I have to tell you, in my experience, and I have been in the House for five years, since 1987, and so I have served on the Appropriations Committee. It has been my experience that the legislature, when it comes to funding needed services to our citizens, we have rarely failed to shirk our responsibility in that regard. Some of you may remember Teddy Nardi. A wonderful woman who was in the House of Representatives and served on the Appropriations Committee with me. When people would come in and tell us what their needs were, she would say, "why don't you sue the state, because that is the only way or one of the few ways that we get things done in this state." That is why we are where we are today, because communities sued. Do you think that we would decide to fund education at a higher level if we hadn't been sued? No. There is not a chance. So, I am not willing to take the risk that people will want to go back to the way that it was, because I think that there are a good number of people **TAPE CHANGE** risk, so I am not going to be able to support this amendment. Thank you.

SENATOR LARSEN: Like each of you here in the room, I think that this is a very individual and difficult vote. I would have to say that up until the almost tailend here, of the debate, I have been listening because it is in fact, a difficult choice to make. What I come down on is the side of voting for it, because I trust the voters. Personally, I believe that the voters will read both of these amendments. I know that each of you has their own reason, and I respect your own reason, but my reason for voting for this is that I trust the voters to read these amendments. I trust the voters not to go back. I trust the voters to recognize that the language that says that a town, that "the general court could delegate in whole or in part" would in fact, return us to the days when some of us were here and we knew that we had an Augenblick decision, and no one would do any work on it. No one would fund it. That was our delegating...that was the legislature delegating almost in whole, back to the towns and cities. We all recognize that no one wants to

return to those days. Certainly 80 percent of the towns in our districts that are benefiting from the current plan, don't want to go back. We have seen what delegation, in whole, does to our property taxpayers. I think that the voters will say no to that. I think that it will move the public dialogue on, and that is why I believe it is important that we vote....at least that is why I am voting for this. I believe that it encourages the public dialogue that has to take place in the next year, so that when we come back next January, we have had a good public discussion and the voters have been engaged, like we must be engaged, and they have made their cast...they have cast their vote. They may reject both, but when I go out and talk to the public, I hear a huge fear among the voters that we are going to have an income tax and that the income tax will be ever rising, and so will be the property tax. I think that to lay the fear of the voters, that a dedicated fund, will in fact, preserve those funds for education. I think that it will allay the fears for what must be a sea change in the taxation of this state. I think that in that sense, the public dialogue will serve all of us. It will help us as we move towards this next step, which I think all of us recognize is going to be a difficult one, and we can certainly use the input of all of the voters. The next election will be an input from the voters, but this will force the voters to make their choices and to send us a message. I trust that we will listen to what they have to say. Thank you for this time.

SENATOR FERNALD: In 1998 I campaigned against any amendment to the constitution that would negotiate the Claremont decision. The decision stands for two propositions. We have an obligation to educate our children, and we have an obligation to tax fairly. I think that the Supreme Court got it just right and I think that my constituents agree. I also campaigned at that time for an income tax dedicated to education. I think that my constituents also support that. Here we are with a package that has the thing that I do not like and the thing that I do like. The question that I am faced with is, shall I support this? Does this move the process forward? Well it is clear that we are deadlocked here in Concord. We have two bodies in the legislature that will support an income tax and a governor who won't. We are stuck. I think that this one will be the conversation forward. I agree with Senator Brown that this will invigorate the public discussion, that people will look at these issues and really think about them, even in more depth than they would normally in an election year. So I am going to vote for this. I am going to afterwards, if it makes it all the way through the process, campaign against the second question and campaign for the first question, and let the voters decide. Thank you.

SENATOR MCCARLEY: Just briefly, I promise. It must be getting pretty much near the end of the list here. Like Senator Larsen, I have been one of those who has not been able to make up my mind on this, because I am fundamentally and unalterably opposed to the second half of this. So fundamentally and unalterably that I cannot even describe it to you, how strongly I feel. I believe that my district agrees with me. I am absolutely confident that they are going to bury the second part of this. I have finally convinced myself that that is going to let me vote for this amendment today, because I want that dead. We haven't killed anything. We are incapable, in this body, in my opinion, I don't mean to lecture, but I would argue that we are incapable of killing this thing permanently. We don't know how to do it. I will loan you Ground Hog Day, I have it on my desk. We have not been able to kill a thing. I be-

lieve that the citizens of New Hampshire will finally put a stake through the heart of the idea of going backwards. For that reason, and that reason alone, am I prepared to support this amendment. Thank you.

SENATOR WHEELER: I rise to oppose this constitutional amendment. I support the content of Senator Trombly's remarks. I don't think that any remarks that have been made today or any other day, since I have been in this Senate, have ever been made with the intent to be discourteous or to offer a personal insult to any member of this body, so I hope that we all understand that that is how we behave to each other. I also trust the voters, but I don't think that we are giving them good choices here. I don't think that this advances the process. I, too, am willing to drive a stake through the heart of the idea of a constitutional amendment, but that is still not moving us forward, because I don't like the other half of the choice either. What we are talking about is dedicating a tax that we don't have. Dedicating it in such a way, that it would not address the needs of my constituents. I have a big university that is one of my constituents. I don't think that this dedicated tax, that we don't have, would be allowed to go for public higher education. I don't think that is the interpretation that we would give it. I have a mental health clinic that is also one of my constituents that is having a real hard time paying its bill because the state isn't giving it enough money. This dedicated tax, that we don't have, wouldn't help my mental health clinic. I have a developmental services region that I represent. We have a waiting list for services. This dedicated tax, that we don't have, wouldn't help them. And as for saying that we are only dedicating a new part, and 'oh no, it wouldn't touch the interest and dividends tax', I have never heard any discussion of a personal income tax that doesn't repeal the interest and dividends tax, so I don't think that is a particularly good argument. So I can see no valid reasons for liking this enough to give these two bad choices to the voters. One, to go back to the status quo or one, to dedicate a tax that we don't have, and might never have, to such a small need that it doesn't represent the needs of all of our people. So, I don't think that we are advancing the process here. Thank you.

SENATOR J. KING: I am not in support of this piece of legislation. It took the city of Claremont and about five other cities and towns, seven or eight or ten years ago, to bring this to the attention of this legislature, the state of New Hampshire. We sat on our fat duffs and did nothing, even those without the fat duffs, sat there too. Nothing happened until they went to the Superior Court. That couldn't be solved there so they went to the Supreme Court. Then the Supreme Court told us what we should do. They didn't force us because that is four years ago, that they did it. Now we are going to make sure that we take care of the Supreme Court. We are going to take them out of the picture. It is wrong. It is wrong. It is wrong. You shouldn't do it. The more input that we have, the better off we are. The court has had their part in this thing. They didn't institute it, we did. We had the Augenblick Formula for years here and over the past ten years, since I have been up here, oh, God, it has been 12 years now, I don't know how many times that came before this legislature, and if we would have fully funded it, we wouldn't have this problem today, but we didn't have the guts to do it. The same people are telling us now that we are going to put a constitutional amendment that is going to make us all feel happy, or we are going to pass an income tax. Why is the income tax the only one that got mentioned in this here? There are some that might think that the property tax would do it. There are some that might think that gambling might do it. There may be

another tax that they think might do it. But why do we single out that the income tax is the one that is at first place on the block here? It is wrong again. Nothing is going to happen, no matter what we do, whatever amendments that we pass, or whatever constitutions that we try and pass. It is going to come right back here and we are going to have to pass the buck to ourselves and say, let's do something about it and vote some money in for education. Whatever it is. We sat here for four years now and we still haven't decided on what we are going to do. We are going to buck it up until 2001 and 2002. Pass bills now and pay for them next year or the year after. Not in my park. Let's forget this baloney and get down and do some work and pass some money to take care of our obligations in this state, whatever it may be from.

SENATOR BELOW: Briefly. I was surprised to hear that the state's duty to cherish the interest of public schools as being a small need of the state. Just to be clear or to set the record straight, I believe that if we check the numbers, you would find that approximately half of all of the taxes that we raise in this state, approximately half of all of the state and local taxes that we raise in this state, are used to pay for primary and secondary education. It is the single biggest and most important thing that we do as a state. In that sense, I think that there are very few, if any states, that rely on a personal income tax to raise half of their total revenues. I think that if this became part of the constitution, and we dedicated a personal income tax to education, that we would have more than sufficient flexibility to fund our other needs with our other potential revenue sources. Again, just to clarify the intent, I think that if in the future, if the legislature determined that the state's duty to cherish the interest of public schools included higher education, then the revenue from a personal income tax could be used for higher education in that situation. Thank you.

SENATOR RUSSMAN: I have to assume that my esteemed colleague, Senator King said that he was going to "buck it up to the next legislature" and I could not resist the opportunity.

SENATOR J. KING: Yes, the dollar sign.

SENATOR RUSSMAN: This whole matter is probably the best example that I have ever seen, "If the citizens lead, the leaders will follow". That is exactly what we are doing. That bumper sticker probably should be handed out to most of the legislature, I think, probably including myself. At the same time, and where I am going with this. I think that I will support the action in that I have voted for most everything that has come along here in trying to move this thing along, even though it seems stalemated. I have to admit that we seemed to be lining up more like, instead of 11-11 like 12-12 on a lot of these issues in terms of use that football analogy. It has been the elephant and the donkeys in terms of where we go. I also have to say in defense of the Supreme Court, that the Supreme Court has taken a lot of blame. As a lawyer for 27 years, I also just want to rise and say that I think that the Supreme Court did exactly what it was supposed to do, and I certainly have a firm belief in the citizen's right to redress. I happened to watch a movie the other day, A Civil Action, and it made me think of how important it is to have the court system there for when the citizens need redress, no matter what the circumstances. My sense is that that portion of it, ought not to pass in terms of where the courts play the role in here, because I think that it is a very, very critical role that the courts play in our system of justice, and our system with the legislature. For the purpose of moving this along, I believe that I will support the bill.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Trombly.

Seconded by Senator Brown.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Roberge, Eaton, Fernald, Squires, Larsen, Krueger, Brown, Russman, Klemm, Hollingworth, Cohen.

The following Senators voted No: Trombly, Disnard, Pignatelli, Francoeur, J. King, D'Allesandro, Wheeler.

Yeas: 17 - Nays: 7

Floor amendment adopted by the necessary 3/5 vote.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 422, relative to advertising by rent-to-own businesses.

HJR 6, encouraging the revitalization of the northern rail corridor from Concord to Lebanon and recognizing its interim recreational uses.

SB 36, relative to salary increases for direct care providers for persons with developmental and acquired disabilities.

SB 89, relative to library trustees.

SB 222, relative to guarantee of loans to local development organizations.

Senator D'Allesandro moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives has passed a Bill with the following title, in the passage of which it asks the concurrence of the Senate:

HB 1200, relative to the application of education property tax hardship relief to estate planning trusts and relative to eligibility for hardship relief.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bill numbered 1200 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 1200, relative to the application of education property tax hardship relief to estate planning trusts and relative to eligibility for hardship relief. **Finance**

HOUSE MESSAGE

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

HB 1105, ratifying article 9 of the 1999 Seabrook annual town meeting and the 1999 Epping annual town meeting.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 1105, ratifying article 9 of the 1999 Seabrook annual town meeting and the 1999 Epping annual town meeting.

Senator D'Allesandro moved adoption.

Adopted.

ANNOUNCEMENTS

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

LATE SESSION

CACR 23, RELATING TO: the responsibility and authority of the general court to determine the content, extent, and funding of a public education and the use of moneys received from the enactment of a new personal income tax.

PROVIDING THAT: (a) If the general court enacts a new personal income tax, all moneys received from such income tax and all the interest received on such moneys shall, after deducting the necessary costs of administration, be appropriated and used exclusively to fulfill the state's duty to cherish the interest of public schools under article 83 of part second, and no part of such moneys shall be transferred or diverted to any other purpose whatsoever.

(b) The general court shall have the authority to determine the content, extent, and funding of a public education and that the state may fulfill its responsibility to provide to all citizens the opportunity for a public education by exercising its power to levy assessments, rates, and taxes, or by delegating this power, in whole or part, to a political subdivision; provided that upon delegation, such assessments, rates, and taxes are proportional and reasonable throughout the state or the political subdivision in which they are imposed.

Question is on the adoption of the final passage of CACR 23.

A roll call is required.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Roberge, Eaton, Fernald, Squires, Larsen, Krueger, Brown, Russman, Klemm, Hollingworth, Cohen.

The following Senators voted No: Trombly, Disnard, Pignatelli, Francoeur, J. King, D'Allesandro, Wheeler.

Yeas: 17 - Nays: 7

Adopted by the necessary 3/5 vote.

Ordered to third reading.

RESOLUTION

Senator Cohen moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings and that when we adjourn we adjourn to Thursday, February 17, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

SB 136-FN, allowing certain state employees to take paid leave to participate in disaster relief service work.

SB 219-FN-L, establishing a procedure for providing educational improvement assistance to local school districts and making an appropriation therefor.

HB 228, clarifying permissible political expenditures.

SB 318-FN, relative to proposed joint maintenance agreements.

SB 325, relative to denial, revocation or suspension of a child care provider license, permit or registration for a felony conviction.

SB 328, making corrections to statutory references in certain fish and game laws and adding a rulemaking provision.

SB 336, relative to the issuance of fire permits.

SB 344, relative to appointment of housing consumers to housing authority boards.

SB 362, relative to the length of buses and single unit vehicles.

SB 367, establishing a prescription drug access study committee.

SB 377, relative to peer support programs within the department of health and human services.

SB 390-FN, relative to vested deferred retirement benefits for group II members.

SB 403-FN-A, making an appropriation to the department of agriculture, markets, and food for the inspection of apiaries and honeybee swarms.

SB 437-FN, relative to retail selling.

SB 442-FN, establishing an equipment depository and disabled person's employment fund in the department of administrative services.

SB 449-FN, clarifying that employees in certain department of health and human services' positions are entitled to certain salaries and raises.

In recess.

Out of Recess.

INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 451-453 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

SB 451, relative to site size standards for new school building construction. (Sen. Russman, Dist 19; Sen. J. King, Dist 18; Sen. McCarley, Dist 6; Rep. Welch, Rock 18; Rep. Gleason, Rock 13; Rep. Whittier, Rock 18; Rep. Langone, Rock 13: **Education**)

SB 452, increasing to \$25 per game date the amount operators of bingo games may be reimbursed for out-of-pocket expenses. (Sen. Russman, Dist 19; Sen. J. King, Dist 18; Sen. McCarley, Dist 6; Rep. Welch, Rock 18; Rep. Gleason, Rock 13; Rep. Whittier, Rock 18; Rep. Langone, Rock 13: **Ways and Means**)

SB 453, relative to the expending of legacies or gifts and the transfer of funds by the regional community-technical colleges. (Sen. Johnson, Dist 3: **Education**)

LATE SESSION

Senator J. King moved that the business of the day being complete that the Senate now adjourn until Thursday, February 17, 2000 at 10:00 a.m.

Adopted.

Adjournment.

February 17, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by the Father Hays M. Junkin, Senate Guest Chaplain.

Good morning! In honor of President's Day, which will be celebrated very soon, I found in my library, a prayer written by President, Woodrow Wilson, on behalf of the nation, which I would like to share. Let us pray:

"Almighty God, Ruler of all the people's of the earth: Forgive, we beseech thee, our shortcomings as a nation; purify our hearts to see and love truth; give wisdom to our counselors and steadfastness to our people; and bring us at last to that fair city of peace whose foundations are mercy, justice, and good-will, and whose Builder and Maker thou art..." Amen.

Senator Pignatelli led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Senator Cohen is excused for the day.

COMMITTEE REPORTS**MOTION TO VACATE**

Senator McCarley moved to vacate **HB 628**, relative to the relocation of the principal residence of a child, from Education to Judiciary.

Adopted.

HB 628 is vacated to the Judiciary Committee.

HOUSE MESSAGE

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

SB 178-FN-A, relative to appropriations to the port authority for dredging projects.

Senate Concurs with House Amendment

SB 178-FN-A, relative to appropriations to the port authority for dredging projects.

Senator Cohen moved to concur.

Adopted.

SB 366-FN, requiring an external financial audit of the university system of New Hampshire when the university system requests an appropriation that exceeds the prior appropriation by more than one percent. Education Committee. Vote 5-0. Inexpedient to Legislate, Senator McCarley for the committee.

SENATOR MCCARLEY: Senate Bill 366 requires an external financial audit of the university system of New Hampshire if it requests an appropriation that exceeds the prior appropriation by more than 1 percent, or if any institution with the system wishes to raise tuition by more than 1 percent from the previous year. Currently, the Board of Trustees is required by statute (RSA 187-A:25-a) to conduct an external, independent financial audit annually, which is reported to both the governor and legislature, and is available to the public. In addition, the university system is required to provide a quarterly financial report to the Fiscal Committee detailing a comparison of budgeted amounts an actual expenditures in major categories for each institution within the university system. Senate Bill 366 would require the state to pay for this audit triggered by increases in tuition or appropriation requests from the general fund. The Education Committee felt there was no need to duplicate university-funded audits with state-funded audits, therefore recommend this bill inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 431, relative to certain secondary vocational education programs. Education Committee. Vote 9-0. Ought to pass with amendment, Senator Larsen for the committee.

2000-3488s

04/09

Amendment to SB 431

Amend the bill by replacing section 2 with the following:

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

SENATOR LARSEN: Senate Bill 431 requires that vocational educational programs at our high schools be included in the unified plan developed in accordance with the workforce investment act of 1998. This federal program requires state legislative approval for secondary school vocational programs to participate in the planning and coordination process with other state agencies and organizations overseeing workforce development. The committee amendment simply changes the effective date to upon passage so that the Department of Education may begin working with the other agencies as soon as possible. The Education Committee, unanimously recommends this bill as ought to pass with amendment. I urge your support of this legislation.

Amendment adopted.

Ordered to third reading.

HB 1381, relative to the dissolution of the Pawtuckaway cooperative high school district. Education Committee. Vote 5-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: House Bill 1381 permits the Nottingham and Deerfield school districts to dissolve the Pawtuckaway Cooperative High School District. Very quickly, they decided to form this cooperative last March. They had one meeting in August, at which time, it was painfully clear that these two groups had no interest in proceeding ahead with this idea. Matter of fact, everyone who came from both sides, said "please, let us out of this arrangement." We need to do this bill as quickly as possible because they have March meetings coming up, and they need to know that the school district has indeed been dissolved. There was an expenditure about \$4,000 to hold the one meeting, in which they made the determination that they could not pos-

sibly work together and wanted to go their separate ways. I would encourage us to pass this and get it to the governor's desk as soon as possible.

Adopted.

Ordered to third reading.

SB 345, relative to real estate transfers. Executive Departments and Administration Committee. Vote 5-0. Ought to pass with amendment, Senator Francoeur for the committee.

2000-3366s

08/09

Amendment to SB 345

Amend the bill by deleting sections 4 and 5 and renumbering the original section 6 to read as 4.

2000-3366s

AMENDED ANALYSIS

This bill:

I. Exempts transfers involving \$4,000 or less from the requirement to file an inventory of property transfers.

II. Provides that any reconveyance of tax-deeded property by a municipality to a former owner is subject to reattachment of any former liens and recognition of the interest of any former co-owners.

SENATOR FRANCOEUR: Section one of the bill removes the requirement to file a notice with the Department of Revenue Administration when real estate transactions that are under \$4,000 are made. The forms are simply unnecessary paperwork to the department as well as those transacting the transfer of property. The next two sections relate to situations in which a town has to take property because of back taxes. The bill dictates the term and conditions that the town must follow in selling the property back to the former owner. These sections also correct a contradiction in the statute caused by the adoption of the law in 1997, and a similar one in 1998, concerning the sale of the tax taken property. The committee recommends this bill as ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 327, relative to responsibility of the employee and perjury under workers' compensation. Insurance Committee. Vote 3-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Under current law, it is not possible to prosecute the most common form of insurance fraud in New Hampshire, which occurs when a person continues to receive benefits after he or she is no longer eligible. This is due to the fact that there is no requirement that an injured employee sign a form or make a statement attesting to the fact that form the basis of their eligibility to receive benefits. This bill requires the employee to complete and sign a form attesting to his or her condition, no more than once every three months. If the worker is not truthful, he or she could then be prosecuted. This bill also includes perjury, as an offense for which a person can be prosecuted under this section. Currently, the statute only refers to two lesser offenses, false swearing and unsworn falsification. This creates a legal presumption that the state may not make a charge of perjury, since it is not specifically men-

tioned in the statute. As a class B felony, perjury carries a potentially higher sentence, and the statute of limitations is six years. For the two lesser, misdemeanor offenses, the statute of limitations is one year. Many insurance fraud investigations take over a year, so including perjury allows a longer time for the state to investigate and prosecute possible crimes. The attorney general's office regards the inclusion of perjury as a clarification. This bill was a request of the Department of Labor and was worked on by the Workers' Compensation Advisory Council and the attorney general's office. The Insurance Committee voted 3-0 that this bill ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 332, relative to risk-based capital for health organizations. Insurance Committee. Vote 3-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill is introduced at the request of the Insurance Department in response, in part, to the events that surrounded the Tuft's Health Plan in late December early January. What the bill does is add HMO's to the category of insurance department supervision, so-called, "risk based capital", which sets up a number of perimeters, guidelines and etceteras, which would give the department an earlier awareness, perhaps, of impending financial difficulties, at which point, they would hopefully, intervene. So it is an important bill. There are other types of carriers in risk based capital, but this one, as for the first time, HMO's, it seems to me, to be appropriate, given what has happened. I ask for your support.

Adopted.

Ordered to third reading.

SB 334, relative to credit unemployment insurance. Insurance Committee. Vote 2-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: This bill will allow a debtor to buy coverage to provide indemnity for loans. Credit unemployment insurance has been sold in New Hampshire for years. Although one part of the statute does refer to credit unemployment insurance, the section that is supposed to govern such sales does not list it. Therefore, New Hampshire lacks a statutory nexus to sell credit unemployment insurance. The Insurance Department issued a bulletin noting that the lack of specific statutory authority to sell this coverage, but the bulletin was suspended since this coverage has been sold in New Hampshire since the 1980's. The department has asked us to address the issue through legislation. This bill defines credit unemployment insurance and adds statutory language to RSA 408 authorizing its sale. Credit unemployment insurance is regulated by the insurance department, is optional, can be purchased to cover any solvent loan, and would come into effect upon the involuntary unemployment of the debtor. This type of coverage is especially helpful for those who work in volatile occupations. The Insurance Committee voted unanimously that this bill ought to pass.

Adopted.

Ordered to third reading.

SB 338, relative to trustee process. Judiciary Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 338 has to do with trustee process. For those who are not familiar, trustee process is when somebody brings a legal action against another party and they find that a third party is holding funds on their behalf. Trustee process is an opportunity to bring that third party into this suit and to use those assets to satisfy a judgment. What this bill does is modernize the process. It does two things in particular, which needed to be updated. The first thing is that an innocent third party becomes actually, a party in the suit. This allows that third party to file an inventory, and that satisfies their obligations without actually having to hire an attorney to litigate the matter for them. The second thing that it does, is it recognizes modern business practice in terms of close of business. What happens is when you become served by the sheriff as a third party, you have to freeze the assets as of that moment. With modern business practices, when transactions are accumulated during the day, sometimes they are processed at night, and they don't become effective until the beginning of business the next morning. This recognizes that practice, and in so doing, recognizing that if somebody gets served after three o'clock in the afternoon, that the attachment itself, will become effective as of eight o'clock the next morning. The beginning of business the next day.

Adopted.

Ordered to third reading.

SB 346, relative to court appearances by certain business owners. Judiciary Committee. Vote 5-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-3412s

09/10

Amendment to SB 346

Amend the bill by replacing section 1 with the following:

1 Occupations and Professions; Attorneys and Counselors; Right to Appear, etc.; Sole Shareholder of Real Estate Management Corporation. Amend RSA 311:1 to read as follows:

311:1 Right to Appear, etc. A party in any cause or proceeding may appear, plead, prosecute, or defend in his or her proper person, that is, pro se, or may be represented by any citizen of good character. For the purposes of this section, a citizen shall be presumed to be of good character unless demonstrated otherwise. *The sole shareholder of a real estate management corporation may appear, plead, prosecute, or defend for the corporation in any landlord-tenant cause or proceeding; such appearance, pleading, prosecution, or defense shall be treated as pro se, and shall not be considered representation.*

2000-3412s

AMENDED ANALYSIS

This bill permits the sole shareholder of a real estate management corporation to appear, plead, prosecute, or defend for the corporation in any landlord-tenant cause or proceeding.

SENATOR PIGNATELLI: This bill will permit landlords to represent themselves in court proceedings on the same basis of tenants. Under the current law, if the landlord is incorporated, he or she cannot regularly represent his

or herself in court pro se, since pro se is for the people, not corporations. Tenants can represent themselves. So the current situation is that landlords must hire an attorney to represent their interest. Senate Bill 346 will create a level playing field in this regard. The Judiciary Committee voted unanimously that this bill ought to pass as amended. The amendment just clarifies that the bill relates only to landlord tenant matters, otherwise, it could be interpreted to read more broadly as applicable to all sole shareholders. Thank you.

Amendment adopted.

Ordered to third reading.

SB 355, relative to name changes for criminal offenders. Judiciary Committee. Vote 5-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: As you may recall, last year we passed legislation that prohibited prisoners and certain people who were registered as sex offenders from changing their names in order to avoid detection. We passed that law and placed into effect, but over the course of the last year, a concern was raised by the probate court in that the language caused some problems. It wasn't easy to interpret, so the probate court asked for this legislation, simply to correct the language so that it could be more easily understandable, and that is what you have before you today. It makes no change in the law itself.

Adopted.

Ordered to third reading.

SB 358, relative to court reporting services. Judiciary Committee. Vote 6-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 358 has to do with court reporters. It was determined that currently, court reporting services are entering into long term contracts with insurance companies and parties in cases, and as a result, that they might not be free from conflict. What this bill would require is, if a certified court stenographer is used for purposes of giving depositions or in legal matters, court matters, where oaths are required, that they be free from any contractual or long term financial relationship with any one of the parties. We would urge you to pass this legislation.

Adopted.

Ordered to third reading.

SB 382, relative to appeals of release or detention orders. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-3413s

09/01

Amendment to SB 382

Amend RSA 597:6-e, II as inserted by section 1 of the bill by replacing it with the following:

II. The person or the state may file with the superior court a motion for revocation of the order or amendment of the conditions of release set by a municipal or district court, by a justice or by a bail commissioner. The motion shall be determined promptly. *However, no action shall be taken on any such motion until the moving party has provided*

to the superior court certified copies of the complaint, affidavit, warrant, bail slip, and any other court orders relative to each charge for which a release or detention order was issued by a justice or a bail commissioner. In cases where a district court justice has made a finding, pursuant to RSA 597:2, III-a that the person poses a danger to another, the superior court shall, after notification to both parties, the police department that brought the charges in district court, and the victim, conduct a hearing and make written findings supporting any modifications and reasons for new conditions or changes from the district court order. The reviewing court shall take into consideration the district court's written findings, orders, pleadings, or transcript when making a modification.

SENATOR PIGNATELLI: The Superior Court routinely entertains appeals for bail review filed by defendants whose bail was initially set by a municipal or a district court. The county attorney's office is notified of the motion for review, but the hearings are scheduled quickly and the state is rushed to try and collect all of the pertinent information. Senate Bill 382 is a simple bill which states that no action shall be taken on a motion for bail review until the reviewing judge has before him or her, all of the information that the first judge had in setting bail. The statute currently states that the motion for review shall be determined promptly. This bill is needed to ensure that bail review hearings while prompt, are not rushed, and that the Superior Court judge has all of the relevant information including copies of the complaint, affidavits, warrant bail slip and any other orders relative to the change, before modifying any bail conditions. The Rockingham County Attorney's office requested this legislation. There was no opposition at the hearing to this very sensible public safety measure. I ask for your support. Thank you.

Amendment adopted.

Ordered to third reading.

SB 422-FN, relative to the housing security guarantee loan program. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: As recently as eight years ago, many community agencies, including Nashua Soup Kitchen were receiving pleas from landlords to find them tenants. And in that time, in the early 1990's the security deposits were often waived or reduced. Today, the situation is reversed. The security deposit cannot exceed one month's rent, but given the economic times, rents have risen. In Nashua for example, a two-bedroom apartment is anywhere from \$800 to \$1000 a month, so the applicant must make a first month's payment plus the security deposit, which is \$2,000 in cash. This bill, addresses the problem of a security deposit. It deals only with very low income individuals who meet the criteria by the federal guidelines. In brief, if an individual is seeking to rent an apartment, the state in fact, guarantees the security deposit and the individual, rentor, then pays off the deposit in small increments over the next year. Since the plan's inception, over 1400 people have taken advantage of this. Yes, there have been some defaults, but not many. In the neighborhood of 20 percent, and many of those are due to instances of life, death, moving to a nursing home and etceteras. The problem has become aggravated by the fact that the increase in the security deposits the state is currently limited to having \$1 million in outstanding obligations, which is only true if everybody

defaulted, which they don't. What the bill does is raise the ceiling \$2 million. The state did bump up against the ceiling about six months ago. It is now back down between \$600,000 and \$800,000. The bill will allow people in this time, to take advantage of this security deposit credit. I urge you to pass it. It will make a huge difference in the lives of many unfortunate people.

Adopted.

Ordered to third reading.

RECONSIDERATION

Senator Pignatelli having voted on the prevailing side moved reconsideration on **SB 338**, relative to trustee process, whereby we ordered it to third reading.

Adopted.

Senator Gordon moved to have **SB 338**, relative to trustee process, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 338, relative to trustee process.

SB 428-FN-A, relative to the development of certain public health initiatives and making an appropriation therefor. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-3445s

05/01

Amendment to SB 428-FN-A

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

4 Accumulated Income of the Health Care Fund. Amend RSA 167:72 to read as follows:

167:72 Accumulated Income. Commencing with the fiscal year ending June 30, 1995, the state treasurer shall annually, on or before October 1, certify an amount to the commissioner which shall be the sum of the income accumulated in the fund that will be available to be expended under RSA 167:71 plus the market value of the principal assets held in the fund. Only the interest earnings shall be expended for the purposes outlined in RSA 167:71, *and such interest earnings shall be continually appropriated to the department for said purposes*. Notwithstanding any other provision of law, the funds authorized for expenditure shall not be reduced by any funds made available from other sources.

2000-3445s

AMENDED ANALYSIS

This bill authorizes the department of health and human services' expenditure of health care fund interest income for fiscal years 2000 and 2001 in excess of the approved budgeted amount up to the projected level of interest income, and makes an appropriation therefor. The bill also authorizes interest earnings from the health care fund to be continually appropriated to the department of health and human services.

This bill was requested by the department of health and human services.

SENATOR McCARLEY: I rise in support of SB 428. This bill authorizes DHHS to expend Health Care Fund interest income for fiscal years 2000 and 2001 up to the projected level of interest income. At the time the budgets were set, interest income was estimated fairly conservatively, and it has turned out that the estimates are probably about \$500,000 higher for each of the fiscal years. The department has come to us to ask that they be able to expend those dollars, only on those programs that they are legislatively able to use those dollars for. The amendment simply would allow a continual appropriation of that interest income into the future. I think that the important thing to note here is that the commissioner was very up front when he acknowledged, that he was accepting a risk by the idea of asking for the continual appropriation, because indeed, if the interest income is down, he will have to deal with how he will have to reduce some of those commitments to some of those programs. He felt that it was a reasonable request. The committee agreed. I urge its passage at this time.

Amendment adopted.

Ordered to third reading.

SB 339-FN, relative to conducting a feasibility study of various alternatives to enhance safety at the traffic circle in the city of Portsmouth, and making an appropriation therefor. Transportation Committee. Vote 3-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 339 was filed as the result of a legislative study committee conducted this past summer and charged with investigating traffic problems at the Portsmouth Traffic Circle. Approximately 46,000 vehicles flow through the Portsmouth Traffic Circle daily. A number already beyond its design capacity. Because of the numerous and complex factors involved with traffic flow at the circle, the only means to truly understand the impact of various alternatives would be for the Department of Transportation to conduct a feasibility study. The Transportation Committee, as a matter of policy, supports SB 339 and the feasibility study, and defers to the Finance Committee to determine whether the expenditure is possible at this time. In order to do a study, that study needs some financial support, and so this bill calls for the expenditure of \$150,000 to fund the study. The Transportation Committee is reporting this out of the Transportation Committee with an ought to pass, with the intent of sending this to the Finance Committee to make a determination as to whether it is appropriate to expend those funds in support of the study, and also whether or not \$150,000 is in fact, sufficient to conduct the type of study which is needed. We urge you to pass this and to move it to the Finance Committee.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 354, relative to an exemption from the seat belt law for passengers in motor vehicles in parades. Transportation Committee. Vote 2-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3379s

05/09

Amendment to SB 354

Amend the bill by replacing section 2 with the following:

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

SENATOR GORDON: You may remember that there was a controversy last year when the Girl Scouts checked with the Department of Safety in regard to the use of seat belts in parades, and were informed that in fact, there was no exemption, and that the Girl Scouts would have to wear seat belts. They also attempted to get a legal opinion from an attorney that said that they wouldn't be held liable if somebody was injured in a parade and wasn't wearing a seat belt, and no attorney was willing to give them a legal opinion saying that they would be exempt from liability. So they issued an order saying that if their Girl Scouts were going to be in parades, they had to wear seat belts. Obviously, this was where common sense and the law attended to diverge. So this bill is intended to correct that little error and to bring common sense and the law back together. What it will do is exempt the wearing of seat belts in parades where a vehicle is not traveling any faster than 10 miles per hour. We urge you to support the bill.

Amendment adopted.

Ordered to third reading.

SB 381-FN, relative to registration fees for off-highway recreation vehicles. Transportation Committee. Vote 3-0. Ought to Pass, Senator Below for the committee.

SENATOR BELOW: Senate Bill 381 would allow for a discount registration fee for vehicles used for snowmobile trail grooming and maintenance. Groomers currently have to register as either farm tractors, construction tractors or OHRVs. The \$5 registration fee would cover the cost of the program. Hundreds of hours in grooming trails is donated by volunteers who perform this service. This registration fee discount is supported by the New Hampshire Snowmobile Association. The Transportation Committee recommends that SB 381 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 363, relative to the sale of malt beverages. Ways and Means Committee. Vote 6-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: Senate Bill 363 requires the identification of kegs of malt beverages sold directly to consumers and further requires that consumers who purchase kegs of malt beverages sign a receipt. The bill was a request of the liquor commission. Currently, there is no way of tracing kegs, because there is no identifying label or serial number on the container. Senate Bill 363 would require both. Although it is not the intent of the committee to regulate small business further, underage drinking is a significant problem, and this is an attempt to provide accountability. Senate Ways and Means recommends SB 363 ought to pass.

Adopted.

Ordered to third reading.

SB 379, relative to lottery scratch tickets. Ways and Means Committee.

MINORITY REPORT: Ought to Pass, Senator D'Allesandro for the committee. Vote 3-4

MAJORITY REPORT: Inexpedient to Legislate, Senator F. King for the committee. Vote 4-3

Senator Johnson moved to have **SB 379**, relative to lottery scratch tickets, laid on the table.

Adopted.

LAID ON THE TABLE

SB 379, relative to lottery scratch tickets.

SB 421-FN-A, establishing a child day care program credit against the business profits tax. Ways and Means Committee. Vote 5-2. Ought to pass with amendment, Senator Brown for the committee.

2000-3508s

09/04

Amendment to SB 421-FN-A

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

AN ACT establishing a child day care program credit against the business profits tax and the business enterprise tax.

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

1 New Paragraph; Business Profits Tax; Child Day Care Program Credit.

Amend RSA 77-A:5 by inserting after paragraph XI the following new paragraph:

XII. The child day care program tax credit as determined under RSA 170-E:51.

2 New Section; Business Enterprise Tax; Child Day Care Program Credit.

Amend RSA 77-E by inserting after section 3 the following new section:
77-E:3-a Child Day Care Program Credit. The child day care program credit, as determined under RSA 170-E:51, shall be allowed against the tax due under this chapter.

3 New Subdivision; Child Day Care Program Business Profits Tax and Business Enterprise Tax Credit. Amend RSA 170-E by inserting after section 50 the following new subdivision:

Child Day Care Program Business Profits Tax and Business Enterprise Tax Credit

170-E:51 Child Day Care Program Business Profits Tax Credit.

I. A taxpayer under RSA 77-A and/or RSA 77-E shall be allowed a child day care program tax credit under either RSA 77-A:5, XII or RSA 77-E:3-a in the amount of the following percentages of expenses incurred for child day care programs:

(a) A 50 percent credit for start-up costs for an on-site child day care facility, licensed under the provisions of this chapter, to be used primarily by the children of the taxpayer's employees. Start-up costs include planning, site preparation, construction, renovation, or acquisition of facilities for purposes of establishing or expanding on-site or near-site facilities to be used for child day care; purchasing and installing equipment for permanent use within or immediately adjacent to the facility, to the extent such equipment is necessary in the use of such facility for the purposes of child day care; and materials to be used primarily for the child day care facility.

(b) A 50 percent credit for the net costs of maintaining an on-site child day care facility, including staff salaries and benefits, equipment, supplies and materials.

(c) A 30 percent credit for support payments made to off-site child day care facilities where, in exchange for such support payment, the facility agrees to serve an agreed-upon number of children of the taxpayer's employees for a time period covered by the support payment. The eligible expense per child shall not exceed \$2,500 of assistance per tax year.

(d) A 40 percent credit for expenses incurred to comply with national accrediting standards, which would not have been incurred to comply with state licensing standards.

(e) A 40 percent credit for payments made to directly assist child day care providers and provider networks to pay for training or continuing education to improve the quality of child day care services.

(f) A 30 percent credit for expenses relating to providing coupons for employees to obtain child day care, including the costs to the taxpayer of administering such coupon program and serving as an information and referral resource. The eligible expense per child shall not exceed \$2,500 per child per tax year.

II. The total amount of the credit shall not exceed 5 percent of the taxpayer's total tax liability per tax year, with a 2-year carry-forward allowed in the immediately succeeding tax years. If a facility ceases to operate as a child day care facility or such other form of support as described in paragraph I ceases after the first year, the carry-forward shall not be allowed.

III. There shall be no distinction made for the purposes of this tax credit between for-profit and not-for-profit child day care programs and facilities.

IV. The commissioner, in consultation with the commissioner of revenue administration and the commissioner of resources and economic development, the New Hampshire Child Care Advisory Council, and the Governor's Business Commission on Child Care, shall develop marketing strategies to educate and attract businesses to access tax credits available pursuant to this section. The commissioner shall work with the above agencies and organizations, as necessary, to evaluate annually the utilization level of this tax credit.

4 Effective Date. This act shall take effect July 1, 2001.

2000-3508s

AMENDED ANALYSIS

This bill establishes a child day care program credit against the business profits tax and the business enterprise tax.

SENATOR BROWN: The intent of this bill is to offer incentives to employers to assist with employee's childcare needs. This bill provides an opportunity for business to partner with government to assist parents with these childcare costs. Ways and Means amended SB 421 to extend the effective date and to add the Business Enterprise Tax to the credit. The Department of Revenue testified that the addition of the BET would not change the fiscal impact of the bill. Ways and Means recommends SB 421-FN-A ought to pass as amended. I believe that there is an amendment following. Thank you.

Amendment adopted.

Senator Larsen offered a floor amendment.

2000-3518s

09/01

Floor Amendment to SB 421-FN-A

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect July 1, 2002.

SENATOR LARSEN: I rise to offer a floor amendment which simply changes the effective date to match what the Ways and Means Commit-

tee had recommended. The effective date is to have been July 1, 2002 in the next biennium. There was an error in the drafting and the calendar shows a different date. The intent is that it would be effective in the year 2002. I think that all of us are aware of the difficulty that parents are finding and locating adequate daycare availability in our communities. In the Concord area there have been at least two threatened closings, one of which has happened, putting parents out into the difficult position of needing to go to work and not finding adequate or even available childcare positions for their children. This bill encourages businesses to work in partnership with their employees to develop onsite, offsite, and to develop daycare facilities, childcare facilities, that are licensed and high quality and available. So I think that it is very important that we begin to address the difficulty that the parents are facing. We all know what the workforce demands of parents these days, and it is critically important, that we, as a state, encourage a partnership with parents who are seeking to do the best for their young children and to make these spots available by encouraging businesses to partner with those employees. I think that this is a first step. Many other states have begun this. The state of Maine has a similar program and I think that if we can direct the state in the next biennium to address this issue, we will have moved to our daycare availability and the quality of daycare, a step forward. I encourage you to vote for this bill with the floor amendment and keep this impetus going. Thank you.

Floor Amendment adopted.

Ordered to third reading.

Senator F. King is in opposition to SB 421.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 375, relative to substitutions for disqualified and deceased candidates.

SB 147, relative to self-referrals for chiropractic care under managed care organizations.

Senator D'Allesandro moved adoption.

Adopted.

SB 450-FN, prohibiting the importation of tobacco products that violate federal law. Ways and Means Committee. Vote 7-0. Ought to pass with amendment, Senator Fraser for the committee.

2000-3502s

09/01

Amendment to SB 450-FN

Amend RSA 78:34, II-IV as inserted by section 1 of the bill by replacing them with the following:

II. No person shall knowingly sell or offer to sell a package of cigarettes or affix the stamp or imprint required by this title on a package of cigarettes unless that package of cigarettes complies with all federal tax laws, federal trademark and copyright laws, and federal laws regarding the placement of labels, warnings, or any other information upon a package of cigarettes.

III. No person shall knowingly sell or offer to sell a package of cigarettes or affix the stamp or imprint required by this title on a package of cigarettes if the package is marked as manufactured for use outside of the United States or if any label or language has been al-

tered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States.

IV.(a) No person shall affix a stamp, label, or decal on a package of cigarettes to conceal the fact that the package was manufactured for use outside of the United States.

(b) No person shall knowingly sell or offer to sell a package of cigarettes on which a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

SENATOR FRASER: This bill would put an end to the sale of "gray market" cigarettes in New Hampshire. "Gray market" cigarettes are cigarettes that have been sold by the manufacturer for export in foreign countries. However, these cigarettes are being brought back into the country and sold in New Hampshire at prices as much as \$5 a carton below the price that legitimate cigarette dealers can purchase from the manufacturer. These cigarettes are affecting not only New Hampshire tax revenue, but also revenues from the tobacco settlement. Gray market sales cannot be counted as domestic sales as defined in the agreement for purposes of calculating final tobacco settlement funds owed. A reduction in domestic sales could lead to a reduction in settlement payments to New Hampshire. Attorney General McLaughlin testified that this is not only a significant revenue problem it is also a public health issue. These cigarettes are different than those sold in the U.S. due to unregulated additives, chemicals and an increased percentage of nicotine. Attorney General McLaughlin also suggested amending the bill by adding language that would remove liability from any unsuspecting "corner store". The word that has been included in several parts of the bill is "knowingly" selling these cigarettes. The Ways and Means recommends SB 421 as amended ought to pass.

SENATOR DISNARD: Senator Fraser, what is the rationale for waiting for almost a year before this takes effect?

Recess.

Out of Recess.

SENATOR FRASER: It was so that the dealers could then readjust their inventory. It would take some time for them to do that.

SENATOR JOHNSON: The genesis of this bill is rather interesting. I went into a convenience store in my district. I noticed up in the marquee that he had Marlboro cigarettes that were \$4.50 a carton cheaper than the going price. That was right after we had put the last increase on the cigarette tax which I had some concern about. So when I went in and asked him "how are your cigarette sales?" he said, "oh, they are booming." I said, "oh that is interesting, after that last increase that we put in." Then he said, "Well, I am selling gray market cigarettes." Then I replied, "oh. That is also interesting. What is a gray market cigarette." So he brought me out back and showed me the product and it had all of the stamps on it. So I said, "oh, obviously it is legal because it has the stamps on it." In further checking, I find that they were being exported out of the country. Some of them only going out beyond the three-mile limit, then coming back in and being redistributed as a legal product sale. So I fought that out that the tobacco and tax people at the federal level were thinking about legislation, which by the way, they have put in and have gone into effect as of January 1, but very little done by the way of enforcement goes. Now we have 21 states who have legislation either on

the books or filing legislation which is similar to what we have here today. My concern, basically, was that the master settlement agreement that we have with the tobacco industry is based on domestic product only. So as this product comes back into the market and is being sold, that is not a domestic product. So our level of revenue has been going down. I think that you will see that come about rather shortly. I think that we will probably be down about \$2 million on the original \$40 million that we thought that we would bring in. So I think that we have that under control now and hopefully, this bill will pass. I went again, just recently, and told him that this legislation was going forward and I thought that it was certainly something that I should let him know about. He said, "that is fine, I am not buying those anymore." I said, "oh, is that so." He said, "Ya, I am buying these made in Switzerland." Now, I didn't know that they grew tobacco in Switzerland, but I find out that what is happening is, this is an export product, which is going over there, they are taking them out of the carton and on each one they have this little clear label put on the bottom that says, "made in Switzerland." They then put them back in the carton and then ship them back here. These are also \$4.50 - \$5.00 a carton cheaper. These happen to be Marlboro Lights. So it is pretty hard to keep them out of the cigarette market. They seemed to be one step ahead of the Sheriff. My reason for the legislation was the diminishing return on the dollar relative to the master agreement that we have. I would hope that you would pass the legislation.

SENATOR PIGNATELLI: This is a new one for me. These cigarettes, the cigarettes that we are smoking ourselves, as if they are not bad enough, and full of chemicals that hurt us and our people, these cigarettes, these Grey market cigarettes aren't even good enough for us to smoke, they have increased nicotine, other chemicals that we may not even know about, and we are exporting them to other countries so that other people can smoke them. It just doesn't seem to make any sense to me. I am going to support this because I don't want our people to be smoking. But I think that if they are worse than our own cigarettes, that we ought to be exporting them to other countries so that they can get even sicker. Thank you.

SENATOR JOHNSON: Just a reminder that it is a legal product and they have a market that demands the product and they sell to the market. I share your sympathy, Senator Pignatelli, but I don't quite agree with your philosophy.

Amendment adopted.

Ordered to third reading.

SB 370, relative to reflectors on bicycle pedals. Wildlife & Recreation Committee. Vote 3-0. Ought to pass with amendment, Senator Klemm for the committee.

2000-3402s

04/09

Amendment to SB 370

Amend the bill by replacing section 1 with the following:

1 Equipment of Vehicles; Pedal Reflectors Required; Reflective Equipment Required. RSA 266:87 is repealed and reenacted to read as follows:
266:87 Pedal Reflectors and Reflective Equipment Required.

I. No person shall operate a bicycle, except for a bicycle equipped with clipless pedals, or moped unless such bicycle or moped has pedals equipped

with a reflector of a type approved by the director which conform to 49 CFR 571.108 Table 2 and which shall be visible from the front and rear of the bicycle or moped from a distance of 200 feet during darkness.

II. No person, during darkness, shall operate a bicycle equipped with clipless pedals unless the operator is wearing either reflectorized leg bands on the lower exterior of the operator's legs or some other type of light reflective equipment on the exterior of either the operator's legs or shoes.

2000-3402s

AMENDED ANALYSIS

This bill provides that no person shall operate a bicycle, except for a bicycle equipped with clipless pedals, or moped unless such bicycle or moped has pedals equipped with an approved pedal reflector. The bill also requires that any person operating a bicycle with clipless pedals shall wear either reflectorized leg bands or some other type of light reflective equipment on their legs or shoes.

SENATOR KLEMM: Originally this bill would simply have repealed the law requiring that all bicycles be equipped with reflectors mounted on the pedals. This law was passed in 1971 and amended in 1983 - long before the use of clipless pedals and cycling shoes became widespread. The committee concluded that repealing the law overlooked the safety issues the original statute was intended to address. The amendment on page seven of the calendar, reaffirms the original law requiring reflectors on pedals. But, while the original law required the seller to ensure reflectors were fitted, the amendment places the responsibility on riders. The amendment also addresses clipless pedals by requiring riders who cannot fit reflectors to their pedals to wear reflective clothing instead. Instead of doing away with reflectors, the amendment requires all cyclists to use reflective equipment or wear reflective clothing when riding after dark. The committee recommends ought to pass with amendment.

SENATOR LARSEN: This critically important bill came to my attention through a constituent request, but I want to thank the Wildlife and Recreation Committee, which actually held two hearings on this bill to help us get this correct. It is a problem when our laws don't match reality. There are in fact, clipless bicycle pedals now that never used to exist in the past. So I want to thank the Wildlife and Recreation Committee for working through this fairly complicated issue in helping us resolve what is a problem for our constituents and probably all of us have bicycle riders in our districts who ride clipless pedals. Thank you.

SENATOR SQUIRES: Senator Klemm...

SENATOR KLEMM: Senator Squires, before you ask, you can tell that I do not do a lot of bike riding.

SENATOR SQUIRES: No, this is a hypothetical question. I am wondering if a Girl Scout riding in the Memorial Day Parade fails to have reflective whatever, is the poor thing going to run afoul of the mighty force of the state government?

SENATOR KLEMM: We will make an exemption for that.

Amendment adopted.

Ordered to third reading.

Recess.

Out of Recess.

TAKEN OFF THE TABLE

Senator Below moved to take **HB 109-FN-A-L**, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor, off the table.

Adopted.

HB 109-FN-A-L, establishing a flat rate education income tax and a statewide education property tax to fund public education and making an appropriation therefor.

Question is on the committee report of interim study.

Adopted.

Committee report of interim study is adopted.

February 15, 2000

2000-3455-EBA

04/01

Enrolled Bill Amendment to HB 251

The Committee on Enrolled Bills to which was referred HB 251 AN ACT relative to official ballot procedures.

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

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to HB 251**

This enrolled bill amendment makes a technical correction and a punctuation change to the bill.

Enrolled Bill Amendment to HB 251

Amend RSA 40:13, VII as inserted by section 5 of the bill by replacing line 8 with the following:

RSA 669:5, 669:19, 669:30, 670:3, 670:4, 670:11, 671:15, 671:19, and 671:30 through 32; and votes on zoning

Amend RSA 40:14, XI(c) as inserted by section 7 of the bill by replacing line 4 with the following:

first and second Saturdays after the last Monday in _____, inclusive?"

Senator Trombly moved adoption.

Adopted.

2000-3463-EBA

08/09

Enrolled Bill Amendment to SB 228-FN

The Committee on Enrolled Bills to which was referred SB 228-FN

AN ACT relative to spousal benefits upon the death of certain retired group II members of the New Hampshire retirement system.

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

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to SB 228-FN**

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to SB 228-FN

Amend section 2 of the bill by replacing line 5 with the following:
and who originally elected and is receiving the 100 percent joint and survivorship option, or 100

Senator Trombly moved adoption.

Adopted.

HOUSE MESSAGE

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

SB 135-FN, relative to water supply land protection grants.

SENATE NONCONCURS AND REQUESTS A COMMITTEE OF CONFERENCE

SB 135-FN, relative to water supply land protection grants.

Senator Russman moved to nonconcur and requests a committee of conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Russman, Johnson, Pignatelli

Recess.

Out of Recess.

RESOLUTION

Senator J. King moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

ANNOUNCEMENTS

RESOLUTION

Senator J. King moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings enrolled bills and amendments and that when we adjourn we adjourn to the Call of the Chair.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 327, relative to responsibility of the employee and perjury under workers' compensation.

SB 332, relative to risk-based capital for health organizations.

SB 334, relative to credit unemployment insurance.

SB 345, relative to real estate transfers.

SB 346, relative to court appearances by certain business owners.

SB 354, relative to an exemption from the seat belt law for passengers in motor vehicles in parades.

SB 355, relative to name changes for criminal offenders.

SB 358, relative to court reporting services.

SB 363, relative to the sale of malt beverages.

SB 370, relative to reflectors on bicycle pedals.

SB 381-FN, relative to registration fees for off-highway recreation vehicles.

SB 382, relative to appeals of release or detention orders.

SB 421-FN-A, establishing a child daycare program credit against the business profits tax and the business enterprise tax.

SB 422-FN, relative to the housing security guarantee loan program.

SB 428-FN-A, relative to the development of certain public health initiatives and making an appropriation therefor.

SB 431, relative to certain secondary vocational education programs.

SB 450-FN, prohibiting the importation of tobacco products that violate federal law.

HB 1381, relative to the dissolution of the Pawtuckaway cooperative high school district.

In recess to the Call of the Chair.

Out of Recess.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 1381, relative to the dissolution of the Pawtuckaway cooperative high school district.

SB 178, relative to appropriations to the port authority for dredging projects.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 251, relative to official ballot procedures.

SB 228, relative to spousal benefits upon the death of certain retired group II members of the New Hampshire retirement system.

Senator D'Allesandro moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bill sent down from the Senate:

SB 46-FN, relative to the applicability of mooring permit requirements.

HOUSE MESSAGE

The House of Representatives accedes to the request of the Senate for a Committee of Conference on the following entitled Senate Bill:

SB 135-FN, relative to water supply land protection grants.

The Speaker, on the part of the House of Representatives has appointed as members of said Committee of Conference:

REPRESENTATIVES: Charles Royce
Michael Whalley
Michael Downing
Joseph Stone

HOUSE MESSAGE

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

HB 1110, establishing a committee to study landlord-tenant issues.

HB 1114-FN, relative to creditable service in the retirement system for teachers in a job-sharing position.

HB 1124-L, relative to local building codes.

HB 1126, relative to repealing the prohibition on rewards for procuring employment.

HB 1134, establishing a committee to study mental health care treatment under managed care plans.

HB 1143-FN, relative to renaming New Hampshire route 28 in the town of Wolfeboro as the "Gary Parker Memorial Highway."

HB 1168, establishing a committee to study the merits of limiting the use of social security numbers as identifiers.

HB 1179, relative to final orders of the public utilities commission.

HB 1268-FN, relative to certain vehicle registrations.

HB 1283, establishing a commission on the education of the deaf and hard of hearing in New Hampshire.

HB 1318, establishing a committee to study the instability of kerosene, gasoline, diesel fuel, and home heating fuel prices.

HB 1322, relative to the regulation of certain outdoor advertising devices.

HB 1362, relative to the reconsideration of cost apportionment within a cooperative school district.

HB 1374, extending the report date for the sex offender issues study committee.

HB 1413, relative to the rights of ownership of cemetery plots or burial spaces.

HB 1454, relative to deputy conservation officers in the fish and game department.

HB 1462, extending the report date and changing the membership and duties of the committee to study methods to promote the use of renewable energy sources.

HB 1464, relative to the licensing process for new health care facility construction.

HB 1523, relative to landlord-tenant obligations.

HB 1579-FN, establishing certain penalties for violations of the youth tobacco laws and clarifying a definition under the indoor smoking act.

HB 1583, increasing the education requirement for estheticians and manicurists and relative to the board of barbering, cosmetology, and esthetics.

HB 1592, relative to the display of the United States flag.

HB 1602-FN, establishing the New Hampshire task force on deafness and hearing loss.

HB 1607, establishing a study committee to consider legislation reducing to zero the number of mentally retarded or developmentally disabled individuals in the state who are not receiving or have not received Medicaid services.

HB 1613, exempting police officers on bicycles from certain motor vehicle laws and rules.

HCR 20, urging Congress to stop the collection of certain kinds of information from patients in a home health care setting.

HCR 24, relative to integration of people with disabilities.

HCR 32, urging the President and the Secretary of Energy to release certain amounts of petroleum from the nation's petroleum reserve.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 1110-HCR 32 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 1110, establishing a committee to study landlord-tenant issues. **Public Affairs**

HB 1114-FN, relative to creditable service in the retirement system for teachers in a job-sharing position. **Insurance**

HB 1124-L, relative to local building codes. **Public Affairs**

HB 1126, relative to repealing the prohibition on rewards for procuring employment. **Insurance**

HB 1134, establishing a committee to study mental health care treatment under managed care plans. **Insurance**

HB 1143-FN, relative to renaming New Hampshire route 28 in the town of Wolfeboro as the "Gary Parker Memorial Highway." **Transportation**

HB 1168, establishing a committee to study the merits of limiting the use of social security numbers as identifiers. **Public Affairs**

HB 1179, relative to final orders of the public utilities commission. **Energy and Economic Development**

HB 1268-FN, relative to certain vehicle registrations. **Transportation**

HB 1283, establishing a commission on the education of the deaf and hard of hearing in New Hampshire. **Education**

HB 1318, establishing a committee to study the instability of kerosene, gasoline, diesel fuel, and home heating fuel prices. **Energy and Economic Development**

HB 1322, relative to the regulation of certain outdoor advertising devices. **Transportation**

HB 1362-L, relative to the reconsideration of cost apportionment within a cooperative school district. **Education**

HB 1374, extending the report date for the sex offender issues study committee. **Judiciary**

HB 1413, relative to the rights of ownership of cemetery plots or burial spaces. **Public Affairs**

HB 1454, relative to deputy conservation officers in the fish and game department. **Wildlife and Recreation**

HB 1462, extending the report date and changing the membership and duties of the committee to study methods to promote the use of renewable energy sources. **Energy and Economic Development**

HB 1464, relative to the licensing process for new health care facility construction. **Public Institutions, Health and Human Services**

HB 1523, relative to landlord-tenant obligations. **Public Affairs**

HB 1579-FN, establishing certain penalties for violations of the youth tobacco laws and clarifying a definition under the indoor smoking act. **Public Institutions, Health and Human Services**

HB 1583, increasing the education requirement for estheticians and manicurists and relative to the board of barbering, cosmetology, and esthetics. **Executive Departments and Administration**

HB 1592, relative to the display of the United States flag. **Internal Affairs**

HB 1602-FN, establishing the New Hampshire task force on deafness and hearing loss. **Public Institutions, Health and Human Services**

HB 1607, establishing a study committee to consider legislation reducing to zero the number of mentally retarded or developmentally disabled individuals in the state who are not receiving or have not received medicaid services. **Public Institutions, Health and Human Services**

HB 1613, exempting police officers on bicycles from certain motor vehicle laws and rules. **Transportation**

HCR 20, urging Congress to stop the collection of certain kinds of information from patients in a home health care setting. **Public Institutions, Health and Human Services**

HCR 24, relative to integration of people with disabilities. **Public Institutions, Health and Human Services**

HCR 32, urging the President and the Secretary of Energy to release certain amounts of petroleum from the nation's petroleum reserve. **Energy and Economic Development**

HOUSE MESSAGE

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

HB 640-FN, establishing certain standards of accountability for health maintenance organizations and other entities providing health insurance through a managed care system.

HOUSE MESSAGE

The House of Representatives accedes to the request of the Senate for a Committee of Conference of the following entitled Senate Bill:

SB 186-FN, relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Merton Dyer
Robert Mercer
Robert Holbrook
Margaret Lynch

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 640, establishing certain standards of accountability for health maintenance organizations and other entities providing health insurance through a managed care system.

Senator D'Allesandro moved adoption.

Adopted.

HOUSE MESSAGE

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

HB 51, (New Title) providing for the voluntary registration of commercial maple producers and maple packers.

HB 86-A, (New Title) making an appropriation for renovation of the Sawyer House at the Daniel Webster Birthplace in the city of Franklin.

HB 405-FN, (2nd New Title) relative to the annual funding of placement costs for juvenile diversion and alternative disposition programs and relative to an effectiveness study of such programs.

HB 413-FN-A, relative to the renovation of regional vocational education centers, and making an appropriation therefor.

HB 505-FN, establishing a special license plate for veterans.

HB 580-FN-A-L, (New Title) authorizing a grant from funds appropriated to the joint promotional program for the purpose of marketing the Connecticut river area as a travel and tourism destination.

HB 648-FN, relative to a sludge testing program.

HB 713-FN, relative to penalties for multiple DWI offenses.

HB 725, relative to rulemaking under the administrative procedures act.

HB 1106, making the widening of Interstate 93 from Manchester to the Massachusetts border a state priority.

HB 1165-FN-L, reclassifying certain roads in the towns of Northfield, Tilton, and Waterville Valley.

HB 1196-L, giving the police department of Lincoln authority to respond to emergency situations and exercise police duties in the unincorporated place of Livermore.

HB 1264-FN, relative to the unlawful use of theft detection shielding devices.

HB 1502, (New Title) relative to lead paint abatement.

HB 1508-FN, establishing a study committee on antitrust laws as they apply to hospital business practices.

HB 1573-FN, relative to the funding of the salary of the director of emergency medical services and making an appropriation therefor.

HB 1614, naming 2 bridges.

HB 1616-FN, relative to registration fees for certain construction equipment vehicles.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 51-1616 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 51, providing for the voluntary registration of commercial maple producers and maple packers. **Executive Departments & Administration**

HB 86-A, making an appropriation for renovation of the Sawyer House at the Daniel Webster birthplace in the city of Franklin. **Energy & Economic Development**

HB 405-FN, relative to the annual funding of placement costs for juvenile diversion and alternative disposition programs and relative to an effectiveness study of such programs. **Public Institutions, Health & Human Services**

HB 413-FN-A, relative to the renovation of regional vocational education centers, and making an appropriation therefor. **Education**

HB 505-FN, establishing a special license plate for veterans. **Transportation**

HB 580-FN-A-L, authorizing a grant from funds appropriated to the joint promotional program for the purpose of marketing the Connecticut river area as a travel and tourism destination. **Energy & Economic Development**

HB 648-FN, relative to a sludge testing program. **Environment**

HB 713-FN, relative to penalties for multiple DWI offenses. **Judiciary**

HB 725, relative to rulemaking under the administrative procedures act. **Executive Departments and Administration**

HB 1106, making the widening of Interstate 93 from Manchester to the Massachusetts border a state priority. **Transportation**

HB 1165-FN-L, reclassifying certain roads in the towns of Northfield, Tilton, and Waterville Valley. **Transportation**

HB 1196-L, giving the police department of Lincoln authority to respond to emergency situations and exercise police duties in the unincorporated place of Livermore. **Public Affairs**

HB 1264-FN, relative to the unlawful use of theft detection shielding devices. **Public Affairs**

HB 1502, relative to lead paint abatement. **Public Institutions, Health & Human Services**

HB 1508-FN, establishing a study committee on antitrust laws as they apply to hospital business practices. **Judiciary**

HB 1573-FN, relative to the funding of the salary of the director of emergency medical services and making an appropriation therefor. **Internal Affairs**

HB 1614, naming 2 bridges. **Transportation**

HB 1616-FN, relative to registration fees for certain construction equipment vehicles. **Transportation**

INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered **454-462** shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

First and Second Reading and Referral

SB 454, relative to penalties for engaging in the business of retail installment sales of motor vehicles after failure to renew a retail seller's license. (Sen. Fraser, Dist 4: **Banks**)

SB 455, relative to campgrounds. (Sen. F. King, Dist 1: **Wildlife and Recreation**)

SB 456, relative to testing newborns for deafness. (Sen. Squires, Dist 12; Sen. Larsen, Dist 15; Sen. J. King, Dist 18: **Public Institutions, Health & Human Services**)

SB 457, relative to ownership of certified public accounting firms. (Sen. Johnson, Dist 3; Sen. D'Allensndro, Dist 20; Rep. Chandler, Carr 1; Rep. Buckley, Hills 44: **Executive Departments and Administration**)

SB 458, increasing the salary of the executive secretary of the retirement system and changing the title to executive director. (Sen. J. King, Dist 18; Rep. Dyer, Hills 8: **Executive Departments and Administration**)

SB 459, relative to underinsured motorist. (Sen. Russman, Dist. 19; Rep. Craig, Hills 38; Rep. Konys, Hills 33; Rep. Bradley, Carr 8: **Insurance**)

SB 460-FN, establishing a grant program to reimburse eligible districts served by municipal waste combustors. (Sen. Cohen, Dist 24; Sen. Johnson, Dist 3; Sen. Larsen, Dist 15; Sen. Disnard, Dist 8; Rep. Bradley, Carr 8: **Environment**)

SB 461, establishing a committee to study the creation of a flag to honor all police departments in the state. (Sen. J. King, Dist. 18: **Public Affairs**)

SB 462, establishing a reformed public school financing systems for ensuring educational adequacy for all children and stablishing a state public education assistance system funded solely with state tax revenues, and making an appropriation therefor. (Sen. F. King, Dist 1: **Education**)

Adopted.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, March 9, 2000 at 10:00 a.m.

Adopted.

Adjournment.

March 9, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

You have so many decisions to make for us, it must sometimes feel overwhelming. In the midst of your days filled with all kinds of activities-hearings, phone calls, caucus meetings, voice mail, snail mail, e-mail, not to mention those sessions of persuasive arm twisting - in the midst of all that busyness, take care that you do not become an activist who forgets the point. No schedule should be so full of business that there is no room for reflection on whether what is being done is worth doing at all. No life should become so busy that there is no time to take stock of it. Check your life's balance regularly, for it is the gyroscope that will keep your perspective clear and your decisions sound. It's important - for your decisions are something I have to live with. I, and many others. Let us Pray:

Lord, touch us with the steadying strength of Your guidance. Give us the experience of a good balance in our living, a right proportion in our relationships with one another, and a deeply centered authenticity that comes from taking the time to reflect and not just to act. Amen.

Senator Francoeur led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled House Bill sent down from Senate:

HB 228, clarifying permissible political expenditures.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Robert Clegg
Lynn Horton
Robert Letoureau
Jane Clemons

SENATE ACCEDES TO HOUSE REQUEST

HB 228, clarifying permissible political expenditures.

Senator Trombly moved to accede to the request for a Committee of Conference.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Trombly, Eaton, McCarley

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled House Bill sent down from Senate:

HB 553-FN-A, establishing a commission on the status of men.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Frank Sapereto
William Zolla
Robert Boyce
James Burkush

SENATE ACCEDES TO HOUSE REQUEST

HB 553-FN-A, establishing a commission on the status of men.

Senator Cohen moved to accede to the request for a Committee of Conference.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Cohen, Larsen, Brown

COMMITTEE REPORTS

HB 1136, relative to the university system of New Hampshire board of trustees. Education Committee. Vote 7-0. Ought to Pass, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: House Bill 1136 changes the title of the Dean of the College of Life Long Learning to the "President of the College for Life Long Learning". The College of Life Long Learning (CLL) is one of four institutions within the University System of New Hampshire. The others are the University of New Hampshire at Durham, Keene State College and Plymouth State College. The title of the head of each of those three institutions is President. The head of CLL is a Dean. This change brings CLL in line with the other institutions. House Bill 1136 also adds the president of CLL to the university system board of trustees. The other three presidents sit on the board, and CLL deserves representation on the board of trustees through its Dean/President. As this additional member brings the board to 27 members, the requirement for a quorum is also raised from 13 to 14 members. The Education Committee believes this bill is a matter of equity within the university system and recommends this bill as ought to pass.

Adopted.

Ordered to third reading.

SB 320, relative to ballot counting in cooperative school districts. Education Committee. Vote 6-0. Ought to pass with amendment, Senator Eaton for the committee.

2000-3608s

04/10

Amendment to SB 320

Amend RSA 671:26 as inserted by section 1 of the bill by replacing it with the following:

671:26 Counting Ballots. The town election officials shall act in like capacity for the school district in conducting the school district election. After the close of the polls, the town election officials shall turn all school district ballots over to the moderator of the school district, who shall then proceed to count the ballots publicly with the assistance of such legal voters of the district as the moderator of the school district shall appoint. Provided, however, that, in the case of cooperative school districts, the town election officials, *or the school district officials*, immediately after the close of the polls, shall count the ballots for school district officers, *and all articles on the ballot, from ballots cast in each town of the cooperative school district* and, within 24 hours, forward to the school district clerk a list of the number of votes received by each candidate for school district office *as well as all articles on the ballot*. The list shall be signed by the town clerk and witnessed by the town moderator. Upon receipt of the list, the cooperative school district clerk shall record the results from each town and shall, when the results from all towns within the district have been recorded, determine and announce the names of the winning candidates *and the results of the ballot votes. The results shall be available to the public after the final count from all polling places has been determined.*

2000-3608s

AMENDED ANALYSIS

This bill provides that in cooperative school districts, the town election officials or school district election officials shall count and record the ballots from each constituent town in the cooperative school district prior to being added to the cumulative vote count within the cooperative school district, and that the results of the vote on all articles on the ballot shall also be counted.

SENATOR EATON: Senate Bill 320 requires that in cooperative school districts, the ballots for each constituent town in the district be counted and recorded separately prior to being added to the cumulative vote count for the cooperative school district. This has been an issue in at least one cooperative district where the ballots from each town in the district were co-mingled and tallied together, and a town-by-town breakdown of the voting was not available. Passage of this bill will ensure that the public has access to the votes by individual towns within the district, for school district official elections, and for all articles on the ballot. The amendment clarifies this counting and recording applies to all articles on the ballot, not just voting for school district officials. The Senate Education Committee recommends that this bill ought to pass with amendment.

Amendment adopted.

Senator Johnson offered a floor amendment.

2000-3699s**04/09****Floor Amendment to SB 320**

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

AN ACT relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as section 3:

2 Ratification of the March 8, 2000 Inter-Lakes Cooperative School District Annual Meeting. All acts, votes, notices, and proceedings of the Inter-Lakes cooperative school district annual meeting held on March 8, 2000 are hereby legalized, ratified, and confirmed.

2000-3699s**AMENDED ANALYSIS**

This bill provides that in cooperative school districts the ballots from each constituent town in the cooperative school district shall be counted and recorded prior to being added to the cumulative vote count within the cooperative school district. This bill also ratifies all acts, votes, notices, and proceedings of the Inter-Lakes cooperative school district meeting held on March 8, 2000.

SENATOR JOHNSON: What this amendment does is the Interlake School District, which is my school district, missed posting the notice in the towns of Sandwich, Center Harbor and Meredith, by one day, although it was notified in the newspapers correctly. This amendment would ratify the district meeting that was held last night. Thank you, Madame President.

Floor Amendment adopted.**Ordered to third reading.**

SB 321, relative to a pupil's right to learn. Education Committee. Vote 6-0. Inexpedient to Legislate, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Senate Bill 321 adds three provisions to the criteria for an adequate public education. It encourages teacher mentoring and requires that students be given progressively challenging tests in order to establish a baseline, and method to measure the academic achievement of individual pupils. It also empowers the state Board of Education to identify the components of a core academic curriculum. The Education Committee felt that most of these additions focused on school improvement. With the passage of the school improvement and accountability bill earlier this session and another version pending in the House, the committee felt that these additions to the adequate education criteria are not currently needed; therefore, unanimously recommended this bill as inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 365-L, relative to the adoption of bonds or notes in certain school districts and municipalities. Education Committee. Vote 7-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-3618s

08/09

Amendment to SB 365-LOCAL

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

AN ACT relative to the adoption of bonds or notes in school districts and municipalities.

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

1 Town or District Bonds or Notes; Vote Required for Adoption. Amend RSA 33:8 to read as follows:

33:8 Town or District Bonds or Notes. Except as otherwise specifically provided by law, the issue of bonds or notes by any municipal corporation, except a city or a town which has adopted a charter pursuant to RSA 49-B, without a budgetary town meeting, [~~and except a school district or municipality which has adopted official ballot voting procedures pursuant to RSA 40:13~~] shall be authorized by a vote by ballot of ~~[2/3]~~ **3/5**, and the issue of tax anticipation notes, by a vote of a majority, of all the voters present and voting at an annual or special meeting of such corporation, called for the purpose. [~~The issue of notes or bonds by a school district or municipality which has adopted official ballot voting procedures pursuant to RSA 40:13 shall be authorized by a vote of 3/5.~~] No such action taken at any special meeting shall be valid unless a majority of all the legal voters are present and vote at such special meeting, unless the governing board of any municipality shall petition the superior court for permission to hold an emergency special meeting, which, if granted, shall give said special meeting the same authority as an annual meeting. The warrant for a special meeting shall be published once in a newspaper having a general circulation in the municipality within one week after the posting of such special meeting. The warrant for any such annual or special meeting shall be served or posted at least 14 days before the date of such special meeting. Every warrant shall be deemed to have been duly served or posted, if the return on the warrant shall so state, and it shall be certified by the officer or officers required to serve or post the same. All bonds or notes, authorized in accordance with this chapter, shall be signed by the governing board, or a majority of the governing board, and countersigned by the treasurer of the municipality, and shall have the corporate seal, if any, affixed to it. The discretion of fixing the date, maturities, denominations, the interest rate, or discount rate in the case of notes, the place of payment, the form and other details of said bonds or notes and of providing for the sale of such bonds or notes, may be delegated to the governing board or to the treasurer and shall, to the extent provision therefor shall not have been made in the vote authorizing the same, be deemed to have been delegated to the governing board.

2 Alternate Procedure for Authorizing Town or Village District Bonds or Notes for Municipal Small Scale Power Facilities; Vote Required for Adoption. Amend RSA 33:8-c, I to read as follows:

I. By a ~~2/3~~ vote, the governing board of a town or village district may call a special meeting for the purpose of authorizing the issuance of bonds or notes for the municipal financing of small scale power facilities, as such facilities are defined in RSA 374-D:1. A special meeting held under this section shall have the same authority as that of an annual town meeting. The issuance of such bonds or notes shall be authorized by a vote of ~~[2/3]~~ **3/5** of all the voters present and voting at the special meeting.

3 Procedures for Authorizing Bonds or Notes in Municipalities Adopting Charters Pursuant to RSA 49-B, Without a Budgetary Town Meeting; Vote Required for Adoption by Town Council. Amend RSA 33:8-d, I(c) to read as follows:

(c) A ~~[2/3]~~ **3/5** majority vote of the town council shall be required to authorize the issuance of bonds or notes.

4 Procedures for Authorizing Bonds or Notes in Municipalities Adopting Charters Pursuant to RSA 49-B, Without a Budgetary Town Meeting; Vote Required for Adoption by Referendum if Bonds or Notes in Excess of 10 Percent of Town's Operating Budget. Amend RSA 33:8-d, II(g) to read as follows:

(g) If a ~~[2/3]~~ **3/5** majority of the voters present and voting on the issuance of bonds or notes shall vote in the affirmative, the appropriation and issuance of bonds or notes in the amounts so stated in the question shall be declared to have been adopted.

5 City Bonds; Vote Required for Adoption. Amend RSA 33:9 to read as follows:

33:9 City Bonds. The issue of bonds or tax anticipation notes by a city shall be authorized by a resolution of the city councils, passed by at least ~~[2/3]~~ **3/5** of all the members of each branch thereof. All such bonds and notes shall be signed by the mayor and countersigned by the city treasurer, and shall have the city seal affixed thereto. The discretion of fixing the date, maturities, denominations, place of payment, interest rate, or discount rate in the case of notes, the form and other details of said bonds or notes, and of providing for the sale thereof, may be delegated to the city treasurer and shall, to the extent provision therefor shall not have been made in the vote authorizing the same, be deemed to have been delegated to the treasurer with approval of the mayor.

6 Municipal Revenue Bonds; Issuance of Revenue Bonds. Amend RSA 33-B:2 to read as follows:

33-B:2 Issuance of Revenue Bonds. A municipality may issue bonds or notes under this chapter for construction of revenue-producing facilities. Bonds issued by a municipality under this chapter shall not be deemed to be a pledge of the faith and credit of the state or of the municipality. Except as otherwise provided in this chapter, the principal of, premium, if any, and interest on all bonds shall be payable solely from the particular funds provided therefor under this chapter. The bonds shall be issued in such amounts as the legislative body may authorize by a ~~[2/3]~~ **3/5** vote as required under RSA 33:8, ~~33:8-d~~, or 33:9, as applicable. Bonds of each issue shall be dated, shall bear interest at such rate or rates, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be determined by the authorized officers, and shall mature at such time or times as may be determined by the authorized officers, except that no bond shall mature more than 40 years from the date of its issue or beyond the expiration of the expected useful life of the facilities being financed by the bonds as determined by the authorized officers. Bonds may be made redeemable before maturity at the option of the municipality at such price or prices and under such terms and conditions as may be fixed by the authorized officers prior to the issue of bonds. The authorized officers shall determine the form and details and the manner of execution of bonds. The municipality may sell its bonds in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at such discount in lieu of interest, as the authorized officers may determine. The provisions of RSA 33:11-a, 14 and 15 shall apply to bonds issued under this chapter.

7 Municipal Electric Revenue Bonds; Authorization and Issuance of Bonds. Amend RSA 374-B:2, I to read as follows:

I. Any municipality, when authorized by a ~~[2/3]~~ **3/5** vote as defined in RSA 33:8 for bonds or notes not in excess of \$100,000, or in RSA 33:8-a for other bonds or notes for towns and village districts or in RSA 33:9 for cities **or RSA 33:8-d for towns which have adopted a charter pursuant to RSA 49-B, without a budgetary town meeting**, may, subject to the approval of the commission under RSA 369:1, borrow money through the issue of revenue bonds to finance project costs, or its share of project costs, of electric power facilities. The commission in rendering its decision shall, in addition to the other requirements of said RSA 369:1, approve only such issue as the commission finds, after notice and opportunity for hearing, is appropriate to finance an electric power facility which is both consistent with the power needs of the state and necessary to supply the load plus reserve requirements created by the municipality's retail customers, and by such wholesale customers as may have existed on the day of the vote of the municipality, said load plus reserve requirements to be forecast by the municipality at a time 3 years beyond the scheduled date for commencement of commercial operation of the facility; in evaluating the ability of the municipality to supply its load plus reserve requirements at said time, the commission shall deduct from these requirements all capacity in other generating units to which the municipality will then be entitled by ownership or contract, including any contracts for the purchase of electricity to be in force at said time. The project costs to be financed may include finance charges, interest prior to and during the carrying out of any project and for a reasonable period thereafter, prepayments under contracts made pursuant to RSA 374-A:2, the funding of notes issued for project costs as hereinafter provided, such reserves for debt service (including a common reserve for debt service established pursuant to an agreement for consolidation of indebtedness under paragraph VI) or other capital or current expenses as may be required by a trust agreement or resolution securing notes or bonds, and all other expenses incidental to the determination of the feasibility of any project or to carrying out the project or to placing the project in operation.

8 Municipal Electric Revenue Bonds; Revenue Refunding Bonds. Amend RSA 374-B:12 to read as follows:

374-B:12 Revenue Refunding Bonds. Any municipality having bonds outstanding under this chapter, when authorized by a ~~[2/3]~~ **3/5** vote as defined in RSA 33:8 for towns and village districts and in RSA 33:9 for cities **or RSA 33:8-d for towns which have adopted a charter pursuant to RSA 49-B, without a budgetary town meeting**, may issue refunding bonds for the purpose of paying bonds issued by or on its behalf, at maturity or upon acceleration or redemption, subject to the approval of the commission under RSA 369:1. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service (including a common reserve for debt service established pursuant to an agreement for consolidation of indebtedness under RSA 374-B:2, VI) or other capital or current expenses from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing bonds or notes. The refunding bonds may be issued not more than 5 years prior to the maturity or redemption date of bonds being refunded. The issue of refund-

ing bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the municipality in respect of the same shall be governed by the provisions of this chapter relating to the issue of bonds other than refunding bonds insofar as the same may be applicable, but no bonds shall be refunded to a date later than the refunded bonds could have matured hereunder.

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

2000-3618s

AMENDED ANALYSIS

This bill provides that a 3/5 majority vote shall be required to adopt bonds or notes in school districts and municipalities.

SENATOR MCCARLEY: Senate Bill 365 would have changed the legislation passed last year with regard to the percentage of votes required to pass a bond, in specifically, what we like to call "SB 2-towns." It would have moved it back to the 66 percent. During the testimony, there were a number of concerns raised about the legislation passed. Last year there were a number of concerns about doing this now. Are we going to indeed be flying in the face of making it easier or harder to pass bond issues? What is good and bad about what we did simply a year ago. There were some real constitutional questions that were asked during the hearing. As a result of that, the Education Committee has offered an amendment to this bill, which would lower all districts, not just SB2-towns, but all districts, municipalities, and this is also not just for school bond issues, but bond issues in general, to 60 percent, so that the entire state would be at the same level. I would encourage, at this point in time, your support for this amended version, because I think that we do have our communities right now in a difficult situation. There is a lawsuit that has been filed relative to this question to the Superior Court. The goal, I think here, is to get an answer to this question from the Supreme Court as soon as we can, because if not, if many more six to eight weeks go by, in terms of local communities passing bond issues at whatever percentage they pass them at, you place the bond bank where they are going to be going to put together packets to go to Wall Street, in a very, very difficult situation. I think that none of us want to do that, regardless of where we might be specifically, and what the level of bond passage should be. So I would encourage support for the ought to pass as amended, and we will make a commitment on the floor that if indeed that happens, this bill will be tabled and there is a resolution with question to send to the Supreme Court. Thank you.

Recess.

Out of Recess.

SENATOR KRUEGER: First, I just want to say that I appreciate how closely Senator McCarley has worked with me to try and solve a problem that I think that we both realize is very, very serious. Unless we understand if what is contained in a lawsuit, which I am going to tell you about very briefly, and in the question we are asking the court, we may have a problem, since it is my understanding that the bond bank is very concerned about this issue. Senator McCarley has her way, and I respect that in solving the problem, and I would like to think that I have mine. Mine, very selfishly, is to pass my original bill. My original bill asks that the percent of passage in all towns in the state of New Hampshire be moved back up to a 2/3 vote. That is the simple part. Why?

Besides being a fiscal conservative, I have found it extraordinarily interesting that on March 3, in Rockingham court, it was entered; a lawsuit represented by attorney McEachern, which basically says two things. The first thing that it says is that when the legislature last year, and I believe that it went into effect, August 17, passed a bill which allowed SB2-towns a change from a historical 2/3 vote down to a 3/5 vote. In those towns, we in fact did two things that these particular plaintiffs feel were unconstitutional. The first thing is that we set up a special class of people in the state of New Hampshire, who had different percentages for passing bonds. Secondly, what we did which is subtler, put possibly the more powerful of the argument, we in fact, as the legislature, imposed a form of government on SB2-towns that those citizens of those towns never voted on, never imposed on themselves. Senator McCarley's idea is a good one. Senator McCarley believes with her amendment, that we could in fact solve one of those problems by making everyone in the state of New Hampshire adhere to the lower number. In other words, take out the provision or the question asked of the court by the plaintiffs to remove any town from a 2/3 vote and bring everyone down to the 60 percent. Everyone in the state of New Hampshire. In my mind, that does two things. One, that never answers the other question, which I think is profound, and more importantly, we are drastically changing, in the state of New Hampshire, the number of votes needed for major fiscal pieces of legislation. We haven't had huge hearings about this, people don't know about this, I think that there are groups all over the state that would feel very, very strongly that this may not, in times of Claremont, be the responsible thing to do. So although I appreciate the fact that this might in fact help the situation, and asking the court, obviously, is a very prudent thing to do. I am more concerned with the fact that by passing this amendment, we have created a brush stroke of change in the power of the electorate, that I am not sure that this state, or the towns, are going to be able to afford with no debate, no information, no numbers, nothing. The power of the lawsuit, I believe, speaks to the questions because, we, as a legislature, did something. We had never considered elements of self-government. These plaintiffs believe that it is unconstitutional because of this position of form of government. If we were to pass Senator McCarley's amendment, in my mind, again, I don't feel that we have done anything to address a very powerful argument in this lawsuit. I agree that we would, by lowering the percent, eliminate again, the special classes of people provision in the plaintiff's argument; however, I really think to do this, to find out, if it is okay with the Supreme Court, is drastic change in the way that we operate in the state of New Hampshire. I urge all of you to think about this very carefully. I believe that the timing is paramount, and I would agree with Senator McCarley about that. I have no idea, actually, how long it takes for the Supreme Court to give us this advisory opinion, but I can tell you that if we were to stick with the original bill and move everyone back up to 66 percent, the whole problem goes away; therefore, I am not exactly sure why we are going through this exercise. Thank you very much.

Recess.

Out of Recess.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Roberge.

The following Senators voted Yes: F. King, Fraser, Below, McCarley, Trombly, Disnard, Eaton, Fernald, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: Gordon, Johnson, Roberge, Squires, Francoeur, Krueger, Brown, Klemm.

Yeas: 16 - Nays: 8

Amendment adopted.

Senator Trombly moved to have **SB 365-L**, relative to the adoption of bonds or notes in certain school districts and municipalities, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 365-L, relative to the adoption of bonds or notes in certain school districts and municipalities.

Senator McCarley offered the following resolution.

2000 SESSION

00-2820

08/09

SENATE RESOLUTION

12

A RESOLUTION requesting an opinion of the justices concerning the constitutionality of **SB 365-LOCAL**, as amended.

SPONSORS: Sen. McCarley, Dist 6

COMMITTEE:

ANALYSIS

This senate resolution requests an opinion of the justices regarding the constitutionality of **SB 365-LOCAL**, as amended.

00-2820

08/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

A RESOLUTION requesting an opinion of the justices concerning the constitutionality of **SB 365-LOCAL**, as amended.

Whereas, there is presently pending in the Senate, **SB 365-LOCAL**, "An Act relative to the adoption of bonds or notes in certain school districts and municipalities"; and

Whereas, there has been proposed to **SB 365-LOCAL** an amendment (document number 2000-3618s) which would generally reduce the voting majority required to authorize the issuance of bonds or notes in cities, towns, school districts, and village districts from 2/3 to 3/5; and

Whereas, **SB 365-LOCAL** with the proposed amendment does not provide for a local referendum accepting or declining the reduction in the voting majority; and

Whereas, questions have arisen concerning the constitutionality of **SB 365-LOCAL** with the proposed amendment; and

Whereas, it is important that the questions of the constitutionality of SB 365-LOCAL with the proposed amendment should be settled in the near future, and in any event before final passage by the senate; now therefore, be it

Resolved by the senate:

That the Justices of the Supreme Court be respectfully requested to give their opinion upon the following questions of law:

1. If SB 365-LOCAL with the proposed amendment is enacted, would it in any way violate the provisions of the first sentence of Part I, Article 39 of the New Hampshire Constitution, specifying that no law changing the charter or form of government of a particular city or town shall be enacted by the legislature except to become effective upon the approval of the voters in a local referendum provided for in the law?

2. If SB 365-LOCAL with the proposed amendment is enacted, would it in any way violate the provisions of the second sentence of Part I, Article 39 of the New Hampshire Constitution, specifying that general laws authorizing cities and towns to adopt or amend their charters or forms of government shall become effective only upon the approval of the voters in a local referendum?

3. If under SB 365-LOCAL with the proposed amendment the majority voting requirements would differ between local political subdivisions with and without the optional voting procedures under RSA 40:13, will this result in the infringement of any person's rights under the equal protection, voting, or due process protections of the state or federal constitutions?

4. Do any other aspects of SB 365-LOCAL with the proposed amendment violate or conflict with any provisions of the state constitution?

That the clerk of the senate transmit copies of this resolution and copies of SB 365-LOCAL, as amended by document number 2000-3618s, to the justices of the New Hampshire supreme court.

SENATOR MCCARLEY: The Clerk is now passing out SR 12. This resolution is attempting to get at the issue of the constitutionality of making a change, and in this case, a bonding requirement, whether that change is fundamentally a change in a form of government as well as making these kinds of changes, if it does raise any equal protection issues. The Senate Counsel has worked on these and feels that we are getting at the heart of the question that we want to ask. I have also taken the liberty of suggesting that we, in addition to sending this and asking for a very, very speedy resolution, I have spoken with the municipal bond bank and asked if they would also intervene, or whatever the legal term is, no one which way it goes, but on their need for a speedy response to this issue, because they are looking, as we all know, at our communities making votes over the next several weeks, and the bond bank will then be responsible for putting together something that allows our communities who pass bonds to go out. I have actually spoken to them about that as well. I would encourage us to put these questions as expeditiously as possible, before the Supreme Court. Thank you.

SENATOR BROWN: Senator McCarley, I want to go back to my original question, which is, I am confused on how can we possibly get back to the original bill, if all of the questions going to the court seem to be dealing with the amendment and perhaps, we may feel that it should stay at 2/3 instead of 60 percent?

SENATOR MCCARLEY: Some of us may feel that and some of us may not. We understand that we can disagree on that, but I think that the

question that we are trying to get is, is this piece of legislation making this kind of change, a change in any form of government, and I think that the only way to do that is to send that question to them, which is what I feel is exactly what we are doing.

SENATOR BROWN: Thank you.

SENATOR SQUIRES: Senator McCarley, this issue is now becoming clear to me for which I am grateful. But is it true that the amendment, as we passed, does not address the statement on line 25, paragraph III? So that would remain a potential issue for litigation regardless of what the court says?

SENATOR MCCARLEY: A potential issue; however, I will tell you under RSA 40:13 there are some additional questions around this new protection and other language that is currently on the books. My hope is that the Supreme Court will read the three questions and check that other language, and will indeed push forward the question of the equal protection.

SENATOR SQUIRES: Thank you.

Adopted.

SB 432-FN-A, relative to state assistance for teachers applying for national board certification, and making an appropriation therefor. Education Committee. Vote 6-0. Ought to pass with amendment, Senator Larsen for the committee.

2000-3607s

04/10

Amendment to SB 432-FN-A

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

AN ACT relative to state assistance for teachers applying for national board certification.

Amend RSA 189:14-g, II as inserted by section 3 of the bill by replacing it with the following:

II. Beginning July 1, 2001, the department of education shall, from existing budgetary allocations, reimburse the course fee for a maximum of 10 teachers per fiscal year who successfully complete the NBPTS course. The department is hereby authorized to expend funds for the purpose of reimbursing NBPTS course fees in accordance with this section.

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

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

2000-3607s

AMENDED ANALYSIS

This bill provides that the department of education shall pay the costs associated with 10 teachers annually taking the National Board for Professional Teaching Standards certification course, and provides that teachers who obtain such certification shall be automatically certified as master teachers in New Hampshire.

SENATOR LARSEN: Senate Bill 432 provides that the Department of Education will pay the cost for a maximum of ten teachers per year to take the National Board Professional Teaching Standards Certification Course, and it provides that teachers who obtain such certification shall be automatically certified as master teachers in New Hampshire. Becoming a board certified teacher is an extensive process, and only our most

dedicated teachers attempt to earn such recognition. The certification course costs \$2,000 per teacher, and many New Hampshire teachers would like to pursue board certification, but are financially discouraged from doing so without some form of assistance. The Department of Education has already implemented this program on its own, utilizing federal funds in the Department of Education budget. Adding this language in the statute insures that this program continues to be a priority. The amendment changes the effective date and reflects that the funds from this program come from existing budgetary resources; thus eliminating any fiscal impact that is reflected in the bill as originally introduced. The Education Committee believes that this program will provide a significant value and recommends this bill ought to pass with amendment. This is an opportunity. Too often we run down teachers and their efforts. These are teachers who try and reach the highest standards of their profession, and this is a way to encourage that. I urge you to vote ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

SB 451, relative to site size standards for new school building construction. Education Committee. Vote 6-0. Inexpedient to Legislate, Senator McCarley for the committee.

SENATOR MCCARLEY: Senate Bill 451 would have made site size standards simply advisory. The department argued very persuasively that they regularly waive these, depending on what works in communities. So the bill is inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 453, relative to the expending of legacies or gifts and the transfer of funds by the regional community-technical colleges. Education Committee. Vote 6-0. Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: Senate Bill 453 is a housekeeping measure for the Community Technical College System. It allows the Community Technical Colleges to expend legacies and gifts that it receives without approval from the governor and council. It also allows the Community Technical College System to transfer funds within the system. The system has been transferring funds within its budget for several years with the approval of the Administrative Services. Administrative Services suggested that the language be cleaned up so that there would be no question as to that transfer of authority. Both of these changes will help the Community Technical College System function in the most effective manner possible. I ask for your support of the unanimous committee recommendation of ought to pass.

Adopted.

Ordered to third reading.

HCR 25, opposing the President's action to establish vast roadless areas in the White Mountain National Forest without the consultation or input of the New Hampshire citizenry. Energy and Economic Development Committee. Vote 6-2. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: Every ten years, in the country, each of the National Forests has to go through a planning process. That is a very involved thing. Everyone who has any interest in the forest and how it is operated has an opportunity to participate in the process. What happened was, the White Mountain National Forest Plan is just now in progress. It was due

to start a couple of years ago. There was no money available. Thanks to the effort of Senator Gregg, monies were put into the federal budget to allow the process to go forward, both on the White Mountain National Forest and the Green Mountain National Forest in Vermont. Some hearings have been held, but they are just getting started and in good shape. The President came in with an initiative that essentially would have short-stopped one of the issues that will be part of the discussions during the ten year plan's preparation. I guess that what I would read today is not something that is prepared by myself or one of our clerks. I am going to read something from a local editorial. This was in the *Sunday Concord Monitor* on October 24. It says, "President Clinton's plan to preserve 40 million acres of federal forest land is being hailed as the biggest conservation initiative in decades. But the plan isn't right for the White Mountain National Forest, which stands among the nation's first big conservation initiatives and remains one of the best managed. As with all national forests, there is a management plan for the Whites. Work on a new one is just beginning here. The process should be allowed to continue unaffected by Washington edicts, because it holds the best hope of balancing the views of local environmentalists, loggers, residents, hikers and the many others with an interest in the forest. Environmentalists everywhere who agree with Clinton's goal - more protection, less logging - have welcomed his initiative. But even they would do well to be warier of Washington. Much as they may like the present secretary of the interior, Bruce Babbitt, it wasn't that long ago that the man in the job was their Public Enemy No. 1: James Watt. But - to borrow Sherman Adams's town meeting metaphor - the White Mountain National Forest ain't broke, so let's not fix it. It's management should be left alone. That will serve New Hampshire best - and perhaps a nation too, as an example of how things ought to work." So all that we are saying in this resolution, which has the support of our congressional delegation and our governor, and certainly all of the local leaders in the North Country, is let the planning process go forward, Mr. President. Don't stop it because of some personal opinion that you have on how it should take place. Thank you.

SENATOR JOHNSON: I will be brief. Speaking for my district, I just want to thank Senator Fred King for all of the effort that he put in to have the public hearings, because it gave the people, particularly in the North Country, an opportunity to come down and speak on this important HCR. I just want to congratulate Senator King for doing that.

SENATOR GORDON: Very briefly, representing one of the districts where the White Mountain National Forest is located. I just want to say that there was a time when virtually everybody in the state was involved in agricultural pursuits and living off of the land. As the demographics have changed, as the economy has changed, as the world has changed, most of the people in the southern part of this state now live off of cathode ray tubes, but people in the northern part of the state, they still live off of the land; those people who are logging, and people who are farming. Sometimes I don't think that we truly appreciate that. I think for people who aren't familiar with what goes on in the northern part of this state, to make decisions unilaterally as to how our people in Washington who don't know what is going on in the northern part of the state, to make decisions unilaterally that will affect people's livelihood is improper. There needs to be a local planning process in place. Again, I would commend Senator King. I believe that this is the appropriate action for our Senate to take.

Adopted.

Ordered to third reading.

HB 1141, relative to access highways to public waters. Environment Committee. Vote 6-0

Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: I rise in support of HB 1141. This legislation was submitted on behalf of the Public Water Access Advisory Board. This bill will enable the Fish and Game Department to create new public boat access roads at a lower cost, because it will not have to maintain these roads during the winter. Fish and Game testified that this is practical legislation that would apply to the construction of new roads, whether they are acquired or constructed. The department emphasized that this bill will help provide access roads at a lower cost to the state. I urge your support. The Senate Environment Committee voted 6-0 HB 1141 as ought to pass.

Adopted.**Ordered to third reading.**

HB 1186, extending the reporting date of the Sullivan county regional refuse disposal district issues study committee. Environment Committee. Vote 6-0. Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: This legislation was requested by the chair of the study committee. Representative Patten noted that the committee has been working hard and has compiled a sizeable file of information. She also indicated that the study committee members would like to continue their duties, and therefore are requesting an extension of the reporting date from November 1, 1999 to November 1, 2000. I urge you to support the Senate Environment vote of 6-0 of ought to pass.

Adopted.**Ordered to third reading.**

HB 1386, designating segments of the Souhegan River as protected under the rivers management and protection program. Environment Committee. Vote 4-0. Ought to Pass, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: I am happy to represent the Environment Committee in support of HB 1386. This legislation received unanimous support from the House Resources, Recreation and Development Committee. The bill is also sponsored by legislators from each town along the Souhegan River. This river is a regional recreational resource that needs a long term management plan. It is worthy of protection and designation into the Rivers Management and Protection Program Designation. This designation when it is locally supported, as it is on the Souhegan, it can be a valuable way of retaining and supporting the economic benefits of open space. The New Hampshire Wildlife Federation testified in strong support of this bill citing that the Souhegan River is ranked by the U.S. Fish and Wildlife Services as the best Atlantic Salmon Nursery habitat in that region. In addition, DES testified in support of HB 1386, as did the Rivers Management Advisory Committee. This legislation also has the support of the conservation commission, the planning board, and the selectmen in the town of Merrimack. The Environment Committee voted unanimously that this bill ought to pass. I urge passage as well. Thank you.

SENATOR FERNALD: The Souhegan River is a beautiful river, it flows through my district. I am a cosponsor of this bill and I urge your votes for it. Thank you.

Adopted.

Ordered to third reading.

SB 330, establishing a committee to study the impact of water withdrawals on instream flows. Environment Committee. Vote 5-1. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3632s

04/01

Amendment to SB 330

Amend the bill by replacing section 3 with the following:

3 Duties.

I. The committee shall study the impact of water withdrawals on instream flows, including the relationship between water withdrawals and instream flows on rivers designated for protection under RSA 483 and the potential need for the incorporation of criteria for the maintenance of instream flow into water quality standards under RSA 485-A:8. The committee shall evaluate the instream flow provisions of RSA 483, as implemented by the department of environmental services, and shall recommend changes to RSA 483 and/or RSA 485-A to accomplish the purposes of watershed management for maintenance of instream flows.

II. The committee shall evaluate the effects of instream flow regulation on the rights of littoral and riparian property owners, including business and industrial operations.

SENATOR WHEELER: I rise in support of SB 330 as amended. Currently, under the guidance of the Rivers Management Advisory Committee, DES is in the process of completing proposed instream flow rules under RSA 483:9-c for establishing minimum flows on designated rivers under the Rivers Management and Protection Act. These rules represent a long and inclusive process involving all stakeholders in an effort to achieve consensus. The proposed study committee insures legislative oversight to address additional and supplemental concerns as the instream flow rules move through the rulemaking process. DES testified that the department is continuing to make significant progress and expects to have final proposed instream flow rules for designated rivers ready for consideration by the Joint Legislative Committee on Administrative Rules, nevertheless, later this year. Nevertheless, DES expects that there will be issues as the rulemaking is complicated, and the issues are going to merit further consideration by the legislature. They noted that the bill proposes a deadline of December 31, 2001. That is what the study committee reporting date is in the bill. This is intended to provide adequate time for the committee to evaluate the impact of instream flow rules when implemented, consider alternative policies and identify appropriate statutory adjustments. The amendment addresses the BIA's concern relative to the impact of such legislation on business rights. So the amendment requires the study committee to evaluate the effects of instream flow regulation on the rights of littoral and riparian and property owners, including business and industrial operations. It is important to note that this includes an agricultural operation as well. I urge you to support the committee recommendation and vote SB 330 ought to pass with amendment. Thank you.

Amendment adopted.

Ordered to third reading.

SB 388-FN-L, assessing a surcharge on waste disposed at solid waste landfills and incinerators. Environment Committee. Vote 5-0. Inexpedient to Legislate, Senator Russman for the committee.

SENATOR RUSSMAN: I rise in support of the committee recommendation of inexpedient to legislate relative to solid waste disposal. Senate Bill 388 was designed to provide new ways for New Hampshire to deal with solid waste, and to address concerns about trash coming into New Hampshire from out-of-state. I would tell you that waste management has indicated that they have reduced their inflow, supposedly somewhere around 700,000 tons down to 200,000 tons, and those are very rough figures. I don't know if it is based on this bill, but it certainly doesn't hurt New Hampshire. Massachusetts, I believe, still continues to have a moratorium of some sort, and so we can become the wastebasket for the rest of New England, which is not particularly good. I am going to be introducing a SCR to deal with the U.S. Senate legislation that will give the states more authority to regulate the flow of out-of-state trash and things of that nature, and urging them to support that to give us that right to do, because it presently violates the Interstate Commerce clause if we try and pass legislation to do that. It also would provide a lot of money, primarily. It was primarily to provide money from towns in dealing with recycling and source reduction, and dealing with solid waste as a whole. I would urge you at this point, to support the inexpedient to legislate motion.

Committee report of inexpedient to legislate is adopted.

SB 378, relative to Article 9 of the Uniform Commercial Code. Executive Departments and Administration Committee. Vote 5-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: Senate Bill 378 delays the effective date for the computerized filing system under the Uniform Commercial Code for securities from July 1 to December 31, 2001. This will allow six additional months to complete the system before it needs to start. One problem faced by smaller towns is that if they don't have the necessary equipment, they may not have the time to acquire the equipment without delay. This filing system will replace the current dual filing system with a centralized registry, eliminating errors and duplications within the dual system. The committee recommends this bill ought to pass.

Adopted.**Ordered to third reading.**

SB 404-FN, relative to costs in utility proceedings. Executive Departments and Administration Committee. Vote 5-0. Inexpedient to Legislate, Senator Francoeur for the committee.

SENATOR FRANCOEUR: Senate Bill 404 would have permitted the municipalities to recover the costs associated with utility proceedings before the Public Utility Commission. Recovery of the nature by municipalities without showing financial hardship will eventually harm all people affected by the utility because of the need to recover funds through rate increases, which would not only affect the municipality that makes the recovery. Additionally, the smaller utilities, such as water utilities, have so little capital to work with that any ruling in

favor of municipalities could essentially drive the utility out of business, which could cause a death spiral to small utilities in the state. The committee recommends this bill as inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 416-FN, relative to licensure of dietitians. Executive Departments and Administration Committee. Vote 4-0. Ought to pass with amendment, Senator D'Allesandro for the committee.

2000-3596s

08/09

Amendment to SB 416-FN

Amend the bill by replacing section 1 with the following:

1 Statement of Purpose. The general court recognizes that dietitians play an important role in treating illness, injury and other medical conditions; and in improving the quality of life of seriously ill patients; all of which can result in cost savings to the health care system. The general court finds and declares that the practices of dietitians in the state of New Hampshire affect public health, safety, and welfare; these practices makes important and distinct contributions to patient care, and it is in the public's best interest to have qualified individuals who practice in this profession. In doing so, the general court recognizes that there are many aspects of nutrition and it is not the purpose of this act to restrict the ability of any person to provide advice, counseling, or assessments in matters of food, diet, or nutrition and to receive compensation for such services, thereby assuring that all persons can obtain nutrition and dietary information, dietary counseling, and information regarding food, food products, dietary supplements, and their proper use, from any source of that person's choosing. The purpose of this act, therefore, is to establish regulations and standards of qualification, training, and experience for individuals who are practicing dietitians.

SENATOR D'ALLESANDRO: This bill establishes a licensing entity for dietitians in the state of New Hampshire. It establishes requirements for qualifications, training and experience, as well as penalties for violations of these provisions. Dietitians play an important role in health care, and though they do, there is currently no licensing provision in New Hampshire. Establishing licensure will add an element of public protection by regulating the standards of those that call themselves dietitians. Licensing dietitians may provide more opportunities for people to receive much needed dietary care with the benefit of insurance coverage. The committee amendment clarifies that this bill is intended to only apply to dietitians and is not intended to restrict the current practices of other nutritionists. The committee recommends this bill as ought to pass as amended.

Amendment adopted.

Senator Francoeur offered a floor amendment.

2000-3706s

08/10

Floor Amendment to SB 416-FN

Amend the bill by replacing section 1 with the following:

1 Statement of Purpose. The general court recognizes that dietitians play an important role in treating illness, injury and other medical conditions; and in improving the quality of life of seriously ill patients; all

of which can result in cost savings to the health care system. The general court finds and declares that the practices of dietitians in the state of New Hampshire affect public health, safety, and welfare; these practices make important and distinct contributions to patient care, and it is in the public's best interest to have qualified individuals who practice in this profession. In doing so, the general court recognizes that there are many aspects of nutrition and it is not the purpose of this act to restrict the ability of any person to provide advice, counseling, or assessments in matters of food, diet, or nutrition and to receive compensation for such services, thereby assuring that all persons can obtain nutrition and dietary information, dietary counseling, and information regarding food, food products, dietary supplements, and their proper use, from any source of that person's choosing. The purpose of this act, therefore, is to establish regulations and standards of qualification, training, and experience for individuals who are practicing dietitians.

Amend RSA 326-H:6, II as inserted by section 2 of the bill by replacing it with the following:

II. Members of the committee shall serve 3-year terms, shall hold office until successors are appointed and qualified, and shall serve no more than 2 terms.

Amend RSA 326-H:13, II as inserted by section 2 of the bill by replacing it with the following:

II. All licenses issued under this chapter shall expire on December 31, at 12:00 a.m. of the year in which the license was issued. The board shall cause notification of impending license expiration to be sent to each licensed person at least 60 days prior to the expiration of the license.

Amend RSA 326-H:15, II as inserted by section 2 of the bill by replacing it with the following:

II. Has been convicted of a class A felony or found guilty of malpractice or gross misconduct in practice as a dietitian.

SENATOR FRANCOEUR: After the hearing, I talked to the lobbyist for the dietitians and told him that he probably ought to take a look at making term limits to make it more consistent, which is one of the items that we did, we limited it to three years with two terms, which most of our other boards have. Also, we changed...that they would give 60 days notice for expiration of license, so that in December, when all of your mail came in and you threw it out with all of your Christmas cards, and all of that stuff would allow the recipients to notice it and get it back to the state in time, so basically, this is a housekeeping change. They were all in favor of it.

Floor Amendment adopted.

Ordered to third reading.

HB 1200-FN, relative to the application of education property tax hardship relief to estate planning trusts and relative to eligibility for hardship relief. Finance Committee. Vote 7-0. Ought to pass with amendment, Senator F. King for the committee.

2000-3540s

09/10

Amendment to HB 1200-FN

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

AN ACT relative to the application of education property tax hardship relief to estate planning trusts.

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

1 Definitions; Homestead; Household Income. Amend RSA 198:50, II and III to read as follows:

II. "Homestead" means the dwelling owned by a claimant or, in the case of a multi-unit dwelling, the portion of the dwelling which is owned and used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1. "Homestead" shall not include land and buildings taxed under RSA 79-A or land and buildings or the portion of land and buildings rented or used for commercial or industrial purposes. In this paragraph, the term "owned" includes:

(a) A vendee in possession under a land contract ~~and~~;

(b) One or more joint tenants or tenants in common; *or*

(c) *A person who has equitable title, or the beneficial interest for life in the homestead.*

III. "Household income" means the sum of the adjusted gross income for federal income tax purposes of the claimant and any member of the claimant's household who resides in the homestead for which a claim is made. *"Household income" shall also include all income of any trust through which the claimant holds equitable title, or the beneficial interest for life, in the homestead.*

2 Education Property Tax Hardship Relief. Amend RSA 198:51, VII to read as follows:

VII. Each claim shall be accompanied by a copy of the claimant's federal income tax return filed by the claimant for the immediately prior tax period. Claimants who were not required to file a federal tax return for the immediately prior tax period may submit an affidavit to such effect in lieu of a tax return which document shall include the claimant's social security number. *A claimant who asserts ownership in a homestead because he or she holds equitable title, or the beneficial interest for life, in the homestead shall also submit a copy of the document creating such interest and a copy of the federal tax return, if any, for the immediately prior tax period, of the trust holding legal title to the homestead.* Any documents submitted shall be considered confidential, ~~[handled so as to protect the privacy of the claimant, and shall be destroyed after all appeal periods have expired]~~ *and protected under RSA 21-J:14.*

3 Applicability. A person who qualifies to submit a claim for education property tax hardship relief under RSA 198:50, II(c), as inserted by section 1 of this act, shall have 30 days from the effective date of this act to resubmit a claim or make an original claim.

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

2000-3540s

AMENDED ANALYSIS

This bill clarifies the application of education property tax hardship relief to estate planning trusts.

SENATOR F. KING: The main issue in this legislation is that not everyone who has their property in trust is wealthy, in fact, the opposite is quite often true. There have been quite a number of cases where people who would have otherwise been eligible for the hardship abatements, have been denied simply because their property is in trust. The present law requires this denial, but is contrary to the intent of the hardship abate-

ment program. The hardship abatements in HB 999 are related to income levels, not assets. Lower income residents whose property taxes increased under the statewide property tax, should not suffer because of an oversight on the part of the legislature. The Department of Revenue supports this bill and wrote the majority of this language. They are comfortable with this legislation, and they feel that it gives them the authority and flexibility to fairly handle the applications of those who should receive hardship abatements. The Finance Committee amended HB 1200 at the suggestion of Mr. Arnold and Senator Gordon to further clarify the application of educational property tax hardship relief to state planning. The Senate Finance Committee recommends HB 1200 ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 339-FN, relative to conducting a feasibility study of various alternatives to enhance safety at the traffic circle in the city of Portsmouth, and making an appropriation therefor. Finance Committee. Vote 7-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-3562s

04/01

Amendment to SB 339-FN

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

AN ACT relative to conducting a feasibility study of various alternatives to enhance safety at the traffic circle in the city of Portsmouth.

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

1 Feasibility Study; Report. The commissioner of the department of transportation shall conduct a feasibility study of various alternatives designed to enhance safety at the traffic circle in the city of Portsmouth. In conducting the study, the commissioner shall use existing budgetary allocations and resources within the department of transportation. The commissioner shall submit a report of all findings, and any recommendations for proposed legislation, to the senate president, the speaker of the house of representatives, and the chairpersons of the house and senate transportation committees, on or before November 1, 2000.

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

2000-3562s

AMENDED ANALYSIS

This bill requires that the commissioner of the department of transportation, using existing budgetary allocations and resources, conduct a feasibility study of various alternatives to enhance safety at the traffic circle in the city of Portsmouth.

SENATOR MCCARLEY: I am going to defer to Senator Cohen.

SENATOR COHEN: This study is...anybody who has driven through the Portsmouth traffic circle knows that something needs to be done. This study really needs to be done. This would enable the Department of Transportation to spend its funds in doing a feasibility study to see what can be done for long-term improvement. There has been a tremendous increase in traffic congestion at the traffic circle, and it can't go on for much longer. I thank the Finance Committee for its support and I welcome your support as well. Thank you.

Amendment adopted.

Ordered to third reading.

SB 414-FN, reorganizing the divisions of the department of corrections. Finance Committee. Vote 7-0. Ought to pass with amendment, Senator Fraser for the committee.

2000-3567s

09/01

Amendment to SB 414-FN

Amend the bill by replacing section 3 with the following:

3 Change From Division of Field Services” to “Division of Community Services.” Amend the following RSA provisions by replacing “division of field services” with “division of community services”: 6:12, I(ooo); the introductory paragraph of 100-A:1, VII(f); 504-A:13, III; 597:2, V(c); and 651:63, V.

Amend the bill by replacing section 5 with the following:

5 Effective Date. This act shall take effect July 1, 2001.

SENATOR FRASER: This bill was referred to Finance from the Executive Departments and Administration Committee. The bill reorganizes and renames certain divisions of the Department of Corrections, and in so doing, the bill creates two new unclassified positions. One is the director of Institutional Operations, and one Director of Human Resources. Based on the state letter grades and other assumptions, the department has determined that this bill would increase state general fund expenditures by \$169,000 in fiscal year 2001, and \$177,000 in fiscal year 2002, and \$181,000 in each of the years thereafter. The Finance Committee felt that reorganization should take place after the new commissioner is in place, and that these new positions dealt with in the next budget cycle. The committee amended the bill by changing the effective date to 7/1/2001. The bill was further amended to change sections c from the Division of Field Services to the Division of Community Services. The Senate Finance Committee was unanimous in reporting this bill out as ought to pass as amended.

SENATOR D'ALLESANDRO: Senator Fraser, there is currently a piece of legislation that was in the House and it is going back, which provides for a comprehensive study of all of the unclassified positions in state government. Is this going to be in contradiction to that study by moving people around and creating positions at this time?

SENATOR FRASER: Senator, I think to probably answer your question to the best of my ability, I would assume that we embraced the basic content of SB 414. What we did...the primary change that we made was to delay the implementation to the year 2001. If that study committee should, in fact, pass both houses and is signed by the governor, certainly somebody is going to take into consideration the content of SB 414.

Amendment adopted.**Ordered to third reading.**

SB 443-FN, relative to veterinarian reimbursement for the animal population control program. Finance Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: This bill requires veterinarians participating in the animal population control program to supply the commissioner of agriculture, markets, and food a fee schedule listing fees charged for animal sterilization, examination, and pre-surgical immunizations. The bill also

requires that such veterinarians be reimbursed for the full cost of pre-surgical immunizations when participating in the reduced fee program. The exact costs of the animal population control fund cannot be determined, but the coverage for these procedures comes from funds gathered through licensing fees. There is no impact on the general fund. Senate Finance recommends SB 443 ought to pass.

Adopted.

Ordered to third reading.

SB 393, relative to single producer licensing. Insurance Committee. Vote 5-0. Ought to pass with amendment, Senator Fraser for the committee.

2000-3592s

01/09

Amendment to SB 393

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

1 New Chapter; Producer Licensing. Amend RSA by inserting after chapter 402-I the following new chapter:

CHAPTER 402-J

PRODUCER LICENSING

402-J:1 Purpose and Scope.

I. This chapter governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes some statutory language to improve efficiency and reduce costs associated with issuing and renewing insurance licenses.

II. This chapter applies to all persons required to be a licensed producer pursuant to the provisions of RSA 402:15; RSA 405:15; RSA 405:24; RSA 405:44-b; RSA 406-C:3; RSA 407-C:3; RSA 408:42; RSA 416-A:15; RSA 418:5-a; RSA 420-A:7; RSA 420-B:18, RSA 420-F:3 and New Hampshire code of administrative rules Ins 2501.03. This chapter does not apply to excess and surplus lines agents and brokers licensed pursuant to RSA 405:24, except as provided in RSA 402-J:8 and RSA 402-J:16. This chapter does not apply to consultants licensed pursuant to RSA 405:44-b, except as provided in RSA 402-J:8 and RSA 402-J:16.

III. All valid agents', brokers', and consultants' licenses as of January 1, 2001 shall remain valid until a new producer license is issued together with all necessary appointments unless cancelled, expired, or revoked.

402-J:2 Definitions. In this chapter:

I. "Business entity" means a corporation, association, partnership, limited liability company or partnership, or other legal entity.

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

III. "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as a resident insurance producer.

IV. "Insurance" means any of the lines of authority in RSA 401:1 and RSA 401:1-a.

V. "Insurance producer" means a person required to be licensed under the laws of this state in the capacity of agent, broker, or consultant who sells, solicits or negotiates insurance.

VI. "License" means a document issued or caused to be issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.

VII. "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the commissioner determines should be designated a form of limited lines credit insurance.

VIII. "Limited line credit insurance producer" means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate or group policy.

IX. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of such contract, provided that the person engaged in that act either sells insurance, or obtains insurance from insurers for purchasers.

X. "Person" means an individual or business entity.

XI. "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

XII. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

XIII. "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

XIV. "Uniform application" means the current version of the NAIC uniform application for resident and nonresident producer licensing.

XV. "Uniform business entity application" means the current version of the NAIC uniform business entity application for resident and nonresident business entities.

402-J:3 Licensed Required. A person shall not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this chapter.

402-J:4 Exceptions to Licensing.

I. Nothing in this chapter shall be construed to require an insurer to obtain an insurance producer license.

II. A license as an insurance producer shall not be required of the following:

(a) An officer, director, or employee of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(1) The officer, director, or employee's activities are other than the sale, solicitation, or negotiation of insurance, i.e., executive, administrative, managerial, clerical, or a combination of these; or

(2) The officer, director, or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(3) Employees of an insurer or of an insurance producer who respond to requests from existing policyholders on existing policies, provided that those employees are not directly compensated based on the volume of premiums that may result from these services and provided those employees do not otherwise sell, solicit or negotiate insurance.

(b) A person who secures and furnishes information for the purpose of group life insurance, group or mass marketed property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; where no commission is paid to the person for the service.

(c) An employer or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts.

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance.

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.

(f) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

402-J:5 Application for Examination. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to RSA 402-J:9. The examination shall test the knowledge of the individual concerning the class or classes of insurance for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. The commissioner may make arrangements for administering examinations. Examinations required by this section shall be developed and conducted under title XXXVII and rules adopted by the commissioner.

402-J:6 Application for License.

I. An individual applying for a resident insurance producer license shall make application to the commissioner on a uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

- (a) Is at least 18 years of age.
- (b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in RSA 402-J:12.
- (c) Has completed an approved preclicensing course of study for the lines of authority for which the person has applied.
- (d) Has paid the fees set forth in RSA 400-A:29.
- (e) Has successfully passed the examination or examinations for the line or lines of authority for which the person has applied.
- (f) Is a suitable person and intends to hold himself or herself out in good faith as an insurance producer.

II. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application the commissioner shall find that:

(a) The business entity has paid the fees set forth in RSA 400-A:29; and

(b) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

III. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

IV. Training of individuals who sell, solicit or negotiate limited line credit insurance. Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that is approved by the commissioner. 402-J:7 License.

I. Unless denied licensure pursuant to RSA 402-J:12, persons who have met the requirements of RSA 402-J:5 and RSA 402-J:6 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life insurance coverage on human lives including benefits of endowment, annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

(b) Accident and health or sickness insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income.

(c) Property insurance coverage for the direct or consequential loss or damage to property of every kind. Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property.

(d) Variable life and variable annuity products insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account, provided the individual already holds a producer license for life insurance.

(e) Lines of authority as set forth in subparagraphs (a), (b), (c), and (d), limited by the commissioner to the extent agreed upon with the applicant and set forth in the license.

(f) Credit-limited line credit insurance.

(g) Any other line of insurance permitted under state law or rules.

II. An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in RSA 400-A:29 is paid and educational requirements for resident individual producers are met by the due date.

III. An individual insurance producer who allows his or her license to lapse may, within 24 months from the due date of the renewal fee, obtain the same license without the necessity of passing a written examination, provided that educational requirements for resident individual producers are met by the due date. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

IV. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request a waiver of renewal procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

V. The license shall contain the licensee's name, address, social security number or other federal identification number, and the date of issuance, lines of authority, the expiration date, and any other information the commissioner deems necessary.

VI. Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of legal name, state of residence, business address, and mailing address within 30 days of the change. Failure to timely inform the commissioner of a change in legal name, state of residence, business address, or mailing address shall result in an additional fee pursuant to RSA 400-A:29.

402-J:8 Nonresident Licensing.

I. Unless denied licensure pursuant to RSA 402-J:12, a nonresident shall receive a nonresident producer license if:

(a) The person is currently licensed as a resident and in good standing in his or her home state.

(b) The person has submitted the proper request for licensure and has paid the fees required by RSA 400-A:29.

(c) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to his or her home state, or in lieu of same, a completed uniform application.

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis.

II. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence. No fee or license application is required.

III. The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

IV. Notwithstanding any other provision of this chapter, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to paragraph I of this section. Except as provided in paragraph I, nothing in this section otherwise amends or supercedes any provision of RSA 405:24 through RSA 405:31.

V. Notwithstanding any other provision of this chapter, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license, pursuant to paragraph I of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

VI. Notwithstanding any other provision of this chapter, a person licensed as a consultant in his or her home state shall receive a nonresident consultant license, pursuant to paragraph I of this section, granting the same scope of authority as granted under the license issued by the consultant's home state.

402-J:9 Exemption and Examination.

I. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any pre-license education or examination, except for the laws and rules of New Hampshire. This exemption is only available if the person is currently licensed in said state, or if the application is received within 90 days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state for the lines of authority requested.

II. A person licensed as an insurance producer in another state who moves to this state shall make application within 90 days of establishing legal residence to become a resident licensee pursuant to RSA 402-J:6, except that no pre-license education or examination, except for the laws and rules of New Hampshire, shall be required of that person to obtain any line of authority previously held in the prior state.

III. Upon payment of the fee required under RSA 400-A:29, and if the commissioner is satisfied that the applicant is a suitable person and intends to hold himself or herself out in good faith as an insurance producer, and upon filing a completed producers application, the commissioner may waive the written examination required for an applicant for a license under RSA 402-J:5 upon whom has been conferred the Chartered Property Casualty Underwriter (CPCU) designation by the American Institute for Property and Liability Underwriters, Inc., and who is a member in good standing of the Society of Chartered Property and Casualty Underwriters, or upon whom has been conferred the Chartered Life Underwriter (CLU) designation by The American College, or by its predecessor organization, the American College of Life Underwriters, and who is a member in good standing of The American Society of Chartered Life Underwriters.

402-J:10 Assumed Names. An insurance producer doing business under any name other than the producer's legal name is required to notify and obtain approval of the commissioner prior to using the assumed name.

402-J:11 Temporary Licensing.

I. The commissioner may issue a temporary insurance producer license for a period not to exceed 180 days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To the surviving spouse, or if none any person deemed suitable by the commissioner, or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business.

(b) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.

(c) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America.

(d) Termination of an agency.

(e) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of a temporary license.

II. The commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

402-J:12 License Denial, Nonrenewal, or Revocation.

I. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, except where another penalty is expressly provided, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

(b) Violating any insurance laws, or violating any rule, regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(d) Improperly withholding, misappropriating, or converting any moneys or properties in the course of doing insurance business.

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(f) Having been convicted of a felony.

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.

(h) Using fraudulent, coercive, or dishonest practices, or incompetence, untrustworthiness and/or financial irresponsibility in the conduct of business in this state or elsewhere.

(i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(k) Improperly using notes or any other reference material to complete an examination for an insurance producer license.

(l) Knowingly having accepted insurance business from an individual who is not licensed.

(m) Being found after hearing that the conduct of the producer is unsuitable to act as a licensed insurance producer.

II. In the event that the action by the commissioner is to nonrenew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action pursuant to RSA 400-A:17.

III. The license of a business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or

more of the partners, officers, or managers acting on behalf of the partnership or corporation and the violation was neither reported to the commissioner nor had any corrective action taken.

IV. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person violating this chapter shall, after hearing, be subject to an administrative fine pursuant to RSA 400-A:15, III.

V. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and title XXXVII against any person who is under investigation for or charged with a violation of this chapter or title XXXVII even if such person's license or registration has been surrendered or has lapsed by operation of law.

VI. The commissioner shall publish a notice of the revocation of a producer's license in such a manner as the commissioner deems appropriate for the protection of the public.

402-J:13 Commissions.

I. An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

II. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

III. Renewal or other deferred commission may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this chapter at the time of the sale, solicitation or negotiation and was so licensed at that time.

IV. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate RSA 417:4, IX.

402-J:14 Appointments and Authority.

I. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer.

II. To appoint a producer as its agent, the appointing insurer shall verify the eligibility of the applicant and file, in a form and format approved by the commissioner, a notice of appointment within 15 days from the date the agency contract is executed or the first insurance application is submitted.

III. An insurer shall pay appointment fees, in the amount and method of payment set forth in RSA 400-A:29 for each insurance producer appointed by the insurer.

IV. While such producer's appointment remains in force, an insurer shall be bound by the acts of the person named therein within his or her apparent authority as its acknowledged producer.

V. No such company shall issue a policy or other evidence of insurance through an unlicensed producer or other unlicensed person. Any violation of this provision shall after hearing, subject the insurer to an administrative fine pursuant to RSA 400-A:15, III, and, upon repeated violations, the commissioner may suspend or revoke the license of the company.

402-J:15 Notification to Commissioner of Termination; Confidentiality; Penalties.

I. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business

relationship with a producer shall notify the commissioner within 15 days following the effective date of the termination under RSA 402:15-c, using a form or format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in RSA 402-J:12 or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law, to have engaged in any of the activities in RSA 402-J:12. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

II. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in RSA 402-J:12, shall notify the commissioner within 15 days following the effective date of the termination, using a form or format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, records or other data pertaining to the termination.

III. The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a form or format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with paragraph I had the insurer then known of its existence.

IV.(a) Within 15 days after making the notification required by paragraphs I, II, and III, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in RSA 402-J:12, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(b) Within 30 days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as submitted under RSA 402-J:15, VII.

V.(a) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners, or regulatory or law enforcement shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under paragraph I was reported to the commissioner, provided that the propriety of any termination for cause under paragraph I is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(b) In any action brought against a person that may have immunity under subparagraph V(a) for making any statement required by this sec-

tion or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subparagraph V(a) does not apply because the person making the statement or providing the information did so with actual malice.

(c) Subparagraphs V(a) and (b) shall not abrogate or modify any existing statutory or common law privileges or immunities.

VI.(a) Any documents, materials, or other information in the control or possession of the insurance department that is furnished by an insurer, producer, or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the commissioner in an investigation pursuant to this chapter shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as part the commissioner's official duties.

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subparagraph VI(a).

(c) In order to assist in the performance of his or her duties under this chapter, the commissioner may:

(1) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information under subparagraph VI(a), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information.

(2) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice of the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(3) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized herein.

(d) Nothing in this chapter shall prohibit the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to RSA 91-A to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

VII. An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of RSA 402-J:15 or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with RSA 400-A:15, III.

402-J:16 Reciprocity.

I. The commissioner shall not assess a greater fee for an insurance license or related service to a person not residing in this state, or to a company not domiciled in this state, based solely on the fact that the person does not reside in this state or that corporation is not domiciled in this state.

II. The commissioner shall waive any application or license requirements for a nonresident license applicant with a valid license from his or her home state except the requirements imposed by RSA 402-J:8, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

III. Only residents of this state or residents in any other state granting similar licenses to residents of this state shall be eligible to receive licenses as insurance producers.

IV. A nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

402-J:17 Reporting of Actions.

I. A producer shall report to the commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within 15 days of the final disposition of the matter. The report shall include a copy of the order, consent to order, or other relevant legal documents.

II. Within 15 days of the initial pretrial hearing date, a producer shall report to the commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

402-J:18 Rules. The commissioner may, in accordance with RSA 541-A adopt reasonable rules as are necessary or proper to carry out the purpose of this chapter.

402-J:19 Severability. If any provisions of this chapter, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the chapter, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

2 Fees Amended. Amend RSA 400-A:29, VII(c) to read as follows:

(c) ~~Agent's~~ **Producer's** license.

(1) Application fee	[\$15] \$ 60
(2) Initial Original license	[\$20] \$150
(3) Biennial renewal	[\$20] \$150
(4) Lifetime registration fee	\$ 25
(5) Lifetime registration discharge fee	\$ 25
(6) Amendment to license	\$ 50

3 Fees Amended. Amend RSA 400-A:29, VIII(d), to read as follows:

(d) ~~Agent's~~ **Producer's** license.

(1) Application fee	[\$15] \$ 60
(2) Initial Original license [fee]	[\$10] \$150
(3) Annual Biennial renewal	[\$10] \$150
(4) Lifetime registration fee	\$ 25
(5) Lifetime registration discharge fee	\$ 25
(6) Amendment to license	\$ 50

4 Fees Amended. Amend RSA 400-A:29, IX and X to read as follows:

- IX. ~~[Agents]~~ **Producers**. Application
 [~~(other than variable annuities) exam~~] fee [~~\$ 15~~] \$ 60
- (a) Original **license**; life,
~~[health and accident, property-liability]~~
accident and health, property casualty,
 title and fraternal, 2-year term [~~\$ 10~~] \$150
- (b) **Biennial** renewal; term life,
 health and accident, property-liability,
 title and fraternal, 2-year term [~~\$ 10~~] \$150
- (c) **Lifetime registration fee** \$ 25
- (d) **Lifetime registration discharge fee** \$ 25
- (e) **Amendment to license** \$ 50

- X. ~~[Brokers]~~ **Producers**
- (a) Application [~~examination~~] fee [~~\$ 15~~] \$ 60
- (b) Original license [~~\$ 30~~] \$175
- (c) Biennial renewal [~~\$ 30~~] \$175
- (d) **Amendment to license** \$ 50

5 Fees Amended. Amend RSA 400-A:29, XI(b) to read as follows:

- (b) ~~[Brokers]~~ **Producers**
- (1) Application **fee** [~~\$ 15~~] \$ 60
- (2) Original license [~~\$ 100~~] \$150
- (3) [~~Annual~~] **Biennial** renewal [~~\$ 50~~] \$150
- (4) **Amendment to license** \$ 50

6 Fees; Other Licensing Documents. RSA 400-A:29, XIII is repealed and reenacted to read as follows:

- XIII. Other Licensing Documents
- (a) Qualification/clearance letters \$ 10
- (b) Duplicate licenses \$ 10
- (c) Continuing education status reports \$ 5
- (d) Facsimile copies (all documents) \$ 1 per page
- (e) Mail return fee, incorrect names, addresses \$ 25

7 Fees Amended. RSA 400-A:29, XIV(a) is repealed and reenacted to read as follows:

- (a) Producer; amendment to life license \$ 50

8 Fees; Insurance Consultants. Amend RSA 429-A:29, XIX to read as follows:

- XIX. Insurance consultants
- (a) Application [~~examination~~] fee [~~\$ 15~~] \$ 60
- (b) Original license [~~\$ 30~~] \$150
- (c) Biennial renewal [~~\$ 30~~] \$150
- (d) **Amendment to license** \$ 50

9 Eligibility as Agent. RSA 402:15 is repealed and reenacted to read as follows:

402:15 Eligibility as Agent. An insurance producer license to act as an agent shall be issued to any eligible person or business entity pursuant to the provisions of RSA 402-J.

10 Definition Amended. RSA 405:15 is repealed and reenacted to read as follows:

405:15 Definition; Agent. An insurance producer license to act as an agent shall be issued to any eligible person or business entity pursuant to the provisions of RSA 402-J.

11 Reference Change. Amend RSA 405:17-b to read as follows:

405:17-b Insuring Through Agents. Foreign insurance or surety companies, although authorized to transact business within this state, shall

only make, write, place, or cause to be made, written, or placed, policies or contracts of insurance or suretyship which are to be effective within this state through [~~agents~~] **producers** who are regularly commissioned and licensed to transact business in this state.

12 Issue. Amend RSA 405:24 to read as follows:

405:24 Issue. The commissioner, [~~upon the annual payment of a fee as provided in RSA 400-A:29~~] **pursuant to RSA 402-J**, may issue [~~licenses~~] **a producer license** to [~~licensed~~] **a resident** [~~agents~~] **agent** of the state; [~~subject to revocation at the pleasure of the commissioner,~~] permitting the agent named therein to procure insurance policies and contracts of insurance or suretyship to be effective in this state in foreign insurance companies not authorized to transact business in this state, but which are duly authorized to do business in some state having an insurance commissioner. [~~All such licenses shall expire annually on March 31.~~] Such insurance or suretyship placed with an unadmitted company shall be for such amount as the agent cannot place with an admitted company, and shall not be placed until the agent has first satisfied the insurance commissioner that [~~he~~] **the agent** cannot procure such an insurance in an admitted company. [~~Every licensee~~] Before delivering to the insured a policy or binder of insurance written under the provisions of this section, **every agent** shall have stamped in a form approved by the commissioner on the face of the binder or policy the following: "The company issuing this policy has not been licensed by the state of New Hampshire and the rates charged have not been approved by the commissioner of insurance. If the company issuing this policy becomes insolvent, the New Hampshire insurance guaranty fund shall not be liable for any claims made against the policy."

13 Brokers; Producer License. RSA 405:34 is repealed and reenacted to read as follows:

405:34 Brokers; Producer License. An insurance producer license to act as a broker shall be issued to any eligible person or business entity pursuant to the provisions of RSA 402-J.

14 Insurance Consultants. Amend RSA 405:44-a to read as follows:

405:44-a License Required; Limited Authorization.

I. No person, corporation, partnership or association shall, for a fee received or to be received, offer to examine, or examine or aid in examining, any policy of insurance or any annuity or pure endowment contract for the purpose of giving, or give or offer to give, any advice, counsel, recommendation or information in respect to the terms, conditions, benefits, coverage or premium of any such policy or contract, or in respect to the expediency or advisability of altering, changing, exchanging, converting, replacing, surrendering, continuing, renewing or rejecting any such policy or contract, or of accepting or procuring any such policy or contract from any company, or, in or on advertisements, cards, signs, circulars or letterheads, or elsewhere, or in any other way or manner by which public announcements are made, use the title "insurance consultant," "insurance adviser," "insurance specialist," "insurance counselor," "insurance analyst," "policyholders' advisor," "policyholders' counselor," or any other similar title, or any title, word or combination of words indicating that he gives, or is engaged in the business of giving, advice, counsel, recommendation or information to holders of policies of insurance or annuity or pure endowment contracts, unless he **or she** holds a license as an insurance consultant under the provisions of [~~this subdivision~~] **RSA 402-J**.

II. No person, corporation, partnership or association shall, by the granting of a license under [~~this subdivision~~] **RSA 402-J**, be construed to have been authorized to be other than a consultant on insurance matters.

III. The term "fee" as used in this section means compensation paid by a person served by any person required to be licensed under [this section] **RSA 402-J**. Fee shall not be construed to mean the commission paid to a licensed insurance agent or broker by an insurer.

15 Reference Addition; Insurance Consultants. Amend RSA 405:44-b, I to read as follows:

I. The commissioner may, upon receipt of a fee [of \$30] **pursuant to RSA 400-A:29**, issue to any person who has attained the age of 18 or to any corporation, partnership or association a license to act as an insurance consultant. The applicant for the license shall [file with the commissioner a written application in such manner and form as the commissioner shall prescribe, stating the line or lines of insurance for which the applicant desires such a license. If the commissioner is satisfied that the applicant is trustworthy, competent, of good moral character and financially responsible, he shall issue the license, which shall expire on June 14 of the second year after issuance, unless sooner revoked or suspended as provided in this section] **apply for such license pursuant to the provisions of RSA 402-J**.

16 Renewals. Amend RSA 408:49 to read as follows:

408:49 Renewal of Agent's Registration. [Registration of an agent may be renewed from year to year.] **Biennial renewal of an agent may be made** upon the request of the insurance corporation authorized to issue variable contracts pursuant to the provisions of RSA 402-J and the payment of [\$25] **the fee required in RSA 400-A:29**.

17 Reference Changes. Amend RSA 406-C:3 to read as follows:

406-C:3 License for Insurance Sales. A financial institution and the employees of a financial institution conducting insurance sales shall be required to obtain [an agent's or broker's] **a producer's** license authorizing the sale of insurance by complying with the licensing requirements of RSA [402:16 or RSA 405:32] **402-J**.

18 Reference Addition. Amend RSA 407-C:3 to read as follows:

407-C:3 Agents. No person, for himself or in behalf of any individual, firm, association, or corporation, shall sell, or offer to sell, any such road or other service, without being licensed therefor by the insurance commissioner **pursuant to the provisions of RSA 402-J**.

19 Reference Change. Amend RSA 416-A:15, I to read as follows:

I. Title insurance agents shall be licensed in the manner provided for agents of insurance companies by RSA [402:15 through RSA 402:26] **402-J**, except as otherwise provided in this section.

20 Producer Licenses. Amend RSA 416-A:15, IV to read as follows:

IV. The commissioner of insurance may require such examination of applicants for **producer** licenses as title insurance agents as he **or she** shall consider necessary to carry out the purposes of this chapter.

21 Reference Change. Amend RSA 418:5-a, II to read as follows:

II. Any agent of a fraternal benefit society, whether foreign or domestic, who shall so act within this state, shall be licensed by the insurance commissioner in accordance with provisions of RSA [402:15-402:23] **402-J**.

22 Health Service Corporations. Amend RSA 420-A:7, I to read as follows:

I. No person, for himself or in behalf of any person, shall sell or offer to sell any such health service as is provided for in this chapter without being licensed therefor by the commissioner **pursuant to RSA 402-J**.

23 Reference Addition. Amend RSA 420-B:18, to read as follows:

420-B:18 Regulation of Agents. All persons engaged in the solicitation or enrollment of enrolled participants shall be duly licensed agents for the sale of health insurance in the state **pursuant to the provisions of RSA 402-J**.

24 Agent Licensed; Delta Dental. Amend RSA 420-F:3, I to read as follows:

I. No person, for himself or in behalf of any person, shall sell or offer to sell any Delta benefit plan, as is provided for in this chapter, without being licensed by the commissioner *pursuant to the provisions of RSA 402-J*.

25 Reference Change. Amend RSA 402:16-a, I to read as follows:

I. The commissioner may issue a limited travel agent's license without examination to a resident of this state upon filing with the commissioner an application for a license and the fee prescribed in RSA [~~402:16 and RSA 402:17~~] **400-A:29**.

26 Repeals. The following are repealed:

I. RSA 402:16, relative to agent's examination and license.

II. RSA 402:17, relative to notice form.

III. RSA 402:18, relative to examination waiver.

IV. RSA 402:18-a, relative to examination waiver.

V. RSA 402:19, relative to license to represent additional underwriters.

VI. RSA 402:20, relative to license renewal.

VII. RSA 402:21, relative to temporary license.

VIII. RSA 402:22, relative to license revocation.

IX. RSA 402:23, relative to license expiration.

X. RSA 402:25, relative to agent's authority.

XI. RSA 402:26, relative to unlicensed agents.

XII. RSA 405:16, relative to residence.

XIII. RSA 405:17, relative to license required.

XIV. RSA 405:17-a, relative to expiration or revocation of license.

XV. RSA 405:32, relative to examination and fees.

XVI. RSA 405:33, relative to other state's license.

XVII. RSA 405:35, relative to license application.

XVIII. RSA 405:36, relative to expiration.

XIX. RSA 405:37, relative to violation.

XX. RSA 405:37-a, relative to penalties.

XXI. RSA 405:39, relative to renewal.

XXII. RSA 405:40, relative to revocation.

XXIII. RSA 405:41, relative to publication of revocation.

XXIV. RSA 405:42, relative to limited license.

XXV. RSA 405:44, relative to commissions.

XXVI. RSA 405:44-b, II and III, relative to insurance consultants.

27 Effective Date. This act shall take effect January 1, 2001.

SENATOR FRASER: This bill is a response to the federal legislation known as **TAPE INAUDIBLE** Act. The federal act institutes uniform provisions regarding the licensing of insurance agents, brokers and consultants. This bill will enact, in New Hampshire, the boiler plate provisions of the National Association of Insurance Commissioners model for such licensure. Under federal law, 29 states must adopt the NAIC model within the next three years. If 29 states fail to adopt the provisions, then licensing provisions promoted by the National Association of Registered Agents and Brokers, so-called NARAB, will be put in place. It is my understanding, Madame President, that if this bill is adopted by both bodies and signed by the governor, we will be the first state in the country to comply with the version. The committee was unanimous in reporting this bill out as ought to pass.

SENATOR WHEELER: Senator Fraser and I and the committee, had a lot of discussions on this bill. Some of the issues have not been resolved. The issue of the fees, the licensed fee is still unresolved, but we feel that it is an important enough piece of legislation that...and we have the com-

missioner, Paula Rogers, on record as saying that she is dedicated to working on this to make sure that the fees will represent a neutral revenue, not an increase revenue. It was also brought to my attention this morning, that there is an immunity from civil liability on page 18 in the amendment. This is part of the model act, it did not come up for discussion during the insurance hearings. I urge you to vote in favor of this. I think that it is a very important piece of legislation, and it is still open to further discussion, which will happen in the House.

Amendment adopted.

Ordered to third reading.

SB 395-FN-L, relative to creditable service for eligibility by retired teachers for payment of medical benefits. Insurance Committee. Vote 5-0. Interim Study, Senator Squires for the committee.

SENATOR SQUIRES: This bill was introduced on behalf of a constituent. In the retirement system for teachers, there are two points at issue here. A teacher can retire after so many years of service in New Hampshire and receive retirement benefits. Thirty years. You can move from another state, transfer payments that you have made into the retirement fund, let's say Massachusetts, enter them into New Hampshire. You're credited towards retirement so that you could teach 14 years in Massachusetts and 16 years in New Hampshire and retire with benefits. Last year the legislature added an additional benefit for retiring teachers, that is health care insurance, assuming that they have had the 30 years. A constituent, having come from Massachusetts, having had a total of 30 years of service, or will have in New Hampshire, then went to the Retirement Board and was told "no, you are not eligible for those health care benefits." The reason that he is not eligible, is that there is a specific time that you must have taught in New Hampshire to become eligible. You can't transfer benefits in effect from Massachusetts to New Hampshire, to count towards eligibility for health care benefits. So the bill is an attempt to address that problem. The fact of the matter is, it is an individual case, and it is a very complex issue. It is not clear how one would, without being absolutely arbitrary, change it. I think that it deserves a little bit more study, but even as the sponsor, after the hearing, I had to agree that it is not appropriate at this point to pass it as it was written. I hope that you will allow us to look at it a little bit more and vote for interim study. Thank you.

Committee report of interim study is adopted.

HB 730-FN, establishing a house committee to review methods for recording committee sessions, authorizing a request for proposals, and making an appropriation therefor. Internal Affairs Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill establishes the House committee of which there are no Senate members. The reason for that is that the House has been going through a certain discussion over there, relative to whether or not they should have the same recording secretarial advantages that we have during our hearings over here in the Senate. The result of their deliberations is this legislation. It allows them to study a situation which exists in their own body.

Adopted.

Ordered to third reading.

HB 1223, changing the name, amending the duties, and extending the reporting date of the committee to study the unclassified salary structure for state officers. Internal Affairs Committee. Vote 5-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, as we all know, for the past several years, the legislature has had a large number of bills concerning the salary of a single or even a few unclassified state employees. These individual changes to the unclassified salary structure have rarely taken the consideration of other comparable positions. This bill changes the name, extends the reporting date and expands the duty of a study committee that will look at the unclassified employee salary structure as a whole. The bill allows the committee to retain a consultant with funds from the salary adjustment fund. It is important to look at the salary structure as a complete entity. The committee was unanimous in reporting this bill out as ought to pass.

Adopted.

Ordered to third reading.

SB 301, relative to prohibiting the department of resources and economic development from selling to or making leases with certain entities on state park or state forest lands without prior approval by the general court. Internal Affairs Committee. Vote 4-1. Inexpedient to Legislate, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This legislation will require the approval of the general court before DRED can sell or lease property. The majority of the committee agreed that the state needs to be able to lease or sell its forest land for the purpose of forest management. Additionally, this legislation can hamper the ability from the state to successfully operate state parks. The committee recommends this bill as inexpedient to legislate.

Recess.

Out of Recess.

LAI D ON THE TABLE

Senator Fernald moved to have **SB 301**, relative to prohibiting the department of resources and economic development from selling to or making leases with certain entities on state park or state forest lands without prior approval by the general court, laid on the table.

A division vote is requested.

Yeas: 8 - Nays: 14

Motion failed.

Committee report of inexpedient to legislate is adopted.

SB 423, relative to the New Hampshire state flag. Internal Affairs Committee. Vote 3-2. Ought to pass with amendment, Senator D'Allesandro for the committee.

2000-3548s

04/01

Amendment to SB 423-FN-LOCAL

Amend RSA 3:2 as inserted by section 1 of the bill by replacing it with the following:

3:2 State Flag. The state flag shall be of the following color and design: The body or field shall be blue and shall bear upon ~~[its center]~~ *one side*, in suitable proportion and colors a representation of the ~~[state seal. The seal shall be surrounded by a wreath of laurel leaves with nine stars interspersed.]~~ *Old Man of the Mountain. To the left of the representation of the Old Man of the Mountain, arranged slightly left of center and near the top border, shall be the words NEW HAMPSHIRE, under which shall appear the date 1788 encircled by a field of 9 5-pointed stars. Below the date shall appear the words LIVE FREE OR DIE represented within an appropriate banner which shall have a white field or background, a gold trimmed border, and which shall be folded at each end.* When used for military purposes the flag shall conform to the regulations of the United States.

SENATOR D'ALLESANDRO: I believe that each member of the Senate has either received over the Internet or in the mail, the copy of the suggested changes in the New Hampshire state flag. Change is a very difficult thing, particularly when you are talking about a flag that has been in existence for a considerable period of time. When we are talking about something that represents the state, it really should be a manifestation of what the state is, and what the state represents. In 1978, a contest was held. This contest was sponsored by the statewide newspaper to talk about what the New Hampshire flag should be and how it should be constructed. The majority of the people who responded, recommended that the Old Man of the Mountain, the symbol of New Hampshire, which by the way, appears on our license plate, our driver's license and on the doors of every state police cruiser that travels throughout this state. It is something that is emblematic of New Hampshire. Yet, the Old Man of the Mountain does not appear on our flag. In 1995, the legislature put together a committee to talk about changes in the state flag. Nothing came out of that, but a constituent of mine, from the Manchester area, has spent a great deal of time and effort working on changes for the New Hampshire flag. The first thing that we encourage in this country, is participation by people. We invite them to get involved. My constituent was a teacher, who for years recommended that his students become involved in the process. When he retired he took his own advice and got involved in the process. The process to do something positive for his state and to do something that was truly reflective of New Hampshire. In developing the new state flag, the following items were taken into consideration. Does the New Hampshire flag stand out in its present format? Does it really let people know when New Hampshire is in view? The answer to those questions is no, because our flag looks just like the flag of 26 other states. Again, you have seen that situation presented to you both in letter form and if you have gone to the net, you have seen it on the Internet. The two things that are most significant about New Hampshire are the Old Man of the Mountain and our motto. Neither one appears on our state flag. The other significant aspect of New Hampshire is the United States did not accept its constitution until New Hampshire ratified the constitution. We were the ninth state to ratify the constitution. We did that in 1788, not in 1776. So, putting those things together, a) it is emblematic of our state, b) it represents the symbols that our state stands for, and they are readily recognizable throughout the country. When people think of New Hampshire, they think of the Old Man of the Mountain. It is synonymous with New Hampshire. The character of the Granite State. That stick-to-it-tiveness, that commitment, is etched in granite. Our motto "Live Free or Die." Again, emblematic of our state.

So Hubie McDonough worked diligently to put this together. He went through the process, with due diligence, doing iteration after iteration. Testing it with people around the state and brought forth, to me, his proposal, that proposal, I bring to you. Now we have a large replica of the flag that I would like to show you. This flag is truly representative of New Hampshire. When you see this flag, you know that it is New Hampshire, you don't have to guess. New Hampshire is clearly spelled out. We have the Old Man of the Mountain, our symbol, which I have iterated is on licenses, license plates, on the doors of every state cruiser, which are quite visible, by the way. We have our motto, "Live Free or Die." We have nine stars circling 1788. We were the ninth state to ratify the constitution of the United States. Emblematic of the governmental structure which we accept as the basis of American freedom and American society. This flag truly represents New Hampshire. Make no mistake, when you see this, you know that it is the New Hampshire flag. You don't have to guess. You know that it is New Hampshire. I bring this forward with that in mind. With 50 states that make up the union, we are 50 sovereign states. Each state manifesting its own identity. And very proud of its own identity. New Hampshire very proud of the Old Man of the Mountain, and very proud of the fact that we were the ninth state to ratify the constitution, and very proud of our state motto. I urge ought to pass.

SENATOR DISNARD: Senator D'Allesandro, I heard you several times use the word "significant" today. Would you believe that I think that it is extremely significant, that we don't tell the "Maineiac's" that the up-coming court case, that we want to do away with the Navy yard and that we want to give it up? Do you think that this is the time to make a presentation?

SENATOR D'ALLESANDRO: I think the presentation is appropriate at this time. I think that the fact that we are going to the court, which under the constitution, which will decide whether or not that land belongs to us, is altogether fitting and proper, and it would never have happened if we didn't ratify the constitution. If we weren't the ninth state. So as a result of that, we have this opportunity to get that land back from Maine.

SENATOR TROMBLY: For those of you who wish to vote against this legislation, have no fear, I think landslide of support for this bill probably ends with Senator Fraser if he chooses to speak. I think what Senator Disnard was alluding to, was the fact that the Raleigh, that hardly known ship that appears on our state flag, was built in that Portsmouth Navy Shipyard. But I can assure you one thing, that if you pass this bill today, the Old Man of the Mountain, is undisputedly 100 percent within the borders of the state of New Hampshire, Senator Disnard. I have to join Senator D'Allesandro in his main point. That is this: I think that he poses the question, should we decide here today, as we enter this new millennium, a much offered used phrase, I think particularly relevant today, as we enter the year 2000, do we want the flag of the state of New Hampshire to contain symbols which people recognize, which they know, which have meaning today. I have learned more about the ship on our present flag than I ever thought that I would know. Like, if you hold that up, Madame President, if you look at the Raleigh, it is in dry dock. It is a ship that is not even sailing on the ocean. I don't know why the Raleigh was chosen, but if you like that ship and you believe that tradition needs to be upheld, then have no fear, because you can vote for this bill, and the Raleigh will still appear on the state seal. Our flag, appears to me, to be some sort of a compromise for convenience, where those who developed

it, took a field of blue and said, put the state seal on it. I don't know how much thought was given to that, but I can tell you after the work that has been done on this new flag, a considerable great more time and effort was put into this new design of the flag, which Senator D'Allesandro held up for you. We are the Granite State. We take pride in having people prove things to us because of our granite fortitude. That is represented by the Old Man of the Mountain. That means something. When I went into the hearing on this bill, I thought, with all due respect, that this was probably one of the craziest ideas I have ever heard. There is no way that I was going to vote to change the state flag, because after all, we have had it for 180 years, why would I do that? Well, I listened to the testimony and I was convinced that the citizens of the state will take a great deal of pride in the new flag because it contains symbols that represent them, not an archaic notion that the state of New Hampshire should be known in the year 2000 for building ships, because that is what the present flag stands for. You know what? When that was adopted, that was relevant. Maybe there was a reason for that then, but the worst enemy for tradition is the argument that we should simply keep something for the sake of tradition, without explaining the relevance to our lives today. The Old Man of the Mountain, our granite fortitude. Live Free or Die still means something to the people in New Hampshire. Nine stars, where the birth of this nation was created here. That had relevance. And for heaven's sakes, the name of the state on the flag. That has relevance in the year 2000. I think that it makes a great deal of sense for us to adopt this legislation. I hope to God Almighty that in 200 years, subsequent generations are debating whether or not the notions that we follow for this flag are relevant to them then. We contain the right to revoke, to choose our own government, in our constitution. So choosing our flag is not a major step in acrobatics. Our forebearers encouraged us to reexamine our form of government, and most certainly, I think that if they wanted us to do that, they would not object to us looking at the flag in our own times. Thank you Madame President.

SENATOR BROWN: Senator Trombly, I am wondering if we could see the two flags side by side, to get a sense of how they look? My question to you is **TAPE CHANGE** in the next election, with a colored picture and a little bit of an explanation, to ask people of New Hampshire, do they want to change the flag? Or do we have to do it this way?

SENATOR TROMBLY: I am glad that you asked that question. Obviously, I think that the easy answer, Senator Brown, is to say when they elect us, they trust us to make those decisions, but there was a contest held by the Museum of New Hampshire History last fall. There were a few ways that you could get people to vote. There was an insert in the Union Leader which I am not sure many people responded to. There was an insert in the e-mail. You could do it by e-mail, or you could do it in person. There were 69,615 votes cast, which I think is a considerable number of votes. The winning favorite New Hampshire symbol was the Old Man of the Mountain. There was a choice of 21 symbols. My face came in 21. There was a choice of 21 symbols, and the Old Man of the Mountain came in first, so I think that the fact that we go that half step and put the Old Man of the Mountain on lots of things, and the people who voted in that contest, voted unofficially, chose the Old Man of the Mountain, I think is significant.

SENATOR HOLLINGWORTH (In the Chair): Senator Trombly, perhaps if you put the bulls eye around your face you might have come in higher on the list.

SENATOR TROMBLY: I think that you may be right, Madame President.

SENATOR FRANCOEUR: Sitting on the Internal Affairs Committee and voting in the majority were myself and Senator Klemm. As we listened to the testimony, as Senator D'Allesandro and Senator Trombly have today, I can understand their rationale and reasoning. This is one that I think each individual here in the Senate is going to have to take a look at and vote, really, on their own feelings. I wish to express my opposition to SB 423, which would alter the New Hampshire state flag by removing the state seal and its inscription and substituting the Old Man of the Mountain in the state motto. The current state seal was adopted in 1784 and it depicts the sun rising on the fortunes of the state. New Hampshire's enterprises are represented by a vessel on the stocks, as represented by Senator Trombly, symbolizing the maritime activity that had sustained New Hampshire in peace and in war. The seal continued in use with minor changes until 1931. In that year, the seal was redesigned to specifically to represent John Paul Jones's ship the Raleigh, and a granite boulder was added to symbolize the Granite State. The state flag was adopted in 1909. In addition, in the tradition of other state flags, the banner above the seal of the state of New Hampshire, which is reserved for the highest symbolic representation of the state, and is protected from frivolous uses by RSA 3:9-a. When the seal was altered in 1931, the flag was also altered, but only to adopt the revised official seal. The Old Man of the Mountain is a wonderful natural curiosity, but is not appropriate. In 1945, the Old Man of the Mountain was officially designated the state emblem. That is appropriate. The words "Live Free or Die" were then adopted as the state motto. The emblem and the motto have since been given more than adequate public use and exposure. Our state seal and flag should be a single symbol, and that symbol should be a conscious decision of our history and traditions. As I mentioned in an interview this last week, and as we get interviewed, I think, different members of the committee, we all look at our flag, it is hanging there on the wall. I ask you to take a look at the Old Man of the Mountain and hang that on the wall. I was quoted as calling it a pile of rocks. I believe that if you look at our flag, wherever it is, and however it hangs, you can tell that it is from New Hampshire and to be proud of it.

SENATOR JOHNSON: I just have a statement and a question for Senator D'Allesandro. Responding to Senator Trombly's comments on tradition. I would just like to comment that I think that a lot of our tradition is history, so I wouldn't want to write that off completely. I heard Mr. McDonough this morning on Public Radio, and he certainly did a marvelous job in his position on the radio. I appreciated what he said. I am sure that he has worked very hard to make this happen. My question to Senator D'Allesandro, in addressing what Mr. McDonough said this morning on Public Radio, can we be assured that the state seal and inscription will still remain, and the flag will be separate from that?

SENATOR D'ALLESANDRO: The answer to that is yes.

SENATOR JOHNSON: Thank you.

SENATOR FRASER: I have a different reason why...I was on the committee, Madame President, and I voted in favor of the change. I have a different reason for having done that, and I will try not to speak too long on it. Back in the years of 1984 & 1985, the Concord Country Club hosted a professional golf tournament here in Concord. In those days, it was called Hogan Tour. Today it is called the Nike Tour. In fact, many of the players that played here in Concord, now play in the big tour, such as Russ Cochran, but at any rate, my responsibility was to arrange for a

tour for the wives of the players. That was one of the things that I had to do. Not being sure what they might want to see, we asked them as they boarded the bus, where they would like to go? There were two places that they wanted to go. So what we did was go to one one day and did the other one the next day. The two places that they wanted to go to were the Old Man of the Mountain and they wanted to go to Portsmouth. They wanted to go to the seaport. We did that for two years. I was so impressed with the number of people from out of this state, who wanted to see the Old Man of the Mountain, and that is the reason why I voted for the bill in the committee. Thank you Madame President.

SENATOR RUSSMAN: I am concerned that if we have it on the flag that they may not want to go and see it because they would have already seen it. The other thing that I was more concerned about is...you know, we are due for a major earthquake, and we could be back here with quite a problem. Certainly rushing into the new millennium as we are instead of Live Free or Die, perhaps it would be more appropriate to have an e-mail address. I surely do appreciate all of the work that has been done.

SENATOR COHEN: I have been open-minded about this and have heard some of the discussion today. I think that one important point is the seal and the flag. I think that it makes sense to keep it the same picture and not have one thing on one and another on the other. It is confusing. I also think that...I was pleased that Senator Fraser said that the people wanted to see the Old Man of the Mountain and the seacoast. The flag that we have right now...thank you very much for that, Senator Fraser. The flag that we have right now represents the seacoast. We are at a critical time in our history where the state of New Hampshire is finally standing up and fighting to preserve the Portsmouth Naval Shipyard as part of New Hampshire. There is tremendous evidence. This is a time where we are taking the case to the U.S. Supreme Court to fight for the Portsmouth Naval Shipyard as part of New Hampshire, which it is. There is tremendous evidence that it is. I think that it is important that we stand and fight for the Portsmouth Naval Shipyard. Now is not the time to be talking about getting something as important as this shipyard, off of the state flag. Let's keep it as the seal, as well as the flag. Thank you.

SENATOR F. KING: I want to thank everybody for publicizing that the Old Man of the Mountain, which is the gateway to Senate District One, as you travel up through Franconia Notch and enter into Senate District One, the Old Man of the Mountain looks down on you, and he is simply saying, stay and spend money.

SENATOR EATON: We have talked about the North Country and we have talked about the seacoast, and we are always forgotten about in Cheshire county. Now I am thinking about an amendment for Mount Monadnock on it. So we will look at that one too.

SENATOR J. KING: I think that the purpose of the flag...what is the best flag that we are going to have? What is the best flag that tells about New Hampshire when people look at it? How do they know what state that you are talking about if you are walking down the street or wherever you are? Tradition is great, but don't let it get in the way of progress. This is progress. Advertising the state of New Hampshire is a very, very important factor. I am strongly in support of it. I am usually as traditional as they come, but I am strongly in support of this.

SENATOR MCCARLEY: I am going to speak very briefly. I am going to acknowledge something that some of you may know. I am not a

New Hampshire native, so I want to commend the speakers today, this has been a great history lesson from my perspective. I thank all of you for the work that you have done, but I am not going to vote for it.

Amendment failed.

LAI D ON THE TABLE

Senator Pignatelli moved to have **SB 423**, relative to the New Hampshire state flag, laid on the table.

Motion failed.

Question is on ordering to third reading.

Motion failed.

Senator Francoeur moved inexpedient to legislate.

Adopted.

SB 423 is inexpedient to legislate.

SCR 3, rescinding the 1979 call for a federal constitutional convention. Internal Affairs Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: In 1979, the legislature passed a call for a constitutional convention which at that time was perfectly stated and it was for passing a balanced budget with the hard work, honest efforts and the great leadership provided by President Clinton. It has been proven that a balanced budget can be submitted by a President's special committee to that act and has been done, so that there is no need for us to have an open-ended constitutional convention, at which any amendment to amend the constitution could be introduced. Therefore, the committee has voted ought to pass on this resolution which would rescind the prior call for a constitutional convention.

Adopted.

Ordered to third reading.

SCR 4, urging the federal government to establish a post office in the town of Madbury. Internal Affairs Committee. Vote 5-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3583s

08/10

Amendment to SCR 4

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

A RESOLUTION urging the federal government to establish a new zip code for the town of Madbury.

Amend the bill by replacing all after the title with the following:

Whereas, the town of Madbury has a population in excess of 1,500; and

Whereas, because the town of Madbury has no designated zip code, causing mail to be delayed, misdirected and lost, and causing confusion and annoyance on the parts of persons outside the town and the state of New Hampshire trying to reach the town of Madbury and residents of the town of Madbury; and

Whereas, the town of Madbury has a fast growing population; and

Whereas, no known opposition exists within the town of Madbury to establishing a zip code for the town; and

Whereas, it appears that the residents of the town of Madbury support this resolution; now, therefore, be it

Resolved by the Senate, the House of Representatives concurring:

That New Hampshire's congressional delegation and the federal government are strongly urged to take all possible steps necessary to expedite the establishment of a zip code for the town of Madbury; and

That copies of this resolution be forwarded by the senate clerk to the New Hampshire congressional delegation and to the United States Postmaster General in Washington, D.C.

2000-3583s

AMENDED ANALYSIS

This senate concurrent resolution urges the New Hampshire congressional delegation and the federal government to expedite the establishment of a zip code for the town of Madbury.

SENATOR TROMBLY: This bill would call on the federal Post Office not establishing a post office south in Madbury, but to give Madbury its own zip code and change the state flag. Just kidding. Therefore, the amendment, Madame President, urges that the post office give the good citizens of Madbury their own post office and 90210 is taken, so it will be something different than that.

Amendment adopted.

Ordered to third reading.

SB 305, relative to payments to defeat eviction for nonpayment of rent. Judiciary Committee. Vote 7-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: Senate Bill 305 allows a tenant to defeat an eviction for nonpayment no more than 3 times within a twelve-month period by paying the arrearages and liquidated damages before the expiration of the notice of a demand for rent or notice to quit. Senate Bill 305 is offered to close a loophole in the current landlord-tenant law and would address the chronically late rent payers. Senate Bill 305 is fair to both landlords and tenants, and received no opposition at the hearing. The Judiciary Committee recommends that SB 305 be ought to pass.

Adopted.

Ordered to third reading.

SB 309, relative to the criteria for awarding or modifying alimony. Judiciary Committee. Vote 6-0. Inexpedient to Legislate, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: Senate Bill 309 would have allowed the court, when awarding or modifying alimony, to consider information describing the awards or modifications of alimony involving similarly situated persons. New Hampshire statute used to require that parties paying alimony come back every three years for review. This statute was repealed and now there is no regular review. However, as alimony is rarely awarded for an unlimited period of time, and one can already go back to court when there has been a change in financial circumstances, the Judiciary Committee recommends that SB 309 be inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 315, changing the form for writs of execution. Judiciary Committee. Vote 7-0. Ought to pass with amendment, Senator Fernald for the committee.

2000-3640s

09/01

Amendment to SB 315

Amend RSA 527:12 as inserted by section 1 of the bill by replacing it with the following:

527:12 Form. Writs of execution shall be substantially in the following form:

THE STATE OF NEW HAMPSHIRE

..... ss. To the sheriff *or deputy* of any county [~~or his deputy~~]:
[L.S.] Whereas,, of, by the consideration of our justices of our court of, holden at, in said County of, on the Tuesday of, recovered judgment against of for the sum of dollars, and costs taxed at, as appears of record, whereof execution remains to be done. We command you, therefore, that of the *money*, goods, chattels [~~or~~], lands, *personal estate, property interest, right or credit* of the said debtor, in your precinct, you cause to be levied and paid to the said creditor the aforesaid sums, with lawful interest thereon, and more for this writ and your own fees; and make return of this writ, with your doings thereon, to said court, to be holden at, in said county, upon the Tuesday of

Witness,, Esquire, the day of,
....., Clerk.

SENATOR FERNALD: A brief explanation about this bill. If someone owes you money and they refuse to pay, your recourse is to sue them. If you win, you get what is called a judgement and then to collect on the judgement, if they still refuse to pay, you have to get an execution from the court, which you then send to the sheriff, and the sheriff goes out to execute on property of the debtor to satisfy the judgement. About ten years ago, there was a Supreme Court case in New Hampshire that cast into doubt, what sort of property you could actually ask the sheriff to execute upon to satisfy a judgement. The sheriffs of the state have taken a position that they can only execute on personal property and real estate, which leaves out other types of property, like stocks and bank accounts. So someone could have \$500,000 in the bank, but you can't get at it. The purpose of this bill is to add a few words to the form of writ of execution that we use in this state, so that it is clear that all types of property are subject to execution by the sheriff to satisfy a judgement. Thank you.

Amendment adopted.

Ordered to third reading.

SB 343, relative to disclosures concerning sexual offenders in sales of real property. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Brown for the committee.

2000-3645s

05/10

Amendment to SB 343

Amend the bill by replacing section 1 with the following:

1 Conveyance of Realty; Disclosure Statements; Sexual Offenders. Amend RSA 477:4-e, I(a) to read as follows:

477:4-e History of Property or Community.

I.(a)(1) The owner of real property, or any agent of such owner, shall not be required to disclose information to a buyer regarding that such real property was a site of a homicide, other felony, or a suicide, unless the buyer requests such information of the owner or agent and the owner or agent has knowledge that the property was the site of a homicide, other felony, or suicide.

(2) In any sale of real property, residential property disclosure statements shall include a paragraph encouraging purchasers to exercise whatever due diligence they deem necessary with respect to information on any sexual offenders registered under the provisions of RSA 651-B that may reside in the area.

(b) No cause of action shall arise against an owner of real property or any agent of such owner if such owner or agent discloses information at the request of the buyer [pursuant to subparagraph (a)].

II. Notwithstanding paragraph I, the seller and buyer of real property shall be free to negotiate contractual rights of disclosure concerning the [matter] *matters* in [RSA 477:4-e, I] *this section*.

2000-3645s

AMENDED ANALYSIS

This bill requires residential property disclosure statements to include a paragraph encouraging purchasers to exercise their own due diligence in checking related public information records on sexual offenders.

SENATOR BROWN: Senate Bill 343 provides a disclosure statement encouraging purchasers of a real estate to exercise whatever due diligence they deem necessary with respect to information on any sexual offenders registered under the provisions of RSA 651-B. Senate Bill 343 was requested due to some confusion among realtors which has arisen since the passage of "Megan's Law." Senate Bill 343 provides in writing, a reminder to purchasers that if they would just check out the school system in an area, that they should also check with police regarding the presence of offenders who are required by statute to register. The Judiciary Committee recommends that SB 343 be ought to pass as amended and encourages your support. Thank you.

Amendment adopted.

Ordered to third reading.

SB 349, relative to the sale of the marital residence or other real property in a domestic proceeding. Judiciary Committee. Vote 5-1. Inexpedient to Legislature, Senator Fernald for the committee.

SENATOR FERNALD: At the hearing on this bill there was some testimony from people concerning cases where they felt it had been inappropriate for the court to order the sale of a residence in the middle of a divorce rather than at the end. The committee found this bill to be inexpedient to legislate because the change that is proposed by this bill would be basically a statement that it would be unjust to ever order the sale of a residence in the middle of a divorce. There are many times when that is exactly the right thing to do because the circumstances of the parties are such that the house has to be sold. We understood the spirit behind this bill but, the wording itself, seems inappropriate. Thank you.

SENATOR GORDON: I am the one dissenting vote in the committee. I just wanted to say that this is one of those bills which should be absolutely, totally unnecessary to address a problem that common sense should have addressed itself in the court system, but it doesn't always work that way. I just wanted to say that I disagree, and feel that in the course of a divorce, if there is a marital residence and the party who is living in that residence is able to afford the upkeep and continuing cost of maintaining that residence, there shouldn't be, from my point of view, any reason why that residence should be sold or be required to be sold in the court proceeding. I would indicate that I don't believe that most judges, in most circumstances, would order that to be the case; unfortunately, in the one case that was brought to us, that was the case. I am not sure that we need legislation to address it, but unfortunately, if these types of practices continue, then we will be back again next and the year after that.

Recess.

Out of Recess.

Senator Johnson moved to have **SB 349**, relative to the sale of the marital residence or other real property in a domestic proceeding, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 349, relative to the sale of the marital residence or other real property in a domestic proceeding.

SB 386-FN-L, relative to names on birth certificates and affidavits of paternity. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3620s

01/09

Amendment to SB 386-FN-LOCAL

Amend RSA 126:6-a, III as inserted by section 1 of the bill by replacing it with the following:

III. In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court. *Each final order affecting a determination of parentage of a minor child shall be forwarded by the court to the clerk of the town or city in which the birth occurred for entry on the birth certificate. The surname of the child shall remain unchanged unless otherwise designated in the court order.*

2000-3620s

AMENDED ANALYSIS

This bill requires final orders of a court determining paternity to be forwarded to the clerk of the town or city in which the birth occurred for entry on the birth certificate.

SENATOR GORDON: Senate Bill 386 is a bill that deals with issues of paternity. The current law requires that when a determination of paternity has been made, that the birth certificate in the community in which the child was born, will be changed to reflect the court order. Unfortunately, there is no process in place, currently, for the court to inform the community that there has been a determination decision. What this bill

very simply does, is require the court to send notification to the community in which the child was born, that the birth certificate should be changed to reflect the correct paternity.

Amendment adopted.

Ordered to third reading.

SB 418, relative to liquor liability insurance coverage. Judiciary Committee. Vote 7-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3641s

03/09

Amendment to SB 418

Amend RSA 178:2-a as inserted by section 1 of the bill by inserting after paragraph II the following new paragraph:

III. The commission shall adopt rules, pursuant to RSA 541-A, relative to procedures and criteria necessary for a certificate of insurance for liquor liability to be required for the issuance of a liquor license.

SENATOR GORDON: This is truly an extremely important bill. What currently happens today, is that we have purveyors of alcohol, marketers of alcohol in this state, which would be stores, bars and taverns, that sell, and in some cases, violate the law. That is that they sell to minors, or they sell to people who are already intoxicated. Under our current law, we have a very liberal standard in terms of revoking licenses. As you probably know, you have to be guilty of five offenses in a three-year period of time in order to have your license revoked. So this bill was brought to me by a constituent. Somebody bought alcohol, they went out and became involved in an automobile accident, they weren't somebody who was properly sold to, and then there was no recourse for anyone to sue. What happens in many cases, the purveyors of the alcohol have no insurance. What this is, is a financial responsibility bill. It is very similar to financial responsibility when you drive on the highways. If you have demonstrated that you are not a proper driver on the highways, and you have either been involved in an accident, or you have had offenses in the past, you are required to show financial responsibility. What this would do is to require purveyors of alcohol, if they are chronic offenders, if they continuously or continually sell to minors, or they sell to intoxicated people, that they be required to show that they have financial responsibility as well.

Amendment adopted.

Ordered to third reading.

SB 438-FN, relative to habitual simple assault. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Fernald for the committee.

2000-3458s

05/09

Amendment to SB 438-FN

Amend the bill by replacing RSA 631:2-a, III as inserted by section 1 with the following:

III. Simple assault shall be a class B felony where the actor has been twice previously convicted of an offense under RSA 631,

either as a felony or as a class A misdemeanor. The court shall, where it deems necessary, require persons convicted under this paragraph to receive appropriate psychological counseling.

2000-3458s

AMENDED ANALYSIS

This bill creates a new category of assault, to be known as habitual simple assault, classified as a class B felony. The bill also requires that persons convicted of habitual simple assault receive appropriate counseling.

SENATOR FERNALD: This was a bill that was sponsored by Senator Russman. He has pointed out a problem that we have in our existing law in practice, which is that often times a person is charged with a more serious form of assault, and it is let down to a lesser charge. Also we have people who are found guilty of assault over and over again, but the penalty for a simple assault is relatively minor. This was a way to get at those people who are habitually assaulting people, and sending them a message that you can't get slapped on the wrist over and over when you are stepping out of line. The committee supported this bill and I urge your support as well.

SENATOR MCCARLEY: I rise to offer as an explanation why I am not going to be able to support this bill. We often find ourselves speaking on things that we feel very seriously about, and I think that if we don't indicate on a bill that on its face, would appear to be reasonable, and suggest that you are not very concerned about assaultive behavior and what have you, and somehow or another, you are perceived to be soft on crime or whatever. I understand about habitual offenses. Perhaps, two is a number that troubles me, that after two, you are facing a Class B felony, which is a three to seven-year potential in jail and assault, as I understand it, in having read the RSA's this morning, simple assault is not necessarily anything that we would condone, but I am not sure that two guilty charges of it should land you the third time, facing a Class B felony, as I read the bill. I am particularly concerned, again, I am not on the Judiciary Committee, I didn't follow this legislation, but I am going to remind members of Senate Education. We spent a lot of time on Wednesday, talking about what goes on inside, particularly our high schools, and what we should be reporting to parents. We saw a form that is filled out that is sent to the police station. We talked about police officers in our schools. Things that used to be considered playground fights, have changed because the world has changed. But what worries me, is for our 17 & 18-year olds, that I consider to be children in our schools, we often have situations where those children are now getting assault charges placed against them. I just am concerned that this legislation and the threat of a Class B felony after two guilty charges of simple assault is going too far, so I can't support the bill as it is currently written.

SENATOR FRANCOEUR: Senator Fernald, after listening to Senator McCarley's question here, in reading it, it says "convicted of two simple assaults". Is there a time limit between the assaults, or did the committee talk about that? Is it over a ten-year period, or is there anything that would give the court some leniency to base on the, okay, as a child, maybe they did it twice in school and then all of a sudden, now they are 35-years old. Is there anything at all to give them some discretion?

SENATOR FERNALD: There is no time period specified in the bill and it wasn't discussed in the committee. It is an interesting point.

SENATOR FRANCOEUR: Do you think that it would be something that we could probably work on by tabling or recommitting to committee, that maybe the committee could take a look at that, and perhaps that would help Senator McCarley feel better over the bill?

SENATOR FERNALD: Yes, I suppose so.

SENATOR RUSSMAN: Yes, thank you for giving me the credit or the blame...one of the former speakers for bringing this bill forward, but this in all honesty, was at a request from the Rockingham attorney's office who has had some real difficulty in dealing with, essentially, perpetual bullies. People that push people around or have a fondness for punching people out. I think that our society...and I do a lot of defense work frankly, but at the same time, I recognize that our society is becoming a more violent society. A certain segment of it is certainly...whether it is in road rage or in the school systems, or in bar rooms. I can tell you even back when my son was in high school, in Exeter, there isn't a lot of undue eye contact with certain kids as you walk down the hall. Okay? I taught my son to carry his book bag on one shoulder, so that he can drop it quick if he has to duke it out with somebody. That is sad that you have to do that. I can tell you that if they are under age, they are going to be treated as juveniles, okay? And the story I just told you was in Exeter, never mind, you get into some of the more urban areas of the state. There ought to be a message sent that on the third time...this is not mandatory sentencing. This prosecutes for a discretion here as to what happens. They can still recommend a suspended sentence. Obviously if someone...if it has been ten years in between prosecutions, certainly no one is going to go to jail, or what have you, that is why the provision for counseling is in there as well, because obviously there is something wrong with this individual who needs anger management. You know, this is put in for people who need counseling of some kind, or manage their anger in some reasonable fashion. That is what we are looking for, but we are seeing it more and more. My son for a while, was a bouncer down in one of the places at the beach. I can tell you that it is not always pleasant out there. These people...how many times should you get in a fight with somebody? I realize that pushing somebody with your finger can be considered assault, but obviously again, this prosecutes a little discretion in any of these cases. The county attorney office is running up against certain segments in our state, difficulties with people that have a propensity to want to punch somebody, or get violent, or push people around. So that is what the idea behind this bill was. Certainly, at some point, there has to be a wall with people that you respect, and respect other people. That is the purpose of the bill.

SENATOR WHEELER: I signed onto the bill as a sponsor, and I certainly understand what Senator Russman is saying, but, having listened to Senator McCarley, and having read the definition of simple assault, I don't think that this is the right approach, considering how we do define simple assault in our statute. I would be much more comfortable with wording that talked about repeated behavior, because clearly, we don't want repeated bullying, repeated actions, but to have an arbitrary number of three, whatever it might be, where somebody just took offense because you gave them a light push...even with the discretion that is in it, I think that it is going too far. So, I apologize to Senator Russman for changing my mind, but I have.

SENATOR COHEN: We heard discussion that this would be two charges. We are not talking about charges, we are talking about convictions.

Convictions of an offense either as a felony or a Class A misdemeanor. This is not just charges of pushing somebody. This is actual conviction. They are not going to get convicted, or they are highly unlikely to be convicted, of just some little playground fight. I don't think that is likely to happen. We are talking about something more serious than that. Now perhaps there is some discussion about a tabling motion to have some sort of time limit on there. That I could support. But, I think that this is something that really needs to be done. I agree that we are becoming more of a violent society, and we need to take steps to move in the other direction and to do something about this. I can support a tabling motion to perhaps have a specified time limit, but I think that this is something that we really ought to pass.

Recess.

Out of Recess.

SENATOR FERNALD: I just want to speak briefly to this bill. There has been a suggestion that passing this bill will be sending people to prison for inconsequential reasons. I don't think that is at all the case. If someone is charged with an assault, they are charged criminally, and they have to go to court. Usually district court, and they are appearing before a judge and they are found guilty. Then we are talking about this happening a second time, and a third time. So this is not just when a someone pushes someone three times, or you bump them with your shopping cart or something at Shaw's. This is something a lot more serious. We all talked about violence in society, and things that we call assault that used to be just schoolyard fights, and what is our attitude about these? I think that it is important that our attitude should be that all assaults are assaults, whether it is with a hockey stick in a professional hockey game, or it is schoolyard fights, or what it might be. It was after all, very recently, here in Concord, I believe, that a high school student was killed, in what we would normally consider, just a schoolyard fight. So I think that this is an important matter. Thank you.

Senator Francoeur moved to have **SB 438-FN**, relative to habitual simple assault, laid on the table.

Adopted.

LAI ON THE TABLE

SB 438-FN, relative to habitual simple assault.

SB 448, establishing a guardians ad litem board. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3617s

05/09

Amendment to SB 448

Amend the bill by replacing RSA 463:36 as inserted by section 1 with the following:

463:36 Duties of the Board. The board shall adopt rules, pursuant to RSA 541-A, relative to the following:

I. Training requirements necessary for becoming certified as a guardian ad litem in this state.

II. Commissioning the participation of Franklin Pierce Law Center, the community technical college system, or another appropriate state educational institution to provide training for guardians ad litem on a tuition basis.

III. Continuing educational requirements for guardians ad litem.

IV. An application process, minimum criteria, and certification fees for becoming certified as a guardian ad litem.

V. A list of specific duties to be performed by guardians ad litem, and ensure that such duties are consistent with the provisions of RSA 463.

VI. A formal process whereby the performance of the duties of guardians ad litem may be evaluated.

VII. A list of those guardians ad litem statewide who are certified and in good standing and make such list available to the general public online through Webster, the official internet site for the state of New Hampshire.

VIII. Investigating the current cost and fee structure established under New Hampshire supreme court rules 48 and 49-A, and making recommendations to the legislature for appropriate action as necessary.

IX. Procedures for processing complaints and addressing disciplinary issues involving guardians ad litem.

X. A schedule of fees required for obtaining certification as a guardian ad litem.

SENATOR GORDON: Senate Bill 448 establishes a board which would be responsible for the training, licensing and supervision of guardian ad litem in New Hampshire. This legislation was filed as a result of a study committee. Following the study last summer, it became evident the dissatisfaction among the public with the current GAL system is significant. Currently, there are no operating standards for a guardian ad litem. Testimony received, indicated that many guardian ad litem view their roles quite differently, especially troublesome to the study committee members, were numerous cases where recommendations about the life of a child were made by guardian ad litem who never even met the child. When a problem arises with a guardian ad litem, there is nowhere for the party to turn. If the concerns or issues are brought to the guardian ad litem, the person risks prejudicing their case. If the concerns are brought to the court, the judge who appointed the GAL could be prejudiced against the person. In fear of reprisal, too many people suffer with GAL's who are biased and partial to one party or another. It became clear to the committee that those within the system know who are the best GAL's and keep them busy. Guardian ad litem who come pro se, frequently are assigned the GAL's who are more available. In a system where 95 percent of the recommendations of guardian ad litem are adopted by the courts, we must do everything possible to ensure that the guardian ad litem are carefully screened, fully trained, and accountable to a licensing board. The study committee, unanimously recommended that this board be established. The Judiciary Committee recommends that SB 448 be ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

SB 303, relative to campaign contributions by corporations. Public Affairs Committee. Vote 3-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3615s

05/10

Amendment to SB 303

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

AN ACT relative to campaign contributions by business organizations.

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

1 New Paragraph; Definition; "Segregated Accounts." Amend RSA 664:2 by inserting after paragraph XVII the following new paragraph:

XVIII. "Segregated accounts" mean accounts funded by contributions solicited from a business organization's employees, officers, shareholders, directors, partners, or members for political purposes.

2 Prohibited Political Organizations; Business Organizations. RSA 664:4, I is repealed and reenacted to read as follows:

I. By any business organization, officer, director, executive, agent, partner or employee acting in behalf of such business organization. This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee as defined in RSA 664:2 that operates independently of the business organization to be used for making political contributions and expenditures if the fund consists only of voluntary contributions solicited from an individual who is an employee, officer, shareholder, director, partner or member of the business organization. The provisions of this section shall not apply to sole proprietorships.

3 Repeal. RSA 664:4, II, relative to prohibited political contributions by partnerships, is repealed.

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

2000-3615s

AMENDED ANALYSIS

This bill eliminates the prohibition on political contributions by business organizations which have established certain segregated accounts for voluntary contributions.

SENATOR TROMBLY: In a court decision, Judge McAuliffe struck down the states long-standing prohibition in corporate...corporate contributions for political campaigns, and suggested that if the legislature wished to do what it intended to do, it ought to do it. So this is the response to that decision. It simply says that a corporation will not be able to give money directly to a candidate out of the corporate treasury. That if you belong to certain business associations you have to set up a political action committee and seek voluntary donations from...it could be the board of directors, or it could be the stockholders, or employees of the corporation. So what this simply says is corporations, in and of themselves, cannot give directly from the corporate treasury. That if they wish to contribute to candidates or causes, they have to set up a political action committee. The bill was reported out of committee unanimously as ought to pass with amendment. I ask for your vote.

SENATOR F. KING: Senator Trombly, the word "organization" how is that defined?

SENATOR TROMBLY: Your honor....

SENATOR F. KING: Thank you, thank you. Sit down.

SENATOR TROMBLY: When I say, "your holiness" you had better walk out the door. Madame President, I would like to defer to the sponsor of the bill, Senator Below if I may.

SENATOR BELOW: Thank you. Yes, Senator King, business organization is a defined term in the same chapter. If you would like I can read it to you. It means "any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organizations, organized for gain or profit,

and includes any enterprise, which is expressly made exempt from income taxation under the U.S. Internal Revenue Code of 1986. It does not include a political committee as defined in the same chapter.” The point of having that term is because the current statute sort of had a gap in it. It addressed corporations and partnerships, but not these other forms of business organizations, such as real estate trusts or limited liability companies. So we have taken the opportunity to update the statute so that it covers all forms of business organization, prohibits direct contributions, but allows the business organizations to set up a separate account, segregated account to make contributions. It also does not apply to sole proprietorships, since those are effectively, just individuals.

SENATOR D’ALLESANDRO: I just want to be very brief. I think that what this piece of legislation does is it restores us to a situation that has existed previously that we found acceptable in New Hampshire in terms of campaign contributions. So we are going back to something that we thought was effective. It was affected to some extent, by a court case. We are restoring us to where we were before. People seem to be very comfortable with that in the state. I would support the ought to pass as amended.

SENATOR FRANCOEUR: Senator D’Allesandro, not being on the committee, was the court case for the Representatives in the House that allowed a corporation to donate to a campaign, but under this bill...I am just trying to get a good understanding of this...are they allowed to donate, but they just have to set up a PAC and notify the state. Is that what it is doing?

SENATOR D’ALLESANDRO: Yes.

Amendment adopted.

Ordered to third reading.

SB 329, relative to the display of tobacco products. Public Affairs Committee. Vote 5-0. Inexpedient to Legislate, Senator Eaton for the committee.

SENATOR EATON: Senate Bill 329 would have established procedures for the display of tobacco products, whereby products would be allowed to be displayed in areas accessible to customers only with the assistance of sales personnel; in plain view and under employee’s control; or in a separate room dedicated to tobacco products. In New Hampshire, 80 percent of the stores who sell tobacco products are “mom and pop” operations, small stores which would be adversely impacted by these restrictions. Small stores do not have the floor space to make alternative provisions and already carefully watch and prosecute shoplifters. The Senate Public Affairs Committee feels that SB 329 should be inexpedient to legislate. Thank you.

SENATOR SQUIRES: I am not on the committee, but I sponsored this bill, and I think that it is important. I think that it is one small piece of armament in this issue of smoking cigarettes. There is no simple answer here. There is no quick answer, but if we combine things, if we combine the pricing policy, the education policy, the cessation policy, and a policy like this, we are going to get somewhere. All that it says is, that if you are going to sell cigarettes in the store, they have to be out of reach. That strikes me as sensible public policy, which is why I sponsored it. The fact is, that a great many stores in New Hampshire already do this, so it is not an issue for them; therefore, I respectfully offer a counter opinion to the report of the committee, and ask for your support.

SENATOR FERNALD: I wanted to follow up on Senator Squire’s comments because I am also a sponsor on this bill. I heard the committee report that small stores, particularly convenience stores, are concerned,

and I am trying to understand what the concern is? What the bill requires is that tobacco products have to be in plain view so that removal from the display can be readily observed by an employee, or they have to be behind the counter. In my experience in going into stores, for the most part, the cigarettes are behind the counter anyhow. I understand that small stores don't have a lot of staff, all this asks is that the tobacco products be near the clerk, or at least where the clerk can see them. Of course the smaller the store, the easier it is for the clerk to see everything that is going on. The problem that we have is the attractiveness of tobacco products to youth, and the deliberate intent of the tobacco industry to place the products in places where they are right in front of kids and seen easily, shoplifted, and in some cases where you have the snuff and those little Indian cigarettes, that are made to look colorful and more like candy. They are meant to be attractive to children with their bright colors. They are placed in a way, to be attractive to children. This, as Senator Squires said, is just one small idea to keep them away from kids so that we can reinforce this message that children should not be smoking.

SENATOR TROMBLY: Senator Fernald, the problem that I am having with this legislation is I think that when you draft it, you have good intent in mind, but when the words hit the paper, it doesn't necessarily do what you want it to do. This is my question to you. It says that the products must be in plain view...and this is all one sentence without a comma, even though I am going to speak with commas...It says, "in plain view and under the control of a responsible employee" whom-ever that may be, so that the "removal of the product from the display can be readily observed by that employee." What I see on the one hand is, you have to put them where someone can see them. It doesn't say who that someone is. So that if you have a small store where the cash register is over here, and the tobacco products are sold over here because of the size of the store, if that employee walks down to where Senator Eaton is, they may be readily in view of that employee, and the store owner would say that they are in compliance with the statute, but yet, my first sense in reading this legislation was that you probably want a small store, with one person working behind the counter, maybe at the register. So is that store in compliance or not, I don't know. But the second problem is, it says that the removal of the product from the display can be readily observed by the employee. Well that presumes that the child is going to..when it takes the cigarette, is going to have to be in view, but yet the same sentence requires that the product be under the control of the employee. So I don't know how you can say that the product needs to be both under the control, and it is okay that the person can pull them out, but is watched. That is the problem that I have with the legislation. Do you want these things where they can be seen, or do you want them under the control of the employee, or do you want them segregated? That is the problem that I have with the legislation, Senator Fernald, because some stores just simply cannot do it. I think quite arguably, we could get around the intent of the legislation simply by saying that if I go to the end of the register, that they can see them do it. Would you believe that?

SENATOR FERNALD: I was waiting for that question at the end. I believe that you raise a good point, and would wonder if you would entertain an amendment of this bill so that we could address your concerns in that one phrase.

SENATOR TROMBLY: Senator Fernald, my position is that anytime that someone wants to try and improve something, as a courtesy to that Senator, I would support tabling or rereferring, or whatever, so that you can work on it. I don't know what the other Senators think, but as a courtesy, I think that we should extend that to each other.

Senator Fernald moved to have **SB 329**, relative to the display of tobacco products, laid on the table.

Adopted.

LAID ON THE TABLE

SB 329, relative to the display of tobacco products.

SB 347, relative to the contributory retirement system of the city of Manchester. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: Senate Bill 347 allows the city of Manchester to amend its retirement system by way of the municipal charter amendment procedures provided in RSA 49-B. Senate Bill 347 would eliminate the current requirement for the city to continually come back to the legislature for ratification. This legislation puts the decisions solely with the city. Further, SB 347 is specific only to Manchester's retirement system, and has no impact on any other municipal provisions. The Public Affairs Committee recommends that SB 347 be ought to pass.

Adopted.

Ordered to third reading.

SB 446, relative to the integration of information technology at the state, county and municipal levels. Public Affairs Committee. Vote 6-0. Ought to pass with amendment, Senator Eaton for the committee.

2000-3616s

05/01

Amendment to SB 446

Amend the bill by replacing sections 4 and 5 with the following:

4 New Subparagraph; Optimization of Benefits. Amend RSA 12-H:1, I by inserting after subparagraph (g) the following new subparagraph:

(h) How to optimize the benefits of information technology for the state, its political subdivisions, and its citizens.

5 Council Membership. Amend RSA 12-H:1, II(a)-(c) to read as follows:

(a) Three house members appointed by the speaker, who are to be one member from the house science and technology committee, one member from the house commerce [~~small business, consumer affairs and economic development~~] committee, and one member from the house education committee.

(b) Three senators appointed by the senate president, who are to be one member from the senate *energy and* economic development committee, one member from the senate education committee, and one member from the senate public affairs committee.

(c) The governor or designee, [~~the director of the division of information technology management;~~] the commissioner of the department of education, [~~and~~] or designee the commissioner of the department of administrative services or designee, the state librarian or designee, a representative from municipal government appointed by the New Hampshire Municipal Association, and a representative from county government appointed by the New Hampshire Association of Counties.

SENATOR EATON: Senate Bill 446 clarifies the process for developing information technology plans and modifies the membership of the New Hampshire Council on Applied Technology and Innovation. Senate Bill 446 was filed as a result of the study committee established under Chapter Law 319 of 1999. With 234 municipalities and more than 60 state agencies, it is imperative that the development of information technology be approached with all parties involved and participatory. The Public Affairs Committee received no testimony in opposition and unanimously recommends that SB 446 be ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 447-FN, relative to campaign contributions and expenditures. Public Affairs Committee. Vote 5-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3627s

03/01

Amendment to SB 447-FN

Amend RSA 664-A:2, III(g) as inserted by section 9 of the bill by replacing it with the following:

(g) Any money appropriated from the general fund by biennium budgetary appropriations.

Amend RSA 664-A:8, I (c)(3) as inserted by section 9 of the bill by replacing it with the following:

(c)(3) \$10,000 for the primary election campaign period if the candidate is not seeking the nomination of a party, as defined in RSA 652:11.

Amend the introductory paragraph of RSA 664-A:9 as inserted by section 9 of the bill by replacing it with the following:

664-A:9 Reports. In addition to the reports required by RSA 664:6 and RSA 664:7, a non-participating candidate whose total expenditures for either the primary election campaign period or the general election campaign period exceeds \$625,000 for governor, \$50,000 for councilor, or \$20,000 for state senator shall file the following additional reports in the form required by RSA 664:6, I:

Amend the bill by replacing section 11 with the following:

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

SENATOR TROMBLY: Senate Bill 447 puts in place, the structure for the public financing of campaigns. I don't think that there is any question in anyone's mind here, that the issue of campaign finance reform is one in which the voters are very interested. I think that this legislature, for a long time, has tried to look at various models on how to accomplish that and has done it unsuccessfully. The time is now though, to do something. This model provides for the public financing of elections for governor, senate, at the federal level, in New Hampshire. It sets up certain criteria, allowing the raising of certain monies, and receiving money. The intent of the legislation is to acknowledge the fact that the money does not currently exist to fund this program. But that doesn't mean that we should not proceed with the theory and the idea in a structure, to put it in place when the money is available. So what the committee is asking you to do today, is to put up the Christmas tree, and the ornaments will come later. We need not fear what form, or the funding source of those ornaments, because we will be able to debate that and encourage that, but if we don't take the step today, to do something about campaign finance reform, then I think that all of our protestations that we make publicly about the rais-

ing of money and who gives how much and where it goes and the influence, will be lost on the public because they just won't think that we are serious about doing this. It is a good idea. We need to do it now. Let's pass this bill and put the structure in place. We will fund it later. Thank you, Madame President.

Senator Johnson moved to have **SB 447-FN**, relative to campaign contributions and expenditures, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 447-FN, relative to campaign contributions and expenditures.

SB 424, relative to controlled substances used for terminally ill persons. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3581s

01/10

Amendment to SB 424

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

AN ACT relative to controlled substances used for pain management.

Amend the bill by replacing section 2 with the following:

2 New Paragraph; Professional Use of Controlled Substances. Amend RSA 318-B:10 by inserting after paragraph VI the following new paragraph:

VI-a. In addition to the provisions of paragraph VI and notwithstanding any other law or rule to the contrary, if, in the judgment of a physician licensed under RSA 329, appropriate pain management warrants a high dosage of controlled drugs and the benefit of the relief expected outweighs the risk of the high dosage, the licensed physician may administer or cause to be administered such a dosage, even if its use may increase the risk of death, so long as it is not furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it falls within rules of the board of medicine.

2000-3581s

AMENDED ANALYSIS

This bill clarifies the professional use of controlled substances for pain management.

SENATOR WHEELER: I rise in support of SB 424 as amended. The purpose of this bill is to encourage physicians to administer appropriate and effective pain management for those who experience pain, acute or chronic, and recognize that it is especially important for patients who are terminally ill. Senate Bill 424 will help to educate patients and caregivers about effective pain management practices, and provide better end of life care for those who are terminally ill and in need of pain medication. This bill will also encourage the progress that continues to be made in the field of pain management. The attorney general's office testified in support of SB 424, and stated that he believes that this bill will alleviate physicians, concerns and fears regarding the possibility of prosecution or litigation resulting from their discretionary administration of controlled drugs for appropriate pain management. The New Hampshire Medical Society also supports SB 424, and noted that this legislation will be beneficial, not only for the terminally ill, but for those who live with diseases such as

AIDS and Sickle Cell Anemia. It will help improve the quality of life for those with chronic pain. The amendment to SB 424 does two things. It changes the bill title to read, "relative to controlled substances used for pain management" and it also removes the word "dangerous" from line 13 of the original bill. We had "dangerous drug" in there, and we don't need that word "dangerous." I urge you support the unanimous vote of the Health and Human Services Committee of ought to pass as amended. Thank you.

SENATOR F. KING: I wonder why this legislation is necessary. It seems to me that physicians have the ability to make these types of decisions now, and I am wondering why we keep trying to tell doctors how to do their business, I guess.

SENATOR WHEELER: Thank you, Senator King, that certainly came up. The attorney general and the Medical Society representing physicians, feels that this would alleviate any concerns that they might have that they would be considered to be overprescribing, if the result of the pain medication is an unexpected death. So the feeling is that this will not only remove some of the concerns that physicians may feel, it also serves to raise the awareness of the medical community, and of all of us, of the importance of pain medication, and the importance of using it enough so that you don't suffer terribly at the end of life.

SENATOR GORDON: Very briefly. As many of you know, we have a document in the state which is a durable power of attorney for health care. Individuals are able to select an agent to act on their behalf of health care matters. That document also allows you to make some elections in regard to the type of care that you might want to have for the duration of your lifetime. It requires you to make some elections in regard to a feeding tube, artificial nutrition and hydration, and what you would want if you were either terminally ill, or permanently unconscious. Then it has a section that says...in essence, it is a question written by a lawyer, it is five sentences long, but it says in essence, is there anything else that you would like to say? For the first few years that this document was available, it first became available in 1991, for the first few years that this became available, no one ever put anything in there. In fact, in most cases, no one ever puts anything in there. Occasionally someone will put that they want to be an organ donor or something like that. Nobody knows what to say at the time that they are executing these documents. So our law firm became concerned that maybe we were missing something. So we talked to some physicians in Laconia, some internists and they said that one of the things that you should mention is the fact that you would want to have sufficient pain medication to keep you comfortable, free from discomfort, even if that medication might have some unintended consequences. That is, that it might dull your consciousness of course, which we would expect, but it might also accelerate the dying process. So we decided that what we would do is to give everybody the option of including that in their durable power of attorney for health care. I do a lot of durable power of attorney for health care, our law firm does a lot of them. I do not believe that there has been a single client that has come through our law firm, who has not elected to have that included in their durable power of attorney for health care over the last six or seven years, because people feel very, very strongly about this. The other thing that I would say is that I made an effort when I was in the House, to have the durable power of attorney for health care amended to include that in the document. At that point

in time, the physicians opposed it. Senator Wheeler was in the house at the time the physicians opposed it. At the very same time, the U.S. Department of Health and Human Services came out and said that 60 percent of all cancer patients were undermedicated for pain because physicians were concerned about the administration of pain medication. So I think that this is very important. It is a good piece of legislation. It is a very important piece of legislation because it puts the doctor's mind at ease that they are not going to be sued if they do the right thing. I would encourage you to support it.

Amendment adopted.

Ordered to third reading.

SB 444-FN, relative to methadone maintenance treatment. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3587s

01/09

Amendment to SB 444-FN

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

1 Methadone Maintenance Treatment Authorized. Until December 31, 2000 or until the general court adopts an appropriate pilot program, any provider providing outpatient methadone detoxification services in the state of New Hampshire as of January 1, 2000, is hereby authorized to provide methadone maintenance treatment as long as the provider meets Commission on Accreditation of Rehabilitation Facilities (CARF) accreditation standards, is licensed by the federal Food and Drug Administration and the federal Drug Enforcement Administration, and otherwise meets all applicable state and federal laws and regulations. The providers of methadone maintenance treatment shall be monitored by the department of health and human services during this period.

2 New Paragraph; Definition Added. Amend RSA 318:1 by inserting after paragraph VII the following new paragraph:

VII-a. "Limited retail drug distributor" means federally funded clinics operated under contract with the department of health and human services and drug abuse treatment centers, where legend and controlled drugs are held, stored or dispensed to patients pursuant to the order of an authorized practitioner.

3 New Section; Licensing of Limited Retail Drug Distributors Required. 318:51-b Licensing of Limited Retail Drug Distributors Required.

I. No person shall operate as a limited retail drug distributor, as defined in RSA 318:1, VII-a, without first having obtained a license to do so from the board. Such license shall expire annually on June 30. An application together with a reasonable fee as established by the board shall be filed annually on or before July 1.

II. No license shall be issued under this section unless the applicant has furnished proof satisfactory to the board that:

(a) The applicant is of good moral character or, if that applicant is an association or corporation, that the managing officers are of good moral character.

(b) The applicant has sufficient space and security equipment as to properly carry on the business described in the application.

(c) The license granted by this chapter shall at all times be displayed in a conspicuous place in the facility for which it is issued.

(d) The applicant has a written contract with a pharmacist licensed in the state to serve as a consultant on all matters relating to the storage and dispensing of prescription drugs.

III. No license shall be granted to any person who has within 5 years been convicted of a violation of any law of the United States, or of any state, relating to drugs, as defined in this chapter or RSA 318-B, or to any person who is a drug-dependent person.

IV. Any person licensed pursuant to this section is subject to the provisions of RSA 318:29.

4 Licensure Required. RSA 318:42, VII(d) is repealed and reenacted to read as follows:

(d) The clinic, except for clinics operated directly by the department of health and human services, possesses a current limited retail drug distributor's license under RSA 318:51-b.

5 Repeal. RSA 318:42, VII(e), relative to drug wholesaler's license, is repealed.

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

2000-3587s

AMENDED ANALYSIS

This bill authorizes a provider meeting certain standards who is currently providing outpatient methadone detoxification services to provide methadone maintenance treatment until December 31, 2000 or until an appropriate pilot program is adopted by the legislature.

This bill also requires limited retail drug distributors to be licensed by the New Hampshire pharmacy board.

SENATOR WHEELER: I rise in support of SB 444 as amended. This is, I think, an extremely important piece of legislation. It authorizes a provider who is currently providing outpatient methadone detoxification services to provide methadone maintenance treatment until December 31, 2000, or until the bill says an appropriate pilot program is adopted by the legislature. This bill is the result of a study committee, which I have chaired for the last two years. New Hampshire is one of only eight states which does not offer methadone maintenance treatment. I just learned that we are the only state that has a statutory prohibition against methadone maintenance treatment. Our law, currently, allows methadone detoxification, defined as a period of no more than 180 days of methadone treatment, and the state allows treatment for pregnant women; however, New Hampshire does not allow long-term methadone maintenance treatment of more than 180 days. For those of you who perhaps are not aware of what methadone is, it is a treatment of use for heroin and other opioid addictions. It is my understanding that approximately 400 New Hampshire residents travel to Maine or Massachusetts every day to receive methadone maintenance treatments. Clearly, we need to establish a means for addicts in need of methadone maintenance treatment to receive appropriate care. I didn't bring up all of my exhibits 1-5, but I am sure that you have all seen the papers on the last week, with the headlines about the heroin bust, the increase of heroin use in our state. We are having a real influx of heroin. At the same time, we have people who want to stop being addicted to it. I have received anonymous e-mails for people who go out-of-state everyday, but they don't want their children to know that they are receiving treatment, and they are spending 1-1/2 hours sometimes, extra, before they go to work, to go get treatment, because they are that committed. We shouldn't have an artificial barrier to people getting appropriate medical treatment. We had testimony on

behalf of the New Hampshire Medical Society in support of SB 444. It was stated that heroin addiction is increasing across the U.S., and only 10 percent to 15 percent of short-term detoxification is successful. That is borne out by an article that just appeared in the Journal of the American Medical Association, the March 8th edition. I was incredibly excited that I was able to find this on the Internet and print it out last night. I was very pleased with that. I was also pleased by what it said, and just the summary of the results are that methadone maintenance therapy resulted in greater treatment retention and lower heroin use rates than the detoxification. It goes on at a much greater length than that, pages and pages, but that is the bottom line, that it is the maintenance that you need, not the detoxification. The detoxification without maintenance is not really going to help in the long run. Also, the National Institute of Health, in conjunction with the National Institute on Drug Abuse, concluded that methadone maintenance treatment is the most effective intervention for treating chronic opioid dependence in the United States. They also recommended increased access to methadone treatment services throughout the U.S., and increased funding for methadone treatment. We have two bills before you right now. This is the interim bill to allow methadone maintenance, until such time as we have an established program in the state. I urge your support of SB 444.

SENATOR SQUIRES: I was also a member of the study committee and I am a cosponsor of this bill. I rise in strong support. I do so by offering a brief commentary that is equally applicable to the next bill. It is important because this bill has some cultural aspects to it that we ought to consider. Substance abuse, what we now call that, has been probably in evidence since recorded history. Our experience, that is, in the United States, our first introduction of this in the substantive way, probably was in the Far East. When the now known notorious opium dens as it were, were noted. People lying around in languid repose, supposedly addicted, with what was undoubtedly heroin. European culture had a very different view of this. A small point, if you extend your thumb like this, you will notice a depression between these two tendons. That is actually known, in medical terms, the anatomical snuff box. It was the place where cultured European society put what was undoubtedly cocaine, and inhaled it, and no one thought anything about it. Sherlock Holmes, as you may know, was a cocaine user. In our society, probably in the 18 & 19 century, and maybe the early 20th century, it was sort of on the European model, but then for reasons that aren't entirely clear, we made this a moral issue. We said, in reality, that a substance abuse, a cocaine or heroin addict is a moral failing, and we drew a picture around that somewhat like the opium dens. These are people who were down and out, sort of like homeless or mentally ill or whatever, we pushed them off someplace and we said that it is a moral failing, as we have done to a number of other things, overeating and so on and so forth. It is easy to do that. In the 1960 period, however, medicine began to understand and teach us that undoubtedly, it is a moral issue to choose the use of illicit, illegal substances, but it is not a moral problem to stop, because you can't. You are physically addicted. So treatments like methadone came into existence. But we clung to the moral view, and we have this bizarre statute which says, yes, if you are pregnant, you can be treated, but once you deliver the baby, you cannot be treated. Yes, if you are an addict you can have treatment for six months, and then you can't

have anymore. Now supposing that was hypertension? I find that you have high blood pressure. I say, okay, patient, six months is all that you get. Then what? You have to drive to Portland, Maine. That is ludicrous. So we are moving, I hope, out of the stigma, out of the moral categorization, recognizing it as a disease, as an affliction. These individuals can no more stop using heroin on their own than the addicted smoker can. For smokers, we have nicotine patches, we have Nicorette gums, and no one thinks anything about it because people need help. I won't reiterate the history of the efficacy of this. It is an efficient program. We all know it, we all heard it. We heard it over and over again, and we heard vivid and poignant testimony by people who use these services. If you would have heard that, I would hope that you would say as I say, that this present situation is totally illogical. So I hope that you will approve this bill on its medical merits, but also on its social merits, because it moves us in our understanding of disease and human behavior. Thank you.

Amendment adopted.

Ordered to third reading.

SB 445-FN, establishing an opioid treatment pilot program. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3582s

01/10

Amendment to SB 445-FN

Amend subparagraph IV(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Designation of participating providers, who shall be New Hampshire-based health care providers.

SENATOR WHEELER: Senate Bill 445 is the companion bill to the bill that we just debated. I think that we have understood, I hope that we have all understood and accepted the importance of having methadone maintenance treatment available in New Hampshire. The bill that is in the calendar is a pilot program. It was originally drafted by Health and Human Services, since then, we have a floor amendment to offer to you, which I hope that we will get to in a moment. I hope that you will vote in favor of SB 445, and then I will offer a floor amendment that Senator Squires and I have.

Amendment adopted.

Senator Wheeler offered a floor amendment.

Sen. Wheeler, Dist. 21

Sen. Squires, Dist. 12

March 9, 2000

2000-3711s

01/09

Floor Amendment to SB 445-FN

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

AN ACT relative to methadone maintenance treatment.

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

1 Methadone Maintenance Treatment; Rulemaking. RSA 318-B:10, VIII is repealed and reenacted to read as follows:

VIII. The commissioner of health and human services shall adopt rules, pursuant to RSA 541-A, relative to methadone maintenance treatment. Except as otherwise specified, no methadone maintenance programs may be initiated until the commissioner adopts rules as required under this paragraph or until 2 years after the effective date of this paragraph, whichever is sooner. Notwithstanding the above, nothing in this paragraph shall be construed as prohibiting or limiting the provision of methadone detoxification services or from prohibiting or limiting those already providing methadone detoxification or maintenance services as of January 1, 2000, from providing methadone maintenance services upon the effective date of this paragraph.

2 Repeal. RSA 318-B:10, VII, relative to methadone maintenance.

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

2000-3711s

AMENDED ANALYSIS

This bill requires the commissioner of the department of health and human services to adopt rules relative to methadone maintenance treatment.

SENATOR WHEELER: What this floor amendment does is, instead of having a pilot program that had a fiscal note, and a lot of obligation on the part of the Department of Health and Human Services, we have made it much simpler. We are repealing our statutory prohibition against methadone maintenance and requiring DHHS to draft rules regarding methadone maintenance treatment. It says that if the rules have not been adopted two years after the effective date of the paragraph, we can still offer methadone maintenance in New Hampshire, but I have no reason to believe that there will be any dragging of the heels on the part of the department's behalf. They are extremely interested in working on this program. So I hope that you will support the floor amendment.

SENATOR MCCARLEY: Senator Wheeler, it would appear then that probably there is not a fiscal note needed relative to the fact that we are simply going to work on rules for a program.

SENATOR WHEELER: Thank you, Senator McCarley for bringing that up. No. There is absolutely no need to have a fiscal note on this bill. We don't put fiscal notes on bills asking a department to draft rules.

SENATOR KLEMM: Senator Wheeler, are we saying by this amendment that the department is going to establish a program, and are you saying that there is no fiscal note attached to this bill?

SENATOR WHEELER: No. Thank you, Senator Klemm. No, we are not saying that the department will establish the program, that is the change from the pilot program. We are just saying that the department will adopt rules pursuant to methadone maintenance treatment. So rules for whatever clinic or physician's office or whatever form that we might be able to offer methadone maintenance. The department will adopt rules, as they normally do for any kind of health facility, but there is no need for any money, because we are not asking them to develop a program. Also, we wanted to make sure that the law enforcement community knew what we wanted to do and did not have any objections to it. I hope that you all have received the letter that has the heading of Town of Bedford. It is from Chief Bailey. It says, "As chairman of the legislative committee, I am issuing the following statement authorized by the president of the New Hampshire Association of Chiefs of Police, Allen Tardiff, and consistent

with the vote taken at the February meeting of the full membership.” It says, “The New Hampshire Association of Chiefs of Police knows that there is a growing problem of heroin use in the state of New Hampshire. The Association also knows that methadone maintenance is a medical treatment for heroin addiction. The Association views the availability of methadone maintenance as a medical issue, and not a law enforcement issue. Accordingly, the Association has no formal position on current legislation related to methadone maintenance.

Floor Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Johnson moved to have **HB 449**, requiring boating safety education, taken off the table.

Adopted.

HB 449, requiring boating safety education.

SENATOR JOHNSON: As the bill, as amended by the Senate is being passed out, I just want to make a couple of comments. We did hear this bill as amended by the Senate, and I think that this is a major piece of legislation to address the safety of boating on the waters of the state of New Hampshire. I want to say and thank Senator D’Allesandro for all of the hard work that he did on this piece of legislation. I can assure you that all of the House members that were involved in this legislation worked with us on the original amendment that you see before you. There was just one word that bothered us. So I have a floor amendment that I will be offering to correct that.

Senator Johnson offered a floor amendment.

2000-3386s

01/09

Floor Amendment to HB 449-FN

Amend RSA 270-D:15 as inserted by section 1 of the bill by replacing it with the following:

270-D:15 Certificate Not Required. A person shall not be required to obtain a certificate of boating safety education if the person holds a certificate from any state indicating successful completion of boating safety education that meets or exceeds the requirements of this subdivision, a certificate from the United States Coast Guard Auxiliary, or a certificate from the United States Power Squadron.

SENATOR JOHNSON: On page three of the bill as amended, on line 26, 270-D:15, that indicates that...it says “A person shall not be required to obtain a certificate of boating safety education if the person holds a certificate from another state”. We had a problem with that because there are people within the state of New Hampshire who have taken the national test, so we want to change that word “another” and put it as “any state” so that will include the people who have taken the test in the state of New Hampshire will be included in that. I ask that you pass this amendment. We would send this back to the House. I have been assured by the members of the committee in the House that they would concur with this amendment.

SENATOR D’ALLESANDRO: I truly want to commend Senator Johnson for his due diligence and hard work on this bill. It seems to me that we

have covered all of the bases, and we have a piece of legislation that is going to be effective in terms of the education process that will take place, and it will be done in a timely manner and in accordance with the national focus. Very few times in this life do you make everybody happy, Senator, so congratulations.

SENATOR FRANCOEUR: Senator Johnson, on requiring those to take the test, are you able to take the test prior to a certain birthday, such as minors at 12, 13 or 14 years old?

SENATOR JOHNSON: I can't answer that question, to be honest with you. If I had to guess, I would probably say no.

SENATOR FRANCOEUR: Maybe you could refresh me. Currently you have to be 16 years old to operate a boat over 15 horsepower. Is that correct?

SENATOR JOHNSON: Correct.

SENATOR FRANCOEUR: And we allow motor vehicles...we allow individuals to be 15-1/2 to take the course for driving so that on their 16th birthday or there about, they could take it. Do you think that maybe this department, in their rulemaking authority, allow somewhere around the same thing, so that we don't have everybody running into these courses at the same time?

SENATOR JOHNSON: I would be more than happy to address the commissioner on that issue.

SENATOR FRANCOEUR: Thank you.

Floor Amendment adopted.

Ordered to third reading.

CACR 38, Relating to: use of highway fund revenues. Providing that: an amount not to exceed 9 percent of highway revenues shall be used to maintain and improve New Hampshire's rail infrastructure. Transportation Committee. Vote 3-2. Ought to Pass, Senator Russman for the committee.

SENATOR RUSSMAN: This is on CACR 38. There are a couple of things that I would indicate to you. Obviously, we know that we have a problem relative to the highway money and roads and bridges. That is a serious problem and it is going to continue to be a serious problem. At the same time, we know that 93 and things of that nature need to be widened. At the same time, to have some vision, we ought to realize that you can only make roads so wide, whether it is four, six or eight lanes, at some point, we have existing rail corridors, and they ought to be used. I know that people might say that when people want to use railways we will build them. We ought to show some leadership in terms of saying that. If we need all of this money, shortly we will be voting to do away with toll booths, which obviously, if we need this money as desperately...and I understand that there are a number of bridges around the state that are in sad shape and need repair, why would we do that? Where were the people when the gas prices were lower to perhaps go up on the gas tax a little bit, a penny or two to raise millions of dollars so that we could have repaired some of these things? I picked up this brochure at Killington last year and it has "Hit the slopes with Amtrak" and it has the snow trains coming from New York coming up to the slopes in Burlington, and they have shuttle buses that take them over there, it is good for the tourist industry. We used

to have ski trains here in New Hampshire years ago, but obviously we don't have those any longer. The New Hampshire Highways Magazine talks about intermodalism, yet there isn't one thing about railroads or trains in there. Now New Hampshire happens to rank dead last in New England for rail infrastructure. We rank dead last in money that we spend on rail infrastructure. Most states use some money from their gas taxes for rail and buses and other types of transportation. But at some point, we can only build roads so wide. **TAPE CHANGE** there ought to be some leadership and some vision shown that some portion of the money, and 9 percent wasn't a magic number and neither was rail infrastructure. It could be intermodal, and it could be a lower percent, certainly in terms of what they used, that would be up to the voters in the committee. I certainly think that...I understand that the votes are not there to pass this, which is unfortunate, but certainly, it is something that we ought to have a more in-depth discussion on, and certainly something that deserves support in terms of where New Hampshire wants to be in the future. These would be the rest of New England and the rest of the United States.

A 3/5 vote is necessary.

A roll call is required.

The following Senators voted Yes: Below, McCarley, Trombly, Pignatelli, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Disnard, Roberge, Eaton, Fernald, Squires, Francoeur, Larsen, Krueger, Brown, Klemm.

Yeas: 10- Nays: 14

Motion failed.

Senator Trombly moved inexpedient to legislate.

Adopted.

CACR 38 is inexpedient to legislate.

SB 337, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance. Transportation Committee. Vote 3-2. Ought to pass with amendment, Senator Roberge for the committee.

2000-3643s

05/10

Amendment to SB 337-FN

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

AN ACT requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations.

Amend the bill by inserting after section 4 the following and renumbering the original section 5 to read as section 8:

5 New Paragraph; Interest after Suspension. Amend RSA 263:56-a by inserting after paragraph II the following new paragraph:

II-a. After suspension as provided in paragraph II, interest on amounts not paid when due shall be computed at the rate of 1 percent per month from the date of suspension to the date payment is actually made. Interest shall be collected by the department or the court and deposited in the default bench warrant fund established in RSA 263:56-d to pay for costs associated with employing law enforcement official and other related expenses necessary to the enforcement of this section. No interest shall be computed on fines assessed before January 1, 2001. The commissioner shall have the discretion, as justice may require, to waive the payment of interest computed under this paragraph.

6 Notice of Interest on Unpaid Fines. Amend RSA 262:44, I to read as follows:

I. Such defendant shall receive, in addition to ~~his~~ *the* summons, a uniform fine schedule entitled "Notice of Fine, Division of Motor Vehicles" ~~[which];~~ *the fine schedule* shall contain the normal fines for violations of the provisions of title XXI on vehicles for which a plea may be entered by mail *and notification that unpaid fines may be subject to interest pursuant to RSA 263:56-a, II-a.* The defendant shall be given a notice of fine indicating the amount of the fine plus penalty assessment at the time the summons is issued; except if, for cause, the summoning authority wishes the defendant to appear personally. Defendants summoned to appear personally shall do so on the arraignment date specified in the summons, unless otherwise ordered by the court. Defendants who are issued a summons and notice of fine and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the fine plus penalty assessment to the director of motor vehicles within 30 days of the date of the summons. The director of motor vehicles shall remit the penalty assessments collected to the police standards and training council for deposit in the police standards and training council training fund and to the state treasurer to be credited and continually appropriated to the victims' assistance fund in the percentages and manner prescribed in RSA 188-F:31. Fines shall be paid over to the commissioner of administrative services, or to such department or agency of the state as the law provides, within 14 days of their receipt.

7 Default of Personal Recognizance. Amend RSA 597:38-b, I to read as follows:

I. Whenever a party recognized to appear for any offense ~~[involving driving]~~ makes default and the recognizance is declared forfeited, the court shall send a notice of default to the division of motor vehicles. The division shall send a notice to the person owing the recognizance, demanding payment within 30 days and stating that failure to make payment within the 30-day period shall result in suspension of such person's driver's license or driving privilege until such time as the person provides proof to the department of safety that he has paid the amount of the forfeited recognizance to the court.

2000-3643s

AMENDED ANALYSIS

This bill:

I. Requires any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC).

II. Authorizes the director of state police, department of safety, to establish a new unit of the state police and assign 2 to 5 police officers to serve criminal processes, warrants, and notices of court defaults, and to arrest persons wanted for outstanding warrants and court defaults.

III. Authorizes the collection of interest on outstanding unpaid fines, with proceeds dedicated to the default bench warrant fund, to pay the costs associated with enforcement of the bill's provisions.

IV. Broadens the scope of personal recognizance defaults subject to interest penalties.

V. Requires that any person who provides false information when applying for a license forfeit any fee paid.

SENATOR ROBERGE: Senate Bill 337 requires the Department of Safety to check through the National Crime Information Center (NCIC) any person who is applying for or renewing a driver's license. These people would be checked for outstanding warrants or court defaults as a precondition to issuance. If one percent interest were charged on defaults, the funds generated would pay for these background checks. Our newspapers regularly carry stories of criminals and other wanted persons who are picked up and have valid New Hampshire driver's licenses. Senate Bill 337 offers an excellent opportunity to apprehend these individuals. Senate Bill 337 would require an exact name and date of birth match in order for a "hit" to have occurred. Names which merely sound alike or are similar would not be considered "hits". Ten year old Jeffery Curley was killed by Charles James in 1997. Mr. James had just obtained a New Hampshire driver's license, despite the fact that he had 75 warrants out of 18 courts in Massachusetts. I sponsored legislation in 1994, SB 588; in 1995, SB 167; in 1996, SB 608; in 1997, SB 201; to stop wanted people from getting New Hampshire licenses. If any of those bills had passed, the killer of Jeffery Curley would have been arrested at the department and put to jail. There are \$8-\$10 million owed to the state. This bill calls for 1 percent interest per month, on overdue fines. This interest would generate almost \$1 million a year, which would more than pay for the cost of funding this legislation. The Senate Transportation Committee recommends that SB 337 be ought to pass as amended. I urge your support. Thank you.

SENATOR D'ALLESANDRO: Senator Roberge, how reliable is the database?

SENATOR ROBERGE: I am told that the database is excellent and Massachusetts is very close to introducing a similar program as the one that I just proposed. Thank you for asking.

SENATOR D'ALLESANDRO: How many times would that database be accessed in the course of a day or a year in terms of renewals?

SENATOR ROBERGE: I would imagine how many times the people come in for renewals and new applications.

SENATOR D'ALLESANDRO: Do you have any idea how many people that would be?

SENATOR ROBERGE: I don't have the idea to that question. I still think that it is a very good point though. I think that everybody should be put through this check. If you have nothing to fear, why would you care?

SENATOR D'ALLESANDRO: Fear of what? Your reliability of the database? If the database isn't reliable, then...

SENATOR ROBERGE: I think that what you are saying...what I am told is that everything would have to match. If one of those pieces, either your date of birth, your name, perhaps the initial in your name, everything would have to match in order to be a hit. It couldn't be just one or two things. It has to be three or four things to match in order for it to be a hit.

SENATOR D'ALLESANDRO: What would be the cost to the state of New Hampshire in terms of implementing this system?

SENATOR ROBERGE: Well, I think that we have more than covered it with \$1 million a year from the **TAPE INAUDIBLE**.

SENATOR D'ALLESANDRO: My question was what would it cost us?

SENATOR ROBERGE: I am not sure, but I think that \$1 million would more than cover it. I am not sure of the answer, but I think that \$1 million is a lot of money.

SENATOR D'ALLESANDRO: But what would it cost us?

SENATOR ROBERGE: I don't know, I said.

SENATOR D'ALLESANDRO: Thanks.

SENATOR GORDON: Having heard the testimony, I am not sure that really the issue is the reliability of the database, because this is the same database that we use to check for criminal background checks for other purposes, so if it is good for other purposes, then it certainly, I think, would be good for this purpose. I know that there are issues in regard to the fact that when the information comes back, it is not always precise and needs to be interpreted, which takes a lot of time. I think that really gets to the issue of how we have to make our decision on this particular bill, and that is when somebody goes over to the department of motor vehicles and they apply for their driver's license, and they ask that they get their driver's license, are we in a position to then do this type of check, do the screening that might be required to make a determination as to whether this person is qualified to become a licensed New Hampshire driver. There are two parts to that. One is time and the other is money. Certainly there would be some expense involved and there is a fiscal note on this, which you will see if you have a copy of the bill, which is somewhat substantial, but there is also the argument that if in fact, you catch people on the renewal of licenses, and that they have outstanding warrants or fines, that there is a good chance that some of that cost, at least, if not all of the costs, would be offset. The other issue is whether or not you would actually have to add staff at the Department of Safety, which is currently unfunded in order to do it. I am certainly not going to encourage people to vote one way or the other. I think that they ought to vote the way that they think is appropriate on the bill, but I think that those are the hearts of the issues.

SENATOR F. KING: Senator Roberge, you spoke about the \$1 million. What is that again?

SENATOR ROBERGE: The million dollars would come from...currently there are...I had it down here somewhere, how many cases...

SENATOR F. KING: I thought that you said that by putting a 1 percent interest charge on the monies owed to the state...

SENATOR ROBERGE: Our figures show that there are \$8-\$10 million owed to the state, and if we put a 1 percent interest per month on each of these, then it would generate, we figure, about \$1 million a year. I have the figures now on how much it would cost.

SENATOR F. KING: Excuse me, excuse me. Am I missing something?

SENATOR ROBERGE: Pardon?

SENATOR F. KING: We are going to put 1 percent interest charge per month?

SENATOR ROBERGE: Yes, per month? It says per month.

SENATOR F. KING: It is going to generate \$1 million a year?

SENATOR ROBERGE: That is what I have down here, per month, on overdue fines. I have the figures on what it would cost too. It would cost about \$400,000 in fiscal year 2001, \$260,000 in fiscal year 2002, fiscal year 2003 - \$271,000 and fiscal year 2004 - \$400,000.

SENATOR JOHNSON: Senator Gordon, I don't have any idea how many new applicants there are for driver's licenses, but I know that I just got my notice for renewal and that is one month or six weeks or whatever away, so I would think that on those renewals, the Department would have had plenty of time to look into those renewals to see if there was some violation that they could pick up on. Wouldn't that be the case?

SENATOR GORDON: I think that there are two issues. One is the renewals. It would seem that they might have some time to check that; however, that takes staff time. As you probably saw from the fiscal note, the department said that in order to implement a program of this type, they would have to have five additional state troopers in order to do that. I think that there was some question as to whether or not a fully qualified state trooper was necessary in order to do a records check.

SENATOR JOHNSON: That would be one of my concerns also.

SENATOR GORDON: The other issue is, somebody who is...the Curley situation, the individual who applied for the license, and that is, someone who is applying for the first time, whether or not they would be delayed in their application for a license, in order for the check to occur.

SENATOR RUSSMAN: I rise in opposition to the bill. I think that the intent is good, but I don't know how many of you have had your licenses renewed lately. I happen to spend a fair amount of time at the Dover sub station on attending hearings, and there is always a line of people there. I don't know if when you have gone in, perhaps you have hit it right and there hasn't been a line of people, but there are virtually hundreds and hundreds and hundreds of people every day, getting their license renewed. You could stand up a few people on this and the money that we would spend, we are going to talk about a bill in a minute here, about more troopers on the roads. Now where do you need your resources? I just think that there are better ways to spend it, really, than on this particular bill, in this particular area. I think that there is going to be a long delay and people are going to be unhappy with the notion of having to wait further at these places when everybody...I mean, they can only do it during working hours anyway, so they have to go over there during their working hours to get their renewals, so it is more problematic than you might think.

SENATOR TROMBLY: Senator Gordon, I have a question. I was stopped for making an improper U-turn a couple of months ago by the Concord police. Believe it or not, I was doing a U-turn so that I could get to lunch. I think that I was with Senator King and Senator Disnard...it was speed verses a U-turn, you know? My question is this, because I really don't know the answer to this: Is the NCIC check, that is required under this legislation, the same computer that that officer used to check my license when he stopped me for the same thing? Is that the same thing, Senator Gordon? There is not two different systems, right?

SENATOR GORDON: I don't believe that there is. I don't know the answer to that question and rather than answer it, I would have to say that I don't know.

SENATOR TROMBLY: I think that there is only one reason why I am going to vote for this bill. That is the death of that little boy. Some times, those types of things don't make the best laws. That type of a thing, that happens. But you know, in this case, that little boy was pretty brutally killed. It may have been an inconvenience for that murderer when he got his New Hampshire license, maybe he would have had to wait three or four minutes before his license was renewed, but he would have sacrificed four minutes of his time. That little boy sacrificed his life. I am going to vote for this bill because of that reason.

Question is on the adoption of committee amendment.

A roll call was requested by Senator Roberge.

Seconded by Senator Trombly.

The following Senators voted Yes: Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Pignatelli, Francoeur, Larsen, Krueger, Brown, Cohen.

The following Senators voted No: F. King, Squires, J. King, Russman, D'Allesandro, Wheeler, Klemm.

Yeas: 16 - Nays: 7

Amendment adopted.

Referred to the Finance Committee (Rule #24).

SB 371-FN, relative to staffing of state police vehicles patrolling highways at night. Transportation Committee. Vote 3-2. Inexpedient to Legislate, Senator Roberge for the committee.

SENATOR ROBERGE: Senate Bill 371 would have appropriated additional monies for staffing of state police vehicles patrolling highways at night. The Senate Transportation Committee feels that while the sponsor's desire to provide additional coverage in rural areas of the state is admirable, the Commissioner of Safety has the authority to re-assign officers. State police have previously budgeted for positions which have not been filled. The Senate Transportation Committee therefore, recommends that SB 371 be inexpedient to legislate. Thank you.

A division vote is requested.

Yeas: 13 - Nays: 10

Committee report of inexpedient to legislate is adopted.

SB 375, relative to motor vehicle dealerships. Transportation Committee. Vote 3-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-3491s

08/10

Amendment to SB 375

Amend RSA 357-C:3, III(k)(1) as inserted by section 1 of the bill by replacing it with the following:

(1) When operating a motor vehicle dealership for a temporary period, not to exceed 2 years, during the transition from one owner of the motor vehicle dealership to another;

SENATOR PIGNATELLI: Senate Bill 375 restricts the circumstances whereby a motor vehicle manufacturer or distributor may operate a dealership. This legislation offers protection to our local auto dealerships from direct competition with auto manufacturers. Earlier in the year,

one manufacturer had made public the information that they intended to open up dealerships. This was of great concern to local dealers who have become invested in their communities and felt there was no way that they could compete with manufacturers. The current franchise agreements do not protect the dealer from competition with the manufacturer. Testimony was received that without the passage of SB 375, over time, many of our local dealers would be forced out of business, leading to higher priced automobiles. The Senate Transportation Committee recommends that SB 375 be ought to pass as amended. Thank you.

SENATOR FERNALD: Senator Pignatelli, am I correct in understanding that for example, if General Motors wanted to own a dealership in New Hampshire, they can't?

SENATOR PIGNATELLI: If a General Motors dealership was for sale, General Motors could take it over for a period, not to exceed two years, but they could not own one in New Hampshire.

SENATOR FERNALD: I guess I was trying to get a circumstance where, maybe you have a dealer or a company like Suzuki or something that doesn't have any dealerships here or doesn't have many. They want to open one in someplace where they have no dealerships now. Are they prohibited from owning anywhere, any company?

SENATOR PIGNATELLI: This bill would prohibit them from owning a dealership.

SENATOR FERNALD: Do we have any similar restriction in our laws now, for example, that prohibits oil companies from directly owning gas stations and competing with franchises?

SENATOR PIGNATELLI: We might, but I am not aware of it.

SENATOR FERNALD: Thank you.

SENATOR SQUIRES: This is a surprising bill to me. It seems as though it is interjecting government directly into the economy, which of course there may be valid reasons, but it also seems to me that the way that commerce is evolving, which I have a friend who bought their car on the Internet. It really made no difference where it might have been, they found six dealerships in New Hampshire and went and got it. I see a time when, no doubt, you will buy straight from the dealer, and the dealer will deliver to your house. So this attempt, which I think that I understand that the purpose, and if I were an automobile dealer, I would probably want to do it, but in other areas, we don't have any restriction about having Cigna come in and take over a health plan. We have no restriction for Anthem, out-of-state, a far away company, come in and operate that business. I just offer those comments in a sense of wonderment, I guess, of this internal problem, where does government fit into economy?

SENATOR F. KING: I sponsored this legislation on behalf of the New Hampshire Automobile Business Association. I see this as a protection for consumers and not a protection for automobile manufacturers. I will believe that you would understand that if Internet sales and automobile sales become as big as they are projected, and General Motors has...and there is only one Chevrolet dealership in the state of New Hampshire and you want to buy a Chevrolet Suburban, which is a very hard vehicle to get, guess where you are going to buy it? You are going to have one

place to buy it. I used to be in the automobile business, I can tell you that it is a very competitive business. I would dare say that everybody in this room that has bought an automobile has shopped at least one or two places before they make their deal. They usually have a car to trade, and they are looking for a deal because an automobile is a big investment and that is the way that you buy it. You are able to do that now because the automobile dealers that you can go to, to buy that car, several within the range where you want to buy that car. So if manufacturers are allowed to be the dealer and compete with their own dealers, they will control the price, the finance and the insurance, and more importantly, they are going to control the supply of the more popular models. This is not like selling groceries or selling shoes, this is talking about automobiles. Additionally, within our state, we have a group of business-men and women, who have invested a lot of money into their operation. They are citizens in your town and they support your town. When little league needs new uniforms, where do they go? They don't go to General Motors, they don't go down the street to GMAC and say, "hey will you buy us some uniforms?" They go to the dealer. This is what happens, and then the dealer buys the uniforms. This is clearly an anti consumer bill. This is also an anti-New Hampshire business person bill. Several states have this legislation. The automobile industry is changing, and there will be a lot of Internet sales, but when that friend of yours bought that automobile over the Internet, he substantially took delivery from some dealer in New Hampshire who made his profit. That is the way that he can buy those uniforms for the Little League ball players.

SENATOR GORDON: I think that one of the biggest concerns that I had and why I support this legislation has to do with the sharing of information. That is, that these small dealerships that are out there doing business in our communities today, are required to provide to the manufacturers, their financial information. They supply that financial information to the manufacturer. Now can you imagine, then having to compete against that manufacturer to sell cars after they know everything about your business? Does that really seem fair? I was very pleased that Senator Fernald raised the issue about oil companies, because there are times when government has to become involved in the economy and the way that things are marketed. The oil business should be an example for all of us. We happen to have an oil company here in the state called Irving. Right now, in many cases, it is selling at the pump, diesel fuel for less than a private business can buy it for wholesale. The reason for that is, because it is manufacturing, it has a facility in Canada, and it brings it down here into New Hampshire and sells it less than New Hampshire residents can buy it for. Maybe there needs to be controls. Other states have gone and started to limit that already. I think in Maine, they call it the "Irving Law." Maybe that is something that we ought to do. There are times when the state has to step up and recognize that there are New Hampshire people doing business in this state, and we have to protect them. This bill comes from an announcement from General Motors. General Motors said, "we are going to buy 200 dealerships across the country and we are going to operate them." Now they since have rescinded that. They have decided that that became very unpopular very fast. That put the fear of God into a lot of people, and I think that precipitated this legislation. I think that it is good legislation. I don't think

that it is unreasonable to say that if local dealerships don't work out, that you could be giving people two years in order to...the company manufacturer to have two years to find a new owner. If they can't find a new owner, then I think that we will find a way to address that, if that be the need. I don't think that would be the case.

SENATOR WHEELER: Senator King, as you were speaking, I was listening to you and I was agreeing with everything that you said. I was really into it. I think that you had a slip of the tongue at the end when you said, that it was an anti-consumer bill. Did you really mean to say that it was a pro-consumer bill?

SENATOR F. KING: Thank you for finding that misstatement. It is late in the afternoon and I am getting tired.

Amendment adopted.

Ordered to third reading.

SB 387-FN-L, relative to proposed toll booths in the city of Nashua and relative to alternatives to the state-wide toll booth system. Transportation Committee. Vote 5-0. Ought to Pass, Senator Pignatelli for the committee.

SENATOR PIGNATELLI: Senate Bill 387 eliminates the toll booths in the city of Nashua and requires the commissioner of the Department of Transportation to create alternatives to the current toll booth system as a way of funding our highways and roads and bridges. If the proposed tolls are placed along this route, what has been gained with the improvement of traffic flow, would immediately be lost due to the traffic backups at the toll plazas. It makes very little sense to me, to spend millions and hundreds of millions of dollars to improve our roads so that the traffic can move more freely, then to stop it by spending millions to build these toll booths and stop traffic to collect more millions. I think that we have to look at a different way to fund our highways. I think a good way is to start with the elimination of some toll booths that are not built yet and are not needed according to the commissioner. Commissioner Kenison testified before the Transportation Committee that even doing away with these tolls, the Department of Transportation could continue their current project level with no delays. I know that this bill has some controversy. I know that it is not without controversy. But for me, we have all heard about some really horrible crashes with tragic results because of accidents at toll booths. Some of us have environmental concerns with traffic backing it up and spewing out whatever they are spewing out of their tailpipes. The massive traffic jams that they cause. Those three reasons alone, are enough for me to support a bill to stop building toll booths that aren't built, and to possibly look at a way to eliminate toll booths that are in the state. Hopefully, to give Senator Roberge's district a look at the Merrimack toll booths that she has some concerns about and certainly the people in Merrimack have concerns about. I appreciate the unanimous support from the Transportation Committee. **TAPE CHANGE**

SENATOR BROWN: Senator Pignatelli, can you assure me that the gas tax will not be increased by the elimination of this toll revenue?

SENATOR PIGNATELLI: Well I will tell you that an increase in the gas tax has never been part of my proposal. Since we are receiving about \$135 million more from the federal government than we had planned, Commissioner Kenison is not considering a gasoline tax increase.

SENATOR BROWN: Thank you.

SENATOR KRUEGER: Senator Pignatelli, just a question, informational answer I hope. Do you expect any increase in the Hooksett tolls that could offset anything related to this particular bill?

SENATOR PIGNATELLI: That certainly is not my plan. I know that at times we are considering eliminating the Merrimack tolls and raising the tolls in other places, but that is certainly not part of this, and it would not be needed should this bill pass. Commissioner Kenison assures me that we can continue with the ten-year highway plan without any delays because of the increased federal money that we are receiving now and should continue to receive in the future.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 426-FN, relative to boat dealers and repairers. Transportation Committee. Vote 3-0. Ought to pass with amendment, Senator Below for the committee.

2000-3490s

08/10

Amendment to SB 426-FN

Amend RSA 270-E:13, III as inserted by section 3 of the bill by replacing it with the following:

III. A manufacturer or dealer of vessels may, in addition to a general distinguishing number for his or her vessels, make application to the department for a registration plate for use only on boat trailers used in connection with the manufacturer's or dealer's business. In no case shall such plates be used for any other purpose or by any person other than the dealer or manufacturer or his or her employee or agent.

Amend RSA 270-E:16, IV as inserted by section 4 of the bill by replacing it with the following:

IV. A repairer of vessels may, in addition to a general distinguishing number for vessels which he or she is repairing or maintaining, make application to the department for a registration plate for use only on boat trailers used in connection with the business of repairing or maintaining vessels. In no case shall such plates be used for any other purpose or by any person other than the repairer or maintainer or his or her employee or agent.

SENATOR BELOW: Senate Bill 426 establishes registration plates for boat trailers used by boat dealers and repairers. These plates would be used when dealers are taking boats and/or trailers to shows, picking up used or traded in boats, transporting boats and/or trailers which have not been sold, and used on trailers which may or may not have been part of a sale. There was no opposition at the public hearing. Monies received from the sale of these plates would increase state revenues by a very modest amount. The Transportation Committee recommends that SB 426 be ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

SB 440, relative to after market parts. Transportation Committee. Vote 3-1. Inexpedient to Legislate, Senator Russman for the committee.

SENATOR RUSSMAN: Again the legislature is being asked to dispute commerce and enter into the business world and decide what is right and wrong in terms of consumer efforts. This bill was put in at the request of a House

member who apparently has a similar bill in the House, and apparently that legislation is being worked on by the House, and we felt that it would be better to report this bill out as inexpedient to legislate and see what the House does over there. We may have to deal with it again at a later time.

Committee report of inexpedient to legislate is adopted.

HB 1397, relative to naming a certain island in Lake Winnepesaukee in the town of Moultonborough. Wildlife and Recreation Committee. Vote 3-0. Ought to Pass, Senator Klemm for the committee.

SENATOR KLEMM: This bill authorizes the selectmen of Moultonborough to name an island in Ambrose Cove. The island is about $\frac{1}{4}$ an acre and is owned by the state, and it has no name. It is very close to shore and families use this island for a lot of recreation and they often swim out to it. The intent to name the island is "Children's Island" and the committee unanimously recommends ought to pass.

SENATOR JOHNSON: This island is in my district, and I just want to say that this is a piece of legislation that comes along at some period of time when I think that everyone can agree on. The family was originally going to name the island, in naming their daughter, who died at a very early age of heart failure. Then after talking with the rest of the family and many neighbors in the community, they decided that it would be nice to name it Children's Island. I thank you for your support. I am sure that the family will be very pleased when the governor signs this piece of legislation. Thank you.

Adopted.

Ordered to third reading.

HB 1455, relative to the authority of the fish and game department for the electronic issuance of licenses, permits, stamps, and tags. Wildlife and Recreation Committee. Vote 7-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3606s

10/09

Amendment to HB 1455

Amend RSA 214:7, VI as inserted by section 2 of the bill by replacing it with the following:

VI. The executive director may adopt rules pursuant to RSA 541-A for the electronic issuance of licenses, permits, stamps, and tags under the provisions of this title, by an agent or by the department. Any such rules shall include procedures for verification of residency, the determination of sufficient proof of hunter education or other certification requirements, and any requirements of the licensee as to the use of the license, permit, stamp, or tag acquired electronically.

SENATOR TROMBLY: This bill allows the Fish and Game Department to issue these products by electronic mechanism. Thank you.

Amendment adopted.

Ordered to third reading.

SB 399-FN-A, making an appropriation to the fish and game department for the purposes of the wildlife damage control program. Wildlife and Recreation Committee. Vote 3-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3599s

10/09

Amendment to SB 399-FN-A

Amend paragraph I of section 1 of the bill by replacing it with the following:

I. In addition to any other sums previously appropriated, there is hereby appropriated the sum of \$500,000 for the biennium ending June 30, 2001 to the fish and game department for the purpose of funding the wildlife damage control program. The governor is authorized to draw a warrant for such sum out of any money in the treasury not otherwise appropriated.

SENATOR TROMBLY: I have already given a speech on this bill seven months ago. If you weren't here, I would repeat it again by memory, for Senator Wheeler, then I would do it again in Spanish. This is the bill that obviously, if it passes today, will go down to Finance. I expect that it will be reworked down there. It calls for a \$500,000 appropriation. I don't think that we will get that, but I do think that it is very important that we maintain the commitment to the agricultural committee. Thank you.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendments to the following entitled House Bill sent down from the Senate:

HB 97, relative to the right to farm.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: David Babson
Ken Marshall
Betsey Patten
Jay Phinizy

SENATE ACCEDES TO HOUSE REQUEST

HB 97, relative to the right to farm.

Senator Russman moved to accede to the request for a Committee of Conference.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Below, Wheeler, Krueger

TAKEN OFF THE TABLE

Senator Fernald moved to have **SB 338**, relative to trustee process, removed from the table

Adopted.

SB 338, relative to trustee process.

Senator Fernald offered a floor amendment.

2000-3646s

08/09

Floor Amendment to SB 338

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

1 Trustee Process; Writ; Trustee Disclosure Form. Amend RSA 512:3 to read as follows:

512:3 Writ. The trustee writ shall be an attachment and summons, and shall be served upon the defendant and trustee like a writ of summons, and the goods and estate of the defendant may be attached thereon. ***Concurrently therewith, the trustee shall be served with a trustee disclosure form in compliance with RSA 512:9-d. The first page of the attachment shall bear a notice in boldface, in at least 12-point type, advising the trustee to complete and file the enclosed disclosure of trustee form with the court, the plaintiff, and the defendant within 60 days of receipt or suffer the risk of default. Return of the trustee disclosure form shall operate as an answer and an appearance on behalf of the trustee. A corporation summoned as trustee may appear and answer through its cashier, treasurer, clerk, or such other officer or employee as it shall appoint.***

2 Trustee Process; Bank Accounts; Service. Amend RSA 512:9-b to read as follows:

512:9-b Bank Accounts. When a bank, trust company, building and loan association, or similar corporation is named as trustee, the trustee shall be summoned by service ~~[on an officer, person in charge, teller, or office employee of such bank, trust company, building and loan association, or similar corporation at its office if service is made during banking hours, and, if service is made at a time other than banking hours, by service on an officer of such bank, trust company, building and loan association, or similar corporation, and not otherwise. The trustee so served shall not be chargeable for any goods, rights, or credits of the defendant except as shall be in the hands of the trustee at the time of service]~~ ***only upon a bank officer, branch supervisor, or head teller of a branch only from 8:00 a.m. to 3:00 p.m., Monday through Friday except bank holidays. The trustee so served shall be chargeable only for any money, goods, chattels, rights, or credits of the defendant in the trustee's hands at the time of service, subject to any reductions for chargebacks due to the trustee for uncollected funds or other priority claims to defendant's money, goods, chattels, rights, or credits. If summoned by service after 3:00 p.m., the trustee shall have until the beginning of the next business day to effect the attachment.***

3 New Sections; Trustee Process; Duties of Trustee; Trustee Disclosure Form; Extension for Filing Disclosure Form. Amend RSA 512 by inserting after section 9-b the following new sections:

512:9-c Duties of Trustee. The trustee so served shall place a hold on money, goods, chattels, rights, or credits of the defendant that are in the trustee's hands at the time of service, but shall have no duty to collect money, goods, chattels, rights, or credits either belonging to the defendant or that may become due or owing the defendant after that time.

512:9-d Trustee Disclosure Form. The trustee disclosure form served upon the trustee in compliance with RSA 512:3 shall include only the following interrogatories and nothing more:

"I. On what date were the trustee writ (including attachment and summons) and trustee disclosure form served upon you?";

“II. What money, rights, goods, chattels, and/or credits belonging to or due defendant and covered by plaintiff’s attachment did you hold at the time of service?”;

“III. Are any of the money, rights, goods, chattels, and/or credits disclosed by you in response to interrogatory II subject to chargebacks that are due to you from the defendant? If so, please state the amount and the basis.”; and

“IV. At this time, are you aware whether the money, rights, goods, chattels, and/or credits disclosed by you in response to interrogatory II are subject to priority claims of other people? If so, please state the amount, the basis for the priority claims, and the claimants.”

512:9-e Extension for Filing Disclosure. The trustee may request by motion that the court grant an extension of time for completing the trustee disclosure form. The court shall grant such extension request as a matter of course, except upon a showing by plaintiff that plaintiff would suffer undue and substantial prejudice as a result of such extension which outweighs the need for the extension. Notwithstanding any decision not to grant the extension, the trustee shall not be in default if it completes and files the disclosure form within 10 business days from the trustee’s receipt of the court’s order on the extension.

4 Trustee Process; Default of Trustee. Amend RSA 512:10 to read as follows:

512:10 Default. No person summoned as trustee in an action shall be charged on default until ~~he~~ **that person** shall have neglected to ~~[answer in the action]~~ **file a properly served trustee disclosure form in a timely manner**, after such notice as the court ~~[or justice, at the term when the action is entered or at some subsequent term,]~~ may order. ***In the event plaintiff is unable to establish proper service of the trustee disclosure, plaintiff shall provide to the trustee a trustee disclosure form. The trustee shall be entitled to the time periods provided in this chapter within which to file the disclosure.***

5 Trustee Process; Effect of Default. Amend RSA 512:11 to read as follows:

512:11 Effect. If the trustee ~~[makes default after the notice provided in RSA 512:10 he]~~ **fails to file a trustee disclosure form with the court within 60 days of service of the trustee writ on the trustee, the trustee** shall be adjudged chargeable ~~[for the amount of the judgment which may be recovered by the plaintiff against the defendant]~~ **only to the extent of the money, goods, chattels, rights, or credits of the defendant in the trustee’s hands at the time of service made in accordance with RSA 512:9-b, subject to any reductions for chargebacks due to the trustee for uncollected funds or other priority claims to defendant’s money, goods, chattels, rights, or credits.**

6 New Section; Trustee Process; Right to Hearing Upon Notice of Default. Amend RSA 512 by inserting after section 11 the following new section:

512:11-a Right to Hearing Upon Notice of Default. With its final default notice to the trustee, the court shall issue a notice of evidentiary hearing on the extent of trustee’s chargeability. The parties may waive hearing by filing with the court a stipulation as to the trustee’s chargeability signed by plaintiff, defendant, and trustee.

7 Trustee Process; Taking of Trustee’s Deposition. Amend RSA 512:12 to read as follows:

512:12 Taking. ~~[Disclosure of trustees may be given or taken by any party to the action at any time after the service of the writ upon the trustee,]~~

Within 60 days of the filing of the trustee disclosure with the court, the plaintiff or defendant shall be entitled to take trustee's deposition only on the limited issue of trustee's chargeability upon such notice to the [adverse party] ***trustee*** as is required in taking depositions ***under court rules*** and upon the payment [or tender] to the trustee of [his] fees for travel [and], attendance [as in the case of witnesses], ***and reasonable attorneys' fees as provided for herein.***

8 Repeal. RSA 512:18, relative to jury trial if trustee denies liability, is repealed.

9 New Section; Trustee Process; Evidentiary Hearing. Amend RSA 512 by inserting after section 18 the following new section:

512:18-a Evidentiary Hearing. If the court receives no objection to a trustee disclosure within 60 days of the date of receipt of such disclosure, the disclosure shall determine the chargeability of the trustee. If the plaintiff or the defendant files a written objection to the trustee disclosure within 60 days of receipt of the trustee's disclosure, or if the trustee fails to file a trustee disclosure form with the court within 60 days of service of the trustee writ on the trustee, the court shall schedule an evidentiary hearing on the extent of the trustee's chargeability.

10 Trustee Process; Charging Trustee. Amend RSA 512:20 to read as follows:

512:20 Charging Trustee. [Hf.] Upon the ***filing of trustee disclosure not objected to within 60 days of filing*** [depositions in the case], or, [if there is a trial by jury,] upon the [verdict of the jury] ***court's decision following an evidentiary hearing on the trustee's chargeability,*** [it appears that] ***the court shall charge*** the trustee [had in his possession at the time of the service of the writ upon him, or at any time after,] ***for any money, goods, chattels, rights, or credits of the defendant in the trustee's possession at the time of the service of the writ and not exempted from trustee process, [he] or subject to any reductions for chargebacks due to uncollected funds [shall be adjudged chargeable therefor] or other priority claims to defendant's money, goods, chattels, rights, or credits.***

11 Trustee Process; Receiver for Property Disclosed; Refusal to Deliver. Amend RSA 512:32 to read as follows:

512:32 Refusal to Deliver. If the [person summoned as] trustee [shall refuse] ***refuses*** to deliver to [the] ***a*** receiver[, agreeably to the order of court,] ***appointed under RSA 512:29 or RSA 512:30*** any note, security for money, evidence of debt, chose in action or other property, [he shall be adjudged trustee for the value thereof] ***on the grounds that such property is not subject to trustee process, the court shall schedule an evidentiary hearing to determine the validity of such refusal. If, after the evidentiary hearing, the court determines that the property is subject to trustee process and orders the trustee to deliver the property, the trustee shall be adjudged chargeable for the value thereof.***

12 Trustee Process; Paying Into Court. Amend RSA 512:39 to read as follows:

512:39 Paying into Court. The defendant or trustee may discharge the liability of the trustee by paying into court the sum for which the trustee is charged. ***Payment into court by the trustee shall discharge the trustee as a party to the underlying lawsuit.***

13 Trustee Process; Costs; Order of Court. Amend RSA 512:43 to read as follows:

512:43 Order of Court. The trustee shall recover [his] ***the trustee's*** costs in all cases ***from the plaintiff*** except as provided in this chap-

ter, unless otherwise ordered by the court, and the court shall adjust all costs in matters relating to trustee process as between the plaintiff and trustee or any claimant of property in the hands of the trustee as shall seem equitable. *Such costs shall be retained by the trustee from the amount chargeable.*

14 New Section; Trustee Process; Trustee's Attorneys' Fees. Amend RSA 512 by inserting after section 45 the following new section:

512:45-a Trustee's Attorneys' Fees. Plaintiff shall be responsible for all reasonable attorneys' fees incurred by a trustee in preparing the trustee disclosure form and responding to plaintiff's trustee process attachment. If any party disputes the amount disclosed on the trustee disclosure, and the trustee is ultimately deemed chargeable for nothing greater than the amount disclosed in its trustee disclosure, the disputing party shall also be responsible for trustee's reasonable attorneys' fees incurred by the trustee in so responding. Trustee's reimbursement for reasonable attorneys' fees shall be retained by the trustee from the amount adjudged chargeable. If the trustee's reasonable attorneys' fees exceed the sum for which trustee has been adjudged chargeable, the trustee shall be entitled to a judgment against plaintiff for any difference.

15 Trustee Process; Application of Provisions. Amend RSA 512:48 to read as follows:

512:48 Application of Provisions. The provisions of this chapter, so far as they are applicable to actions in municipal *and district* courts, shall apply to actions and proceedings therein and to process issued therefrom[, ~~but no party summoned as trustee shall have judgment entered against him until after notice has been given him to disclose, or after disclosure made~~].

16 Effective Date. This act shall take effect January 1, 2001.

SENATOR FERNALD: This is a bill on trustee process. It is a legal process where property can be attached when it is being held by somebody else. Senator Gordon was on a study committee where they did some great work over the summer. They came up with a bill. I had requested that we table it at a previous session when I was out-of-state on business and I couldn't be here. There were some places in the bill where the language wasn't consistent from section to section. There were certain words used one way and then a different group of words to describe the same thing in another part of the bill. So I have prepared a floor amendment to make the language consistent all the way through. I think that primarily is what it does. There was one place where I tried to use the word in terms of the process of filing motions and so forth in the court, it wasn't really consistent with usage in the legal profession. Senator Gordon has looked this over very kindly and said that it looks good to him. I am not trying to speak for him, but I think that he is okay with that. I would urge your consideration and support. I think that this is part of Senator Gordon's ongoing effort to clean up various parts of the code. Thank you.

Floor Amendment adopted.

Ordered to third reading.

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

ANNOUNCEMENTS

SENATOR FERNALD (Rule #44): I know that we are all really busy and there are times when we have great ideas for a bill, and then when we prepare it, what is on paper is less than perfect. I think that I have observed, in my time here, there is a tradition that when a Senator wants to work on something and make it better that they are normally allowed the courtesy of tabling the bill so that they work on it. I think that is a good tradition to preserve and I think that it is troubling when it is not observed. Thank you.

SENATOR GORDON (Rule #44): I just wanted to note that the February 29th passed and many had predicted that even though there weren't any serious Y2K problems after the first of the year, that we really had to wait until the 29th of February to really know whether there were going to be, which caused me to think that we had some serious debate over the last two sessions here, over Y2K. The debate was over whether or how we were going to solve the problem. As you know, one of the proposed solutions was that we were going to just exempt the state from liability. I just wanted to point out that I think that the position that the Senate took, which was to address it's responsibility by fixing the problem in advance and not just excusing ourselves with the problem was the right thing. The sky didn't fall, and I just wanted to comment on that.

RESOLUTION

Senator Cohen moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings, enrolled bills and amendments and that when we adjourn we adjourn to Thursday, March 16, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

SCR 3, rescinding the 1979 call for a federal constitutional convention.

SCR 4, urging the federal government to establish a new zip code for the town of Madbury.

HCR 25, opposing the President's action to establish vast roadless areas in the White Mountain National Forest without the consultation or input of the New Hampshire citizenry.

SB 303, relative to campaign contributions by business organizations.

SB 305, relative to payments to defeat eviction for nonpayment of rent.

SB 315, changing the form for writs of execution.

SB 320, relative to ballot counting in cooperative school districts and relative to ratifying the Inter-Lakes cooperative school district meeting held on March 8, 2000.

SB 330, establishing a committee to study the impact of water withdrawals on instream flows.

SB 338, relative to trustee process.

SB 339-FN, relative to conducting a feasibility study of various alternatives to enhance safety at the traffic circle in the city of Portsmouth.

SB 343, relative to disclosures concerning sexual offenders in sales of real property.

SB 347, relative to the contributory retirement system of the city of Manchester.

SB 375, relative to motor vehicle dealerships.

SB 378, relative to Article 9 of the Uniform Commercial Code.

SB 386-FN-L, relative to names on birth certificates and affidavits of paternity.

SB 393, relative to single producer licensing.

SB 414-FN, reorganizing the divisions of the department of corrections.

SB 416-FN, relative to licensure of dietitians.

SB 418, relative to liquor liability insurance coverage.

SB 424, relative to controlled substances used for pain management.

SB 426-FN, relative to boat dealers and repairers.

SB 432-FN-A, relative to state assistance for teachers applying for national board certification.

SB 443-FN, relative to veterinarian reimbursement for the animal population control program.

SB 444-FN, relative to methadone maintenance treatment.

SB 445-FN, relative to methadone maintenance treatment.

SB 446, relative to the integration of information technology at the state, county and municipal levels.

SB 448, establishing a guardians ad litem board.

HB 449, requiring boating safety education.

SB 453, relative to the expending of legacies or gifts and the transfer of funds by the regional community-technical colleges.

HB 730-FN, establishing a house committee to review methods for recording committee sessions, authorizing a request for proposals, and making an appropriation therefor.

HB 1136, relative to the university system of New Hampshire board of trustees.

HB 1141, relative to access highways to public waters.

HB 1186, extending the reporting date of the Sullivan county regional refuse disposal district issues study committee.

HB 1200-FN, relative to the application of education property tax hardship relief to estate planning trusts and relative to eligibility for hardship relief.

HB 1223, changing the name, amending the duties, and extending the reporting date of the committee to study the unclassified salary structure for state officers.

HB 1386, designating segments of the Souhegan River as protected under the rivers management and protection program.

HB 1397, relative to naming a certain island in Lake Winnepesaukee in the town of Moultonborough.

HB 1455, relative to the authority of the fish and game department for the electronic issuance of licenses, permits, stamps, and tags.

In recess.

Out of Recess.

HOUSE MESSAGE

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

HB 1127, establishing a committee to study the application and appeal procedures for excavating and dredging permits.

HB 1151, establishing a committee to study the creation of a New Hampshire local government records management trust and to consider funding alternatives.

HB 1166, relative to confidentiality and information collection by the department of agriculture, markets, and food.

HB 1199, establishing a study committee on funding for affordable housing.

HB 1235, relative to defining surface waters..

HB 1258-FN, relative to invasive plant, insect, and fungal species.

HB 1311, relative to payment of employer contributions for unemployment compensation.

HB 1357-FN, relative to the sale of state-owned property in the towns of Belmont and Laconia.

HB 1382-FN, making it a felony for inmates to harass corrections personnel and others by propelling bodily fluids.

HB 1416-FN, establishing a brownfields cleanup revolving loan fund.

HB 1450-FN, relative to hearings and appeals of equal pay claims.

HB 1470, relative to divestiture of electric utility assets.

HB 1494-FN, establishing penalties for attempts to purchase firearms illegally.

HB 1504, relative to submission of biennial budget estimates by agencies.

HB 1510-FN, relative to establishing a medical savings account plan for providing state employee health care benefits.

HB 1512-FN, establishing a committee to study the feasibility of implementing a paid family and medical leave insurance program and potential funding sources to support it.

HB 1531, relative to the preemption of local regulations of firearms.

HB 1535-FN, relative to creation of a commission to study the state's increasing appellate caseload and solutions to the increasing appellate caseload.

HB 1559-FN, establishing a committee to study the organization and functions of the New Hampshire state port authority.

HB 1571-FN, relative to claims arising from clinical services provided to the department of corrections.

HCR 31, urging the New Hampshire congressional delegation to take action to keep the international border crossing between the United States and Canada, in the town of Pittsburg, New Hampshire, open 24 hours a day.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 1127-HCR 31 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 1127, establishing a committee to study the application and appeal procedures for excavating and dredging permits. **Environment**

HB 1151, establishing a committee to study the creation of a New Hampshire local government records management trust and to consider funding alternatives. **Internal Affairs**

HB 1166, relative to confidentiality and information collection by the department of agriculture, markets, and food. **Public Affairs**

HB 1199, establishing a study committee on funding for affordable housing. **Public Affairs**

HB 1235, relative to defining surface waters. **Environment**

HB 1258-FN, relative to invasive plant, insect, and fungal species. **Environment**

HB 1311, relative to payment of employer contributions for unemployment compensation. **Insurance**

HB 1357-FN, relative to the sale of state-owned property in the towns of Belmont and Laconia. **Transportation**

HB 1382-FN, making it a felony for inmates to harass corrections personnel and others by propelling bodily fluids. **Executive Departments and Administration**

HB 1416-FN, establishing a brownfields cleanup revolving loan fund. **Environment**

HB 1450-FN, relative to hearings and appeals of equal pay claims. **Executive Departments and Administration**

HB 1470, relative to divestiture of electric utility assets. **Energy and Economic Development**

HB 1494-FN, establishing penalties for attempts to purchase firearms illegally. **Judiciary**

HB 1504, relative to submission of biennial budget estimates by agencies. **Finance**

HB 1510-FN, relative to establishing a medical savings account plan for providing state employee health care benefits. **Insurance**

HB 1512-FN, establishing a committee to study the feasibility of implementing a paid family and medical leave insurance program and potential funding sources to support it. **Insurance**

HB 1531, relative to the preemption of local regulations of firearms. **Public Affairs**

HB 1535-FN, relative to creation of a commission to study the state's increasing appellate caseload and solutions to the increasing appellate caseload. **Executive Departments and Administration**

HB 1559-FN, establishing a committee to study the organization and functions of the New Hampshire state port authority. **Energy and Economic Development**

HB 1571-FN, relative to claims arising from clinical services provided to the department of corrections. **Public Institutions, Health and Human Services**

HCR 31, urging the New Hampshire congressional delegation to take action to keep the international border crossing between the United States and Canada, in the town of Pittsburg, New Hampshire, open 24 hours a day. **Energy and Economic Development**

2000-3754-EBA

08/10

Enrolled Bill Amendment to HB 1136

The Committee on Enrolled Bills to which was referred HB 1136

AN ACT relative to the university system of New Hampshire board of trustees.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1136

This enrolled bill amendment makes a technical correction in the RSA section in section 1 of the bill.

Enrolled Bill Amendment to HB 1136

Amend section 1 of the bill by replacing line 3 with the following:
The general government of the university system

Senator Trombly moved adoption.

Adopted.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, March 16, 2000 at 10:00 a.m.

Adopted.

Adjournment.

March 16, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

Exactly one year ago I was standing here having a conversation with Senator Blaisdell. I asked him if he knew that many scholars now believe that St. Patrick was a Welshman. To which the crusty Irishman responded in a flash, "Well then, many scholars can go to hell". As you think about gun legislation, the death penalty and various funding mechanisms, beware of hearing just those things you want to hear. Do not resist new information, for if you are right, that new data will only serve to bolster your position. And if you are wrong, it will preserve you and us from harm-

ful decisions. Junie was probably right about those scholars, as he usually was. But just think: if Patrick 'was' a Welshman, who spent his life loving and leading and serving the people of Ireland anyway, that new information would say something very powerful about the importance of the Irish people and the character of their patron saint. No matter where you come from, Senators, staff members, lobbyists, you get to lead and serve and love us in ways that keep us from ending up in that place where Junie sent the scholars. Let us pray:

Lord God of the Irish and everyone else, remind us always that our knowledge is partial and our vision is blurred. Strengthen our grasp on those things that are right, and pry open our fingers from those cherished, but flawed, viewpoints of our own opinions, that our decisions may dignify not just our political reputations, but our essential characters. Amen.

Senator Larsen led the Pledge of Allegiance.

INTRODUCTION OF GUESTS COMMITTEE REPORTS

SB 409-FN, relative to health insurance coverage of qualified clinical trials. Insurance Committee. Vote 7-1. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3689s

01/09

Amendment to SB 409-FN

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

1 New Section; Coverage for Qualified Clinical Trials. Amend RSA 415 by inserting after section 18-j the following new section:

415:18-k Coverage Required for Qualified Clinical Trials.

I. In this section:

(a) "Clinical trials of emerging technologies" mean Phase I and Phase II clinical trials.

(b) "Clinical trials of leading therapeutic or diagnostic alternatives" mean Phase III and Phase IV clinical trials.

(c) "Cooperative group" means a formal network of facilities that collaborate on research projects and have an established National Institute of Health (NIH) approved peer review program operating within the group.

(d) "FDA" means the federal Food and Drug Administration.

(e) "Member" means the policyholder, subscriber, insured, or certificate holder, or a covered dependent of a policyholder, subscriber, insured, or certificate holder.

(f) "Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services, that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

(g) "NIH" means the National Institutes of Health.

(h) "Non-routine patient care cost" means:

(1) The cost of an investigational new drug or device that is not approved for market for any indication by the FDA.

(2) The cost of a non-health care service that a member may be required to receive as a result of the treatment being provided for the purposes of the clinical trial.

(3) The costs of services that are clearly inconsistent with widely accepted and established regional or national standards of care for a particular diagnosis.

(4) Costs associated with managing the research associated with the clinical trial.

(5) Non-covered costs under the member's policy, plan, or contract.

(i) "Routine patient care cost" means the cost of any medically necessary health care service that is incurred as a result of the treatment being provided to a member of a health plan. Routine costs are those for which the health plan regularly reimburses its members, health care providers, or health care institutions subject to the terms and conditions of the member's policy and the provider's service agreement with the insurer.

II. A policy, plan, or contract subject to this section shall provide coverage for all medically necessary routine patient care costs incurred as a result of a treatment being provided in accordance with a clinical trial to the extent such costs would be covered for noninvestigational treatments if the treatment is being provided or the studies are being conducted in a phase I, phase II, phase III, or phase IV clinical trial for cancer or the treatment is being provided for any other life-threatening condition.

III. The coverage required under paragraph II shall be required if:

(a) The treatment is being provided to the member in a clinical trial approved by:

(1) One of the National Institutes of Health.

(2) An NIH cooperative group or an NIH center.

(3) The FDA in the form of an investigational new drug application or exemption.

(4) The federal department of Veterans Affairs or Defense.

(5) An institutional review board of an institution in this state that has a multiple assurance contract approved by the Office of Protection from Research Risks of the NIH.

(b) There is no clearly superior, non-investigational treatment alternative.

(c) The facility and personnel providing the treatment are capable of doing so by virtue of their experience, training, and volume of patients treated to maintain expertise.

(d) The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the non-investigational alternative.

IV. A policy, plan, or contract subject to this section shall provide coverage for routine patient care costs incurred for drugs and devices provided to the member during the clinical trial provided that those drugs or devices have been approved for sale by the FDA, whether or not the FDA has approved the drug or device for use in treating the member's particular condition to the extent that the drugs or devices are not paid for by the manufacturer, distributor, or provider of that drug or device. Nothing in this section shall be construed to abrogate the provisions of RSA 415:6-g or RSA 420-J:7-b. This coverage shall include coverage for reasonable and medically necessary services necessary to administer the drug or use the device under evaluation in the clinical trial.

V. The provisions of this section shall apply to individual and group hospital and medical expense policies subject to RSA 415, health service corporations under RSA 420-A, health maintenance organizations under RSA 420-B, and managed care organizations under RSA 420-J.

VI. For the purposes of this section, providers participating in clinical trials shall obtain a patient's informed consent for participation in

the clinical trial in a manner that is consistent with current legal and ethical standards. Such document shall be available to the health insurer upon request.

VII. Health plans providing coverage under this section and the providers participating in those same clinical trials shall develop a mutually agreed upon process to share appropriate aggregate clinical and financial data on the progress and outcome of clinical trials subject to this section.

VIII. The provisions of this section shall not apply to a policy, plan, or contract paid for under the federal Medicare program nor the state children's health insurance program.

2 Effective Date. This act shall take effect January 1, 2001.

SENATOR WHEELER: Senate Bill 409 comes with the strong support of the Insurance Committee. Some years ago, there was no question that your health insurance would cover your routine patient costs if you were participating in a clinical trial. However, now patients in clinical trials are often being denied coverage for routine patient care costs in order to save the plan money. When health plans deny health care in this manner, patients must either accept standard therapy, which the plan will cover, but might be more expensive and less effective than care at the clinical trial, or the patient must pay for the care in the clinical trial out-of-pocket, which most cannot afford to do. This uncertainty about coverage can prevent people from being willing to participate in a clinical trial. As many of the lifesaving treatments that we have today came from clinical trials, and as clinical trial results give essential information to medical directors of health plans about which treatments are most effective, it is essential to support patients entering into them. The amendment adopted by the committee was the result of long discussions and much effort on the part of many of the stakeholders. The results are positive, as you can tell by the joint letter of support, which I hope that you all received from the American Cancer Society and the American College of Cardiology, Anthem Blue Cross Blue Shield, and the New Hampshire Medical Society. The Insurance Committee believes that this is an important bill for the people of this state and of our nation, and we hope that you will join us in supporting SB 409. Thank you.

SENATOR FRANCOEUR: After listening to the testimony on SB 409, there were concerns brought up by the few HMO carriers in the state of New Hampshire. Currently, as mentioned earlier, there are only clinical trials allowed in seven other states in the United States currently and out of those, only two of them allow clinical trials for all non-threatening diseases. There was a concern from the HMO Association which currently is opposed to the bill that is written, and offer an amendment which would limit it to cancer research only, because of a couple of reasons. 1) it has only been instituted in the states that have it now within a year to 18 months, there is not the evidence of the actual cost of it, they were worried about the costs being different and being higher than what they had anticipated. Currently there has been a study done that was done on cancer only. It showed that the cost was somewhat negligible. There have been no studies that expanded beyond the cancer only. At this time, as far as the Senate, if you take a look at what we have done in the last couple of years where our health care is in the state of New Hampshire, we are getting a more limited selection by the year as it goes by. The mandates that we passed last year have helped to drive our costs up anywhere from 40-60 percent in the last couple of years. I would ask the

Senate to take a look at this, and if we could vote down the ought to pass, I would ask to table this and we could, hopefully, work out a compromise to limit it to cancer only, that would enable us to work on what we know for costs currently. I believe that at this time, the insurance market in the state of New Hampshire has already been hit hard over the last few years and to take a giant step forward without actually knowing the real cost before you get into it, could really be detrimental when forced higher rates and less carriers than we currently have. Thank you.

SENATOR KRUEGER: I wish that all of you in this room had met Keith Boyer. Keith Boyer and his wife, you may have read about this family in some of the local newspapers, was diagnosed at the age of 35 with a very rare type of brain disease. By the way, it is the same brain disease that Ryan had, remember the Ryan story? Keith is on his way back, or will be tomorrow from a place in Texas. The only place in the country that can treat through gene therapy, clinical trials of an FDA approved drug; however, his health insurance will not pay for this. The costs for this particular procedure will probably exceed \$300,000. There is no question that it would be such a phenomenal amount of bake sales and everything else that his friends and neighbors are trying to put forth to help this family. Well I went there when I read the story in the paper. I felt privileged to be sitting in that room, but I felt their sense of desperation. Other people have survived with this particular kind of treatment. My hope of course, is that Keith will also survive, he has young children. But let me tell you, we have already contacted lawyers who are willing to fight the insurance company on this. What my fear is, quite frankly, that the horror that this man...he works for the railroad, is going through, and facing the bills that he is going to have, will probably kill him quicker than the disease he has. It is a horrible, horrible position to be in. If this legislation had been in place, I truly believe that we would have a much stronger time for his particular health insurance carrier in making sure that Keith would be able to have the treatment that is necessary. He is willing to take a chance on the clinical trial. As a side, as I have shared with you before, I was part of a clinical trial once. My health insurance company wouldn't pay for it and I had to sign all kinds of waivers, etceteras. It is devastating. I hope that you will all look upon this and think and include Keith in your prayers. So far he is doing well, but he has a long, long way to go.

SENATOR SQUIRES: I rise in strong support of this bill. The way to truth is through the clinical trial. The opposite, however, is also true. The way to enormous expenses may be through the lack of clinical trials and we could talk about examples, one of which here in New Hampshire, where that occurred. But to the particulars to the bill. First of all, it is important to understand that this bill covers routine costs, and you will find that set forth on line 28 on the first page. Now a routine cost would be the costs associated with benefits that are already covered. For example, if there is a standard treatment as it were, the costs might be a white blood count every two weeks, or anything else that you can think of. If the trial...if the patient entered the trial, the company would pay only the costs that were equivalent in the standard therapy. There is no increase in costs in that example, nor any example. The second point that I wish to call your attention to is the...the criteria on page two, starting on line three. These are not some trials that I might wish to conduct in my office. These are NIH trials, and all of the criteria that you will see, and within that, the company, again, pays the routine costs. The protection here for the company is the term "life threatening illnesses." These are not trials for the vast majority of chronic diseases, which al-

though enormously painful, are not life-threatening. These are trials...the example that you heard about a brain tumor is a good one. It is obviously a life-threatening illness. Finally, it is true that the HMO Association felt that it should be limited. Anthem agrees with the bill, so there is a dispute in the industry as to the effects of this bill. I urge you to pass this. I think that it is good medicine. I believe that the costs, because of the protection in the bill will not rise, and thus, it is an important piece of legislation. Thank you.

SENATOR TROMBLY: Senator Squires, if we adopt Senator Francoeur's amendment, does that mean that any AIDS testing would be terminated and not covered?

SENATOR SQUIRES: It would certainly mean that some AIDS testing would be terminated. As you know over time, some patients with AIDS develop malignancies, so for that group, I suppose, one could say that there would be treatment, but in general, given the current status of AIDS therapy, HIV therapy, at the moment HIV is not a life-threatening disease as it was ten years ago. So one could argue that it would be excluded.

SENATOR TROMBLY: Thank you.

SENATOR FRANCOEUR: Senator Squires, this bill only requires the HMOs to be involved in the clinical trials, could they not do it if they wanted on their own, without this legislation?

SENATOR SQUIRES: They do it on their own as it were, now, but it is fairly arbitrary. What the bill does is turn it around and puts it in the patient's perspective. If there is a possibility out there that some benefit, based on this criteria, might come to these patients, then the company can not arbitrarily say no, that is experimental. In fact, it doesn't happen very often, but it clears the way and simplifies the process for the patient.

SENATOR FRANCOEUR: Thank you.

SENATOR MCCARLEY: Very briefly because Senator Squires touched off the very points that I wanted to sort of put forward in terms of clarification. I think that the other issue that we heard over and over is that in this time in which we had the ability to actually do incredible things in terms of saving lives, to do anything that would diminish an interest in patients taking part in clinical trials that move us forward was articulated over and over. I think that it is an additional point in support of the legislation. Thank you.

SENATOR WHEELER: I want to urge the Senate not to support a tabling motion. This bill has been worked on extensively. The Anthem Blue Cross is firmly in favor of it. The Maryland law requires routine patient care costs coverage for cancer and other life-threatening diseases. We don't want to limit it. What we want to do is enable people in our state, who have the possibility of being in a clinical trial, to have the certainty that their routine care costs are going to be covered. I don't want you to think that the insurer is paying for the clinical trial, or accepting or rejecting the clinical trial. This is the decision of the patient. The insurer is only doing what they have always done in the past, and what they would do if you weren't in a clinical trial, and that is to cover your routine care costs. It is limited to routine care costs. The clinical trials account for less of the overall costs in the small group market than in any other market sector. Measured, this is Maryland data. Studies have been done on this, including the Mayo Clinic which has done a study. They show that the costs are

negligible to the health plans for continuing their coverage of routine care costs. So I can't tell you how important I think that this bill is. I don't think that we should try to amend it further and certainly we shouldn't table it.

Amendment adopted.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Francoeur.

Seconded by Senator Brown.

The following Senators voted Yes: F. King, Gordon, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No: Johnson, Francoeur.

Yeas: 22 - Nays: 2

Adopted.

Ordered to third reading.

SB 361, authorizing citizen suits to assure enforcement of New Hampshire's environmental statutes. Judiciary Committee.

SPLIT REPORT: Ought to pass with amendment, Senator Wheeler for the committee. Vote 3-3 .

SPLIT REPORT: Inexpedient to Legislate, Senator Trombly for the committee. Vote 3-3

2000-3739s

04/09

Amendment to SB 361

Amend the bill by replacing section 1 with the following:

1 New Chapter; Citizen Suits. Amend RSA by inserting after chapter 507-F the following new chapter:

CHAPTER 507-G

CITIZEN SUITS

507-G:1 Standing.

I. Any person may commence a civil action on his or her own behalf against any other person, including the state, who is in violation of any of the statutes enumerated in RSA 507-G:2, or any rule adopted pursuant to said statutes.

II. Any person may commence a civil action on his or her own behalf against the state for failure of a state agency to perform any non-discretionary action required by any of the statutes enumerated in RSA 507-G:2.

III. No person may commence a civil action under this chapter unless the person has an interest that is adversely affected by the alleged violation.

IV. No action may be brought under this chapter for past violations where no injunctive relief is available. A good faith allegation of a continuing violation shall suffice for jurisdictional purposes in cases of sporadic or intermittent violations.

507-G:2 Scope. Actions brought under this chapter must allege a violation of or failure to perform under one of the following:

I. RSA 125-C.

II. RSA 125-D.

III. RSA 125-G through 125-J.

IV. RSA 146-A.

V. RSA 146-C.

VI. RSA 147.

VII. RSA 147-A.

VIII. RSA 147-F.

IX. RSA 149-M.

X. RSA 155-E:4-a, II-a through 155-E:4-a, V.

XI. RSA 211:71 through 74.

XII. RSA 266:59-b.

XIII. RSA 339-A.

XIV. RSA Title L.

507-G:3 Notice.

I. At least 90 days prior to commencing an action pursuant to RSA 507-G:1, I, the prospective plaintiff shall provide notice of an intent to sue to the alleged violator, to the agency primarily responsible for implementing or enforcing the statute underlying the complaint, and to the attorney general. The notice shall identify the facts or events forming the basis for the allegation, the date or dates of the alleged violation, and the statute or rule.

II. At least 90 days prior to commencing an action pursuant to RSA 507-G:1, II, the prospective plaintiff shall provide notice of an intent to sue to the agency which has allegedly failed to perform a non-discretionary action, and to the attorney general. The notice shall identify the facts or events forming the basis for the allegation, and the specific non-discretionary statutory mandate alleged to have been violated. "Non-discretionary" shall not apply to decisions regarding the commencement or non-commencement of enforcement actions under this chapter.

III. Any action brought under this chapter shall be commenced within one year of the date of the notice of intent to sue. The plaintiff shall serve the attorney general with a copy of the pleading initiating the suit.

507-G:4 State Prosecution.

I. A suit may not be commenced under this chapter if the state agency primarily responsible for implementing or enforcing the statute underlying the complaint has commenced and is diligently prosecuting an administrative, civil, or criminal action in a state court against the violator to require compliance with the statute. Prosecution shall be presumed to be diligent absent persuasive evidence that the state is currently engaged in a pattern of conduct that could be considered dilatory, collusive, or otherwise in bad faith.

II. Any person who filed notice pursuant to RSA 507-G:3 prior to the commencement of the prosecution by the state may intervene in the state administrative or judicial enforcement actions as provided by law.

III. The state may intervene as a matter of right in any citizen suit.

507-G:5 Venue.

I. Actions under RSA 507-G:1, I shall be brought in the superior court of the county where the alleged violation occurred.

II. Actions under RSA 507-G:1, II shall be brought in the superior court of the county where the alleged violation occurred or in Merrimack county superior court.

507-G:6 Remedies. The court may order injunctive relief and impose civil penalties, payable to the state treasury, consistent with the applicable statute's penalty provisions. If the applicable statute authorizes civil penalties for each day of a continuing violation, and the court finds that a violation was continuing at the time the complaint was filed, the court may impose civil penalties for the period of the violation after the complaint in addition to penalties imposed for the period before the complaint.

507-G:7 Costs. The court shall award reasonable costs, including reasonable attorney's fees and expert witness fees, to any party who prevails or substantially prevails in an action brought under this chapter, if the court determines that such an award is in the public interest.

SENATOR WHEELER: I think that there are a lot of misunderstandings about SB 361. I hope that most of you have received the paper that talks about the myths versus reality. I won't probably read it aloud, but most of the arguments that have been brought against it can be counteracted just by careful reading of the bill as amended, which incidentally is supported by the attorney general. Senate Bill 361 authorizes citizens who are adversely affected to bring citizen suits in state court to enforce state environmental standards. The availability and even the threat of citizen suits is the most economical method of supplanting state enforcement resources. Senate Bill 361 would help level the playing field between the businesses that obey the environmental rules and those that don't. The attorney general's office supports SB 361 as amended, because they believe that private environmental enforcement initiatives brought by New Hampshire citizens under 361, will result in better enforcement of the environmental laws enacted by the general court. The state citizen suit is not new, 15 states currently allow citizen suits as a way to enforce state environmental laws. Senate Bill 361 is a uniquely New Hampshire and positive solution to help understaffed and underfunded agencies perform their enforcement duties. It doesn't add any new bureaucrats and it doesn't require an appropriation. It has been amended to ensure that citizen and environmental suits facilitate environmental enforcement and do not interfere with the state's enforcement discretion and priorities. Some of the things that people say is that this will force DES to change their priorities. No citizen suit would force DES to change its priorities. DES could allow the citizen to go ahead with the lawsuit, mind you, that you are not suing DES with a writ of mandamus which it would have you do. You are filing suit for an ongoing violation that is affecting you personally. You cannot collect damages. The most that you can get is an award to get your court cost paid for. The cost of the suit paid for. What DES can do, is all that they would need to do was write a one page statement of administrative action saying that they were going to investigate this. So that could immediately stop the suit. If it is in court, as the Loon Mountain was, if that had been a state issue and not a federal suit, you couldn't have brought a suit, because it was already being dealt with by DES. I think that there are an awful lot of protections in this. I think that it is a way of getting citizens involved with understanding that they have some possibility of making sure that the laws that we have are being enforced. There are plenty of protections against frivolous suits in this amendment. I think that it is an important tool to use. It is not to encourage everyone to go to court, but it is to encourage the enforcement of the laws that we have on the books. Thank you.

SENATOR TROMBLY: I think that in 17 years of practicing law it is safe to say that I have never run into anybody that believes that his or her lawsuit is frivolous. But the bottom line is, some lawsuits don't make sense. Some lawsuits are cumbersome. Some lawsuits could be worked out if people would just sit down and compromise, or engage in a dialogue. That doesn't always happen, and when you are talking about perceived or actual violations of environmental standards, people do not always act in what might be a proper course or the best course, and if you give them avenues simply to go into court because they may believe that they are an adversely affected party, that is where they are going

to go folks. I think that is a statement of where we are as a society as a whole. I have to disagree with my very good friend, Senator Wheeler, in that it doesn't cause...it will cause DES to rearrange its priorities and this is why: Because if somebody believes that they are adversely affected, and that is a standard setup in the legislation, the person has to believe that they are adversely affected. One of the problems that I have in going through that working out whether or not somebody would or would not be an adversely affected person, you don't have a great deal of guidance. So one of my concerns is that somebody who believes that they are contaminating...breathing air, from an incinerator, a down wind, 80 miles away, could potentially file suit against the incinerator and bring it into court. This is how the bill rearranges the resources of DES. If DES is facing a citizen suit or if a business or a municipality is facing a lawsuit, and this commences, then DES, by virtue of the fact that they are in that position, is going to want to, if not feel that it has to, address the allegations in the suit. So they are going to take person A, who is working on this environmental problem and stick them over here to work on the lawsuit. That rearranges how the administration and enforcement of the environmental laws in the state take place. That is what is going to happen. Because if DES is working on problem A and environmental problem A, we will say in Berlin, and they are sued by somebody in Nashua, DES is going to want to respond to the lawsuit for a couple of reasons. 1) They are not going to want the publicity and 2) if you file the lawsuit, it kicks in certain actions that follow and they are going to want to address that to clear the table of it; therefore, whatever environmental problem that occurs in the other part of the state, is going to lose those resources. We don't fund DES sufficiently now. There was a great deal of discussion about what happened in the committee, that we don't provide enough money and enough resources to environmental services to do what they are supposed to do now, and quite frankly, with our deficit, it doesn't look like we are going to in the rest of the year. But very briefly, what I need to tell you is this: If a citizen feels that the Department of Environmental Services is not enforcing the environmental laws, they can bring a writ of mandamus, not sue the business, but sue the people that are supposed to be doing what they are supposed to do. You go to court, you say, here is the law, this is what has happened, judge, order them to do it, if that is what your prerogative is. You have it available to you now. I don't think that there has been a great deal of misinformation said about this legislation, but I think that a great deal of questions have been raised about what it would do and what its impact would be. I have a concern that if we pass this legislation, that we would open up a Pandora's box for business and municipalities, and I am not inclined to do that without the questions being answered, and in particular, when we have a legal process already in place that will allow people to do what this legislation would enable them to do. Thank you, Madame President.

SENATOR SQUIRES: I rise in support of the inexpedient to legislation motion for the following reasons: Each bill, particularly this one, rests on a theory. There has to be a premise that prompts the bill. As I have listened to the testimony and thought about this bill, the premise is that government has failed. In this case, the executive branch, but also legislative branch, because we have not funded the operations of government that are supposed to enforce these laws. Now in our rational world, the approach would be to fix the agencies. But we have chosen, a totally different route, which is to say that government is not functioning, so

we will then turn around and sue the people that government is supposed to be regulating. That does not make sense to me. If we have a governmental failure, which it is, we need to fix government. It is even more bizarre, because there is certainly the insinuation, by the attorney general's office and by the department, that said, please sue us and then we will do our job. That is ridiculous. You don't want to bring a whole new array of legal actions for governmental failure. What you want to do is improve the system. Thank you.

SENATOR F. KING: I support the inexpedient to legislate recommendation of the committee. Madame President, we have two worlds. We have the real world and we have the perfect world. In the part of the country that I come from, where a great deal of my citizens that I represent, depend on working in soil and working in the wood's for their living. I will admit when the perfect world runs in opposition to the real world. An example would be someone who's received all of their permits that they need to do a timbering operation. They are working diligently at it, and then an unsuspecting huge storm comes. There are going to be some muddy waters created. This would allow an individual to walk into that operation and claim that the waters are being damaged and therefore, they were being damaged and they could sue that person. I think that a bill like this would make it impossible to work the land like we have historically. **TAPE CHANGE** an acre refuge, established by the federal government. It isn't the Connecticut River that we are talking about. It is the Connecticut River and all of its tributaries. The head waters are the tributaries and are all encompassing in that refuge. Because it is a wildlife refuge, half of Coos County is now in a wildlife refuge that is subject to a lot more federal laws. It is almost impossible to do any work up there in inclement weather that probably doesn't to some degree, violate the law. If we have a bunch of environmental cops running through the woods up there, it is going to create chaos. It is not going to make the environment any better. It is just going to make it more difficult for people to do their work. It is a type of law that just would make it impossible for people to live their lives as they have if it was carried to the extreme. I am not saying that it is going to be, but I am saying that the law allows it to be. So this law would pit neighbor against neighbor, friend against friend. Someone who has just got a permit to put a housing development into a community where somebody opposed it for good and valid reasons, but they lost the argument, could make themselves a nuisance to the person who got the development. We are not a nation that deputizes everybody to enforce laws. We have a way of doing that. We have a department that does a good job, and I haven't heard anyone complain that they are not doing their job. I think that this is just overkill. The solution that I would recommend to my constituents if this passes, is to post all of their land and arrest everyone who trespasses. It is the only way that they will be able to do their jobs. So it is just a law that we don't need. It is a law that is just unnecessary.

SENATOR COHEN: Some discussion has come up about this requiring DES to change their priorities. I don't know if you want to believe the attorney general's office, but they say...and this is the letter that you have, "SB 361 incorporates language changes suggested by the AG's office to ensure this citizen environmental suits, authorized by the bill facilitate environmental enforcement and do not interfere with the state's enforcement discretion and priorities." This enables citizens...it is not going to get in the way of the DES...I think that it makes a lot of sense.

SENATOR GORDON: This is a seemingly, pretty unusual circumstance, because when we enacted the New Hampshire Constitution, originally what we did was we created a police power. What we did was we delegated to our government in creating it, a police power to enforce the law. Now we find ourselves, as the government, delegating that power back to the people to do the government's job for it. I find that a little unusual. It seems to me...it was interesting because we talked a couple of weeks ago, about the Girl Scouts. The fact that we had passed a law that said that seat belts were required, even in parade vehicles, there was no exception for that. I think that people said, "well, you know, police officers use their common sense, they exercise discretion. No police officer in their right mind is going to arrest a Girl Scout. Well, that is what we count on government officials to do. That is to exercise discretion and enforcing the laws. My concern is that in enacting this bill, and giving the general populace, the authority to do that, not everyone would exercise that discretion in the same way. I think that we have identified a problem in the testimony. That is that DES does not have adequate resources to enforce its regulations. I think that if that is the case, I think that we have a responsibility, as a legislature, to do that, and I certainly would support that in the future. Thank you.

SENATOR RUSSMAN: Yes, I have a, not that it is of any great surprise, but I have a few things that I would like to say about this particular piece of legislation. Just like in the seat belt situation in parades, we came back and we fixed that very easily. It was not a big deal. We don't do our jobs everyday, many times government doesn't work, and that is why we have Claremont. That is why we are there where we are. We have the attorney general's office, who is our chief law enforcement agency, who says that it is a good idea. You know, we talk about the...then someone mentioned the idea that we could bring in the writ of mandamus. That clearly causes DES to change their focus if they have to bring in a writ of mandamus. We can bring a notice to sue and wait 90 days, and then make the decision whether or not they can make the decision, is it important enough for us to take it over or let's let them do it? This is actually the cheapest way of funding DES fully, frankly, and saving the state a tremendous amount of money. Now we talk about reality. I would just like to read some portions of a letter from Jed Callan, who testified. He said, that he "represents an elderly woman who lives between a partially constructed 20 plus lot subdivision and a New Hampshire river designated for protection under the New Hampshire Rivers Protection Program." So you have this woman on one side, and you have the river and the developer. "The developer was issued a site specific terrain alteration permit in July 1998. Almost two years ago, to perform certain road construction site clearings. During 18 months, the town conservation commission, citizens and my client, complained several times to DES that the steep slopes in the subdivision were eroding badly, and that after the rains, that the brook across the client's property runs brown with solids, and the river is degraded to a cloudy plume of silt and soil." Now that it is 18 months that they complained for that. "DES inspected the site eight times between July 1998 and December 1999, and found significant violations each time." Not that they ever went there and there were no violations, each time. "After the third inspection of April 1999, DES sent a letter of deficiency and receives a letter saying that the erosion control was corrected. After five more inspections, each revealing multiple violations, DES issued an administrative order in December of 1999, 18 months later. Although the adminis-

trative order indicates the violations subject to penalties under statutes, it imposed no penalties one and a half years later. It ordered the developer to submit a remedial erosion sediment control and stabilization plan within 30 days. The plan has been submitted, late, and has been approved with a completion date of May 16 of this year." It has been almost two years after the original permit was granted. That is real life. That is what actually happened here. Why eight inspections? Why no penalty? Why is compliance required since July 1998, now only required by May 16 of 2000, almost two years later? Doesn't this lack of enforcement and failure to impose a fine put a developer at a competitive advantage over those developers who spend money in 1998 and 1999 to prevent a soil erosion, and to actually comply?" In an example that was given up north, if people have their permits and they have heavy rains, they are in compliance, the heavy rain-storm doesn't change that. Okay? That doesn't change that. It doesn't make them subject to suing. Even then they would have to give 90 days notice of intent to sue even if they were somehow to do that. "The client was currently powerless, and is currently powerless to act. She could bring a tort suit, but would be hard pressed to prove specific damages to herself as opposed to the damages to the developer's land and the public river and wildlife." She would have to pay more in attorney fees than she would get in damages even if she was successful. If this bill had been enacted in 1999 it would have allowed his client, who is clearly adversely affected by these numerous violations to file a 90-day notice of intent to sue. If it wasn't preempted by the state action, she could sue for injunctive relief and for penalties payable to the treasury. Okay? Such a suit in early 1999 would have likely have resulted in compliance a year ago as a threat of imposition of penalties and an effective deterrent to continue noncompliance. To say that we are going to give DES more money. We know that we are not going to give DES more money. We know that we are not. I think that certainly a suit opportunity like this, if it doesn't work right in a year, you can come back and change it. Do away with it, or change it, or what have you. If that were the case, if it turned out that there was rampant misuse or what have you abuse of this, but obviously, it is probably the cheapest way that we can actually give DES a break and give them some money. Certainly, I think that if you are in favor of strong environmental protection, a bill such as this, is a good bill to vote for. Somebody said it opens up a Pandora's box. I think that we all know, well maybe we don't know, what the last thing in Pandora's box was when everything was taken out. It was hope. And there is hope with this legislation, and I hope that you give it the ought to pass. Thank you.

SENATOR FERNALD: There was some discussion before about the premise behind this bill is that government can't be fixed, and so we have to let private people compensate for imperfect government. But I think that there is another point here, and I think that there is a premise on the part of those who oppose this that should be brought out. The premise on the part of those who oppose this is that we can make government perfect. That we can fully fund DES, and then they will enforce all of the laws that the legislature passes. I think that our experience shows otherwise, that it is possible to have chief executives, whether we are talking about a president, or a governor, who will lean against an enforcement of a particular bill. The chief executive can be one person who will set the tone for two or four or however many years, and may through that influence, prevent the enforcement of laws that we, as the legislature, the policy setters, have set through the law. This

law, this bill, will allow citizens to come forward and enforce laws, when not the government is unable, but it is unwilling to enforce its own laws because of some directive that is coming from the top.

Amendment failed.

Question is on the motion of ought to pass.

A roll call was requested by Senator F. King.

Seconded by Senator Francoeur.

The following Senators voted Yes: Fernald, Russman, Wheeler, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, D'Allesandro, Klemm, Hollingworth.

Yeas: 4 - Nays: 20

Motion failed.

Senator Trombly moved inexpedient to legislate.

Adopted.

Committee report of inexpedient to legislate is adopted.

TAKEN OFF THE TABLE

Senator Trombly moved to have **SB 447-FN**, relative to campaign contributions and expenditures, taken off the table.

Adopted.

SB 447-FN, relative to campaign contributions and expenditures.

SENATOR TROMBLY: I have already spoken on this bill last week. I would therefore make the point that I think that it is time for this type of reform. I think that the people are speaking loudly and clearly. They are concerned about money in politics. The legislation simply sets up the structure. No money goes into it at this point, but it does set up the structure for the public financing of campaigns. We are going to work on how the money would enter into the process later on, whether it is through voluntary contributions, appropriations, elapses. That hasn't been worked out, but clearly, if we indicate to the public that we are serious about how money enters into the process of campaigns to New Hampshire, then it is the wise thing to do to set up the framework and structure, so that everyone will be able to know under what processes that they will be working in the future, and when the money gets there, it will kick in.

SENATOR BELOW: I rise in favor of this bill. It does establish the framework for voluntary public financing for the governor, executive councilors and state senators. Some may ask, why is this needed in New Hampshire? Do we really have a problem? I think that the answer is yes, we have a challenge all of the time finding good candidates to run for senate seats, executive council, and governor, and part of that problem relates to the fact that it takes a fairly considerable amount of money that you have to raise to run a legitimate campaign. For the Senate, as you all know, we have a job that pays \$100 a year and it can cost anywhere from \$10,000 to \$40,000 to run a campaign. I think that all of us would want to believe, and probably do believe, that we are not unduly influenced by campaign contributions. We all know that we have to raise money. Some of that money comes from people who have interest before

the legislature, and some of it comes from lobbyists who we interact with on a daily basis, but we all try to distance our thinking, but it is in the back of our minds, and it is in the back of the public's minds, whether there is any actual conflict or not. There is certainly a growing perception that politics is unduly influenced by special interest money. This bill, simply sets a framework if and when there is money to fund such public financing, then the framework would be set into motion and the opportunity would be there for candidates who show that they have collected a significant number of small voluntary contributions that would qualify them for public financing, and who go on to win their primary. It treats party candidates and independents on equal footing. Some may say, why do a framework now if we don't have the funding? I think that an important reason is that next year we start a biennial budget process. We are looking at our budget for the next two years. By enacting the framework today, we allow the next governor and the next legislature to decide whether they want to fund this framework. If we decide to wait for another year, then the answer will be, well the bill, the framework doesn't exist, why fund it, it isn't part of the consideration of the budget process? I would note that in neighboring states, all of our neighboring states have adopted this kind of framework. Two of them, Maine and Massachusetts, adopted it through popular referendum, which was strongly supported. The only other state that had a referendum on the issue is Arizona and again, it should be broad, popular support. I would urge the body to move ahead with this legislation at this time.

SENATOR F. KING: I think that this...the thing about this bill that bothers me is that it is very obvious that the intent is to somehow fund this out of general fund dollars, the original bill having a \$6 million appropriation. I think that until this legislature has the courage to fix the education issue and properly fund that...you may be able to go out and say when you are campaigning, that you voted for campaign reform, but you know, if you want a bill that is going to raise money and put the money in the bill and pass it, if you have the votes, but this is like saying that we are going to fund education but we are not going to put any money in it. That is what we have already done, matter of fact. So until we fix the budget crisis that this state has, and get the state out of bankruptcy, I think that to pass this and try to convince the people that we have done something great is wrong.

SENATOR LARSEN: Senator Below and I worked a good many meetings this summer with the committee to create this bill. All of us know that the public supports campaign finance reform, and most of us in this room, I think, in their heart of hearts, believe that we need to fix the laws that we have. We all know that we are facing election season and how hard it is to go out and continue to have to raise large sums of money, and the position that puts us in. This bill sets up a framework without funding it because we were realistic. We were realistic enough to know that the money for this fund does not yet exist, but we need to set our priorities, we need to say, here is what we want to get to. This bill sets up a goal of campaign finance reform for the state of New Hampshire. We will fund it as possible in the next budget. It is important however, I think that we heard earlier today, about Pandora's box. It is time that we close the box and stop the demons that are coming out. It is time that we re-institute hope for New Hampshire's people, that we can, in fact, correct our campaign finance system here in New Hampshire. This sets up hope, up and closes the box of Pandora's demons. I encourage you to vote yes, on SB 447.

SENATOR TROMBLY: Senator Larsen, would you agree with me, that the statement made by Senator Below, that if we don't set up a framework, we will never establish this as a priority? And further, that if we don't set up the framework, that the voluntary contributions, which would be encouraged, would not be able to be collected either, would you agree with that?

SENATOR LARSEN: I would agree with that Senator Trombly

SENATOR PIGNATELLI: You know, when we run for Senate, we sometimes get forms from different groups asking us if we belong in this and how strongly do we believe in this...I remember getting a form when I ran the last time, asking me if I believed in public support for campaign financing? I think that my answer was, that we can't even fund education, and you expect me to support public support for campaign financing? They probably were not pleased with my answer, but I am going to support this bill. I don't think that it is a huge campaign finance reform bill. I think that it is a tiny baby step in the right direction. There is no money in it, Senator King is right, but you know, I voted for the land and community heritage fund, and I don't know where that money is coming from. I know that it has to come from somewhere, and certainly that is a larger priority for me than this. So if we need to look for money, I say that we look for it for the highest priority, and then if we can find some other way to get money for this campaign financing, through voluntary contributions, through bake sales or whatever we decide to do, we ought to pass it and at least make a step in the right direction. I urge your support for this piece of legislation. Thank you.

SENATOR GORDON: I don't like this bill and I am going to vote for it. The reason that I don't like it is because I am an incumbent. Okay? I have two years since the last time I was elected to raise funds, which I have done. I have money in the bank. If I should elect to run again, it is going to be very difficult for anybody, at this point in time, to raise the money to beat me. It is as simple as that. So, I don't like this bill because this might give people the opportunity to do just that. On the other hand, I think that we should all learn...of anybody in the whole country, probably this state, this legislature, should be more conscious of the subject than anybody having had representatives from the Republican party and the President of the United States go to Claremont, or wherever it was, Lebanon, or someplace up there, not in my district, shake hands and say that they were going to do something about the problem. The problem is that the incumbents won't do anything about the problem because this is to their huge disadvantage. They have done nothing. If we have learned anything from that, we need to do something about reform. I have always been opposed to public financing of campaigns, but I have come to the point where I realize that it is not a level playing field, and we have to level that playing field so that we can get more people involved in the process. I am going to support the bill for that purpose.

Question is on the committee amendment (3627).

Amendment adopted.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Trombly.

Seconded by Senator Pignatelli.

The following Senators voted Yes: Gordon, Below, McCarley, Trombly, Disnard, Eaton, Fernald, Pignatelli, Larsen, J. King, Russman, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: F. King, Johnson, Fraser, Roberge, Squires, Francoeur, Krueger, Brown, Klemm.

Yeas: 15 - Nays: 9

Adopted.

Ordered to third reading.

SB 419-FN, establishing the crime of negligent storage of a firearm. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Cohen for the committee.

2000-3740s

05/10

Amendment to SB 419

Amend the bill by replacing section 1 with the following:

1 New Chapter; Negligent Storage of Firearms. Amend RSA by inserting after chapter 650-B the following new chapter:

CHAPTER 650-C

NEGLIGENT STORAGE OF FIREARMS

650-C:1 Negligent Storage of Firearms.

I. Nothing in this section shall be construed to reduce or limit any existing right to purchase and own firearms or ammunition, or both, or to provide authority to any state or local agency to infringe upon the privacy of any family, home or business except by lawful warrant.

II. As used in this section, "child," "juvenile" or "youth" shall mean any person under 18 years of age.

III. Any person who stores or leaves on premises under that person's control a loaded firearm, and who knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or guardian, is guilty of a class A misdemeanor if a child gains access to a firearm and:

(a) The firearm is used or displayed in a reckless or threatening manner;

(b) The firearm is used during the commission of any misdemeanor or felony; or

(c) The firearm is negligently or recklessly discharged.

IV. Any person who violates paragraph III shall be fined not more than \$1,000 or sentenced to a term of imprisonment not to exceed one year, or both.

V. This section shall not apply whenever any of the following occurs:

(a) The child obtains the firearm as a result of an illegal entry of any premises by any person or an illegal taking of the firearm from the premises of the owner without permission of the owner.

(b) The firearm is kept secured in a locked box, gun safe, or in a location which a reasonable person would believe to be secure, or is secured with a trigger lock or similar device that prevents the firearm from discharging.

(c) The firearm is carried on the person or within such a close proximity thereto so that the individual can readily retrieve and use the firearm as if carried on the person.

(d) The child obtains or obtains and discharges the firearm in a lawful act of self-defense or defense of another person.

(e) The person who keeps a loaded firearm on any premises which are under such person's custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

VI. A parent or guardian of a child who is injured or who dies of an accidental shooting shall be prosecuted under this section only in those instances in which the parent or guardian behaved in a grossly negligent manner.

VII. Licensees shall conspicuously post at each purchase counter the following warning in bold type not less than one inch in height: "THE OWNER OF A FIREARM CAN BE HELD CRIMINALLY LIABLE IN NEW HAMPSHIRE FOR FAILING TO STORE OR KEEP A FIREARM, RIFLE, SHOTGUN, OR MACHINE GUN IN ANY PLACE UNLESS THAT WEAPON IS EQUIPPED WITH A TAMPER-RESISTANT SAFETY DEVICE OR IS STORED OR KEPT IN A SECURELY LOCKED CONTAINER PURSUANT TO RSA 650-C:1," and licensees shall provide said warning, in writing, to the purchaser or transferee of any firearm, rifle, shotgun or machine gun in bold type not less than ¼ inch in height. If a child gains access to a firearm and uses it in any manner provided for in paragraph III, a licensee failing to display or provide this warning to the purchaser of the firearm in question shall be guilty of a violation.

SENATOR COHEN: Throughout the discussion of this bill, I hope that you will keep in mind the guiding principle of this legislation. I do hope that you have had a chance to look at it. I think that it makes a lot of sense. The guiding principle behind this legislation is this: With all freedom, comes responsibility. With all freedom comes responsibility. With ownership of guns comes a special responsibility. So I would hope that you would keep that in mind. This bill is a way to prevent needless tragedies of the sort that we have seen far too many. Tragedies involving children and guns. It asks gun owners to do what they should be doing anyway, which frankly, most gun owners already do, because they take responsibility for their freedom. That is to keep from leaving a loaded gun in a place where a child can get at it. Not too difficult. Unfortunately, there are some people who ignore this responsibility. We have seen the terrible results, nationwide, and in New Hampshire. Thirteen children are killed by guns every day in the United States, and at least one of them is shot to death unintentionally. For every child actually killed by a gun, hospital emergency departments treat another four for gunshot wounds. Guns are the fourth leading cause of accidental deaths among children between the ages of 5 and 14. Every six hours a young American between the ages of 10 and 19 commits suicide with a gun. New Hampshire has a high teen suicide problem. When teenagers try and commit suicide with poisons or pills, it doesn't work, but when they try and commit suicide, thanks to the easy access of a gun, it is successful, almost all of the time. Ninety percent of the time it works. **TAPE CHANGE** and haunted the family for years to come. This **TAPE IN-AUDIBLE** fourteen and younger is twelve times higher in the United States than all of the 25 industrialized nations combined. In 1997, 6000 school children were expelled for bringing guns to school. Where do all of these kids get the guns? Nine out of ten guns used in accidental shootings are found in the home where the shooting occurs. There is at least one gun in more than a 1/3 of American homes, yet there are more impediments to opening a bottle of children's aspirin than there are to pulling a trigger of a loaded gun. Boat owners take responsibility. There is a law requiring boat owners to have life preservers for children. There is a law requiring children in cars to wear seat belts, but there is no law to restrict their access to loaded guns. Store clerks who misread I.D.'s and inadvertently sell a pack of cigarettes or a bottle of beer to a wrong customer, can be prosecuted. With freedom, comes responsibility. But there are no sanc-

tions against those who negligently enable a child to get a hold of a loaded gun. There are statutes and regulations to protect children from all kinds of risk, from patient medicines, inflammable clothing and dangerous toys, but there are no laws to protect children from the risk of loaded guns. Restrictions on the access of young children to movies, filled with excess and explicit violence are stronger than those limiting their access to guns. Since Florida first adopted a similar bill, a child access prevention bill in 1989, 16 other states and many municipalities have followed suit. In these states, unintentional shootings involving children have dropped by an average of 23 percent. Think about that in terms of real children. Twenty-three percent drop in unintentional shootings. Senate Bill 419 simply codifies what responsible gun owners already do, keep loaded guns away from kids. Like those who drive drunk and put others at risk, those who leave loaded guns accessible to children, put at risk, all the people around them, in their neighborhoods, in their schools, and anyplace where a child could bring a gun and use it. This bill does not encumber or restrict the right to keep and bear arms in anymore than a child's seat belt law restricts the freedom to drive. It in no way impedes hunters in their ability to take their kids hunting. We have taken strong measures to reduce the carnage on our highways, let's show some common sense and take what is really just a small step, but a meaningful step, to reduce the carnage in homes and schools. I urge ought to pass on SB 419.

SENATOR FRANCOEUR: Last year SB 163, which was a study committee that was in the Senate. At that time, I supported that study committee, which would take a look at all of these issues that are before us today. Not only this bill, but the bills to follow. I think that was a prudent way to take a look at it. Currently, that study committee will not even have its report out until November. The reason that I supported it, and I believe that there are others here that did support it, was to give us time to take a look at the different items that were in front of us, and it would give the time to take the facts and then come forward from the study committee. Currently, I believe that this bill, SB 419 as it is before us, is currently flawed. There are instances where there are grandparents that have their own residence, which they live in without any children. But then if you look at the amendment, section V-b which it talks about "a reasonable person would believe to be secure", well they may believe that their house is secure for them and they don't expect others to come in...and as I have talked to other members in the Senate today, that if a child did get that weapon, then they could be prosecuted. Also, if a woman was carrying a firearm, most likely she would be carrying that in her purse. Within reach of you, how far is that? Is it from me to the Senate President's desk or farther? I think that there are cautions and concerns. I think that there are legal challenges as to what a reasonable person would believe? Because what is reasonable to one may not be reasonable to another. As we have mentioned, I think that everybody here is concerned about kids. Some of the leading ones, which are your automobile accidents, which your kids get hurt and injured in, and more of them die per year, far more than gun deaths, and those, we fine them if their seat belts off, but we don't fine them if they go flying through the windshield and get killed anymore than we put them in jail. This bill is an anti-gun owners bill. I would ask the Senate to wait their time and let the study committee do its work, then to proceed from there. Thank you.

SENATOR LARSEN: This bill is not an anti-gun owners bill. This bill is a child access prevention bill. This bill does not say that responsible gun owners cannot keep their guns. It asks them, in homes with children, to act responsibly. This is a child access prevention bill. We regularly work to prevent children from getting into harms way. We pass seat belt laws. We as parents and grandparents, lock up our chemicals when they visit our homes. We move precious china objects away from small children's hands. It is normal to protect a home that has a child in it. It is normal to set up a safe environment for a child. We need to work on those who do not act responsibly to ask them to please act responsibly. This bill encourages them. It only goes after a gun owner who acts irresponsibly, after a gun has been used in the committing of a crime or reckless behavior. We don't need to study this bill, yes, there is a study bill for children's issues. We don't need to study it. We know that this law works. We know that in states with this law, there is a 23 percent reduction in child access to firearms. This bill is not anti-gun. This bill is pro-child. Right here, you have a dangerous weapon. These aspirins that I have, in the hands of a child, this can kill a child if a child were to swallow what's in this bottle. What did we do? We made it hard even for adults to get into this thing. Now there are many ways to lock up a gun that aren't very hard for an adult to get into. We had a trigger safety lock in the building yesterday, and people demonstrated that within two seconds you can unlock your gun. This bottle of aspirin is a harder thing to get into than a trigger safety for most of us, particularly when we have a bad headache. We regularly pass measures for protection of children. I believe that if you polled this state, the majority of New Hampshireites, would support safe storage of hand guns in the homes, particularly in the homes of children. This shouldn't be a political issue, this should be a gut level issue for each of us, to protect the children of this state. Right here in Concord, a young boy, age 16 was killed by a 17-year-old. That 17-year-old was able to walk across to the neighboring apartment, where his parent lived, get a loaded handgun, bring it back and shoot the 16-year-old. This is not hypothetical. This is not something that happens in other states, it happens in our state. I beg you to think about your vote. Find the courage to vote for the children of this state. It is important. Thank you.

SENATOR WHEELER: Senator Cohen, am I correct in the reading of the bill as amended by the committee, that it doesn't require the firearm to be locked in a box somewhere?

SENATOR COHEN: You are absolutely right. In section V-b "this section shall not apply whenever the following occurs: (a) says, "illegal entry" so that this is illegal entry or unauthorized access. The gun owner isn't responsible for that. Also in that section, the "firearm is kept secured in a locked box, gun safe" "or" that is an important word "or in a location in which a reasonable person would believe to be secure or secured with a trigger lock or a similar device that prevents it from being discharged." One of the things about New Hampshire is taking personal responsibility. Freedom. Other states say that you have to keep it in a box or that you have to have a trigger lock. We are not doing that. We are saying that it is up to the gun owner to take personal responsibility and decide what the best thing to do is to keep the loaded gun away from kids. It is not unreasonable at all. Further, this bill is not about prosecution. It would provide, at the point of purchase, there is a warning. In the state of Maine, right there in very big letters, saying basically, that

if you are buying this gun, you have a responsibility to keep this away from kids. It is about education, it is about prevention. It doesn't enable any police to do anything differently, it is about prevention and saving kid's lives. It works in other states, and it will work here. Thank you.

SENATOR TROMBLY: Senator Cohen, I need to understand the analysis of how people would be prosecuted? A person would be prosecuted, as I read your bill, if three things occur. One, the gun has to be loaded. Correct?

SENATOR COHEN: Correct.

SENATOR TROMBLY: Two, it has to be displayed or used in a reckless or threatening manner, or used during a commission of a crime. A misdemeanor or a felony, or it has to be negligently or recklessly discharged. Is that correct?

SENATOR COHEN: Correct.

SENATOR TROMBLY: So first the prosecutor has to show that it was loaded and it was used in one of those three manners. Correct?

SENATOR COHEN: Correct.

SENATOR TROMBLY: But then, doesn't the bill require the prosecutor to further examine whether or not the use of that firearm violated those conditions that you just stated under paragraph V?

SENATOR COHEN: That is correct.

SENATOR TROMBLY: So it is a three-pronged test and not a one-pronged test. Is that correct.

SENATOR COHEN: Yes.

SENATOR TROMBLY: Thank you.

SENATOR PIGNATELLI: I favor this very modest and reasonable bill that advances the cause of gun safety. As a society, we need to look for more help from gun owners themselves to keep guns, especially loaded guns, which this bill is directed at, away from children. Let's keep in mind that we made a strong effort to keep cigarettes, alcohol, cars and a host of other things away from children. How is a loaded gun less dangerous in the hands of an unsupervised child? Currently, this bill will serve as a statement to gun owners, that, we, as a society, are expecting that they will use careful measures to secure their loaded weapons in a safe manner. I hope that the Senate will support the unanimous Judiciary Committee recommendation of ought to pass as amended.

SENATOR F. KING: Senator Larsen, I have been thinking. I was struck by your comments that you made, relative to the chemicals that people keep under their sinks, and how we try and keep them out of sight of children. Then I thought about people who leave their keys in their automobiles, and kids take a joy ride and get into accidents. Shouldn't we perhaps table this bill and expand it to include all of those other serious things, like the ones, that you mentioned, that we ought to charge someone who leaves lye under their sink where their grandchild could get into it, and charge them with a misdemeanor for allowing that to happen, or if I leave my keys in my car, and my grandson hops in and takes a ride in it and causes an accident...should we expand it for things other than guns...if this is truly about the safety of children? Should we have laws that would cover all of these incidents?

SENATOR LARSEN: I believe that we do have laws on criminal negligence. I am not a lawyer, but I believe that there are procedures by which a child in a home, where there is negligence, can be removed from the home.

SENATOR F. KING: Wouldn't that law apply to the gun case, too then?

SENATOR LARSEN: There was a six-year-old in Michigan, may in fact, be removed from the home for negligence, but that is not the test of this bill. This bill is actually a very minor step, because it is only, for the most part, a fine. It is a fine, which hopefully, will make a parent think twice before they negligently store a loaded firearm within the reach of a child...

SENATOR F. KING: Perhaps if we had a fine system for people who leave these chemicals where kids can get at them, we would also educate the public through that same process that you are trying to do here. That is fair. Hundreds of kids, thousands of kids probably get poisoned every year through negligence on that type of thing. I was struck by your comment. I would think that you would probably want to expand that to include negligence other than just guns?

SENATOR LARSEN: I believe that a loaded handgun has far more potential for immediate death than a chemical under a sink.

SENATOR F. KING: Thank you.

SENATOR COHEN: Senator Larsen, is it not true that while chemicals under a sink have a purpose of cleaning, the purpose of a gun is to tear through bodily flesh and bones and to kill? That is the purpose of a gun. The purpose of those other things is to clean. Also, is it not true that we have laws about protecting kids from going into swimming pools? You have to have a fence. An adult has to take responsibility and put up some sort of protective barrier around a swimming pool. Now a kid can't carry a swimming pool in his or her backpack to school. A knife brought to school won't go off in a classroom, accidentally, and discharge. Isn't a gun something that is uniquely different in that it is designed to kill and does so quickly?

SENATOR LARSEN: I believe that a gun is designed to kill, yes.

SENATOR SQUIRES: I rise to make three points. Before I come to Concord every morning I check my e-mail. I am reminded how the rhetoric polarizes this debate. This morning's e-mail, one of them greeted me with the accusation that the sponsor of this bill, his name was preceded by Hitler. So I would like to publicly condemn that that is wrong, and I hope that every one of you will join with me that this is not going to advance this process. 2) as I told you last year, my daughter taught eighth grade English, and in her classroom at one point, she happened to be over helping another child and a gun went off, and the bullet went right through her sweater, which was hanging on her chair. Had she been in that sweater or that in the chair, it probably would have permanently damaged her arm. There is no recourse on her husband, or her parents, to find how that happened in the eighth grade. Finally, this bill talks about loaded firearms. It doesn't talk about firearms in general. It talks about loaded firearms. I realize that people feel secure when they have close by, a loaded firearm. But what eludes me is the need for a loaded firearm in a house when you are not there. How's the gun helpful to defend you if you're at work and your gun is in the house, loaded? That I cannot understand. I do not understand how that is a threat to anybody. There are a number of exceptions in the bill. We heard

testimony, what about a gun in the nightstand and the child comes and takes it, and you will see that that is covered by the amendment on page 23, paragraph C. "The firearm is carried on the person or within such a close proximity..." so that is not an issue. There are a lot of exceptions here. It seems to me that they are reasonable. This is about responsibility, and thus, for those three reasons, I support the bill.

SENATOR FERNALD: The people in New Hampshire are law-abiding people, and that is a good thing. When we pass laws, people by and large, obey them. It is not because they think that they are going to get prosecuted, or that they will get caught, or because they even necessarily agree with the law, by and large, people obey the laws, because they are law-abiding people, and they think that it is important for all of us to obey the laws. When we pass a law, it sends a strong message then to the people. When we passed the seat belt law for children, we found that seat belt use went up. Not because people thought they were going to get caught or they had never thought of this before, but it sent a strong message, and that law has saved lives. This law will have the same effect. It is sending a message to the people of New Hampshire that irresponsible gun ownership will not be tolerated in this state. The people will get the message. The behavior will be changed. So the question today is, will we be the 18th state to pass this type of law? If we pass this bill, we will be sending a strong message. The people will listen and lives will be saved.

SENATOR KRUEGER: As everyone in this room certainly knows, I have been a strong defender of the second amendment; however, I rise in support of this bill. I rise in support of this bill, because enough is enough. That story about the six-year-old child, finding that gun of his uncle's or friend of the uncle's, or whoever lived in that house, and going to school, got me. Call that a visceral reaction, call that an emotional response, call it whatever you want, but it clicked something in my head. There is the second amendment, and then there is logic. There is the second amendment and then there is the ability to protect our children. We know the fire in the movie theater argument. I put this in the same category. I think the sponsor of this bill went to all lengths to accommodate many who were concerned about infringing upon second amendment rights. I think that the sponsor of this bill went a long way to ensure the fact that we were doing nothing, that someone like me, couldn't live with. I think that their concessions have been profound. I can live comfortably with this vote, and I think that somewhere, deep, even in its opponent's hearts, they know in a strange kind of way, that if it stopped one tragedy, it would be worth it. I very, very proudly, and I have told Senator Cohen from day one, that I would be willing to support a piece of legislation like this. Senator Larsen is right, this is child protection. Thanks.

SENATOR FRANCOEUR: Senator Krueger, you had mentioned that six-year-old child that got the gun out in the Midwest. There has been allegations that that house was used for drugs and had other illegal weapons in it. Do you believe that another law would have prevented what happened there?

SENATOR KRUEGER: I can't tell you another law could prevent anything from what has already occurred. But, I am hoping that the press and the people of this room put forth the message, if this is passed in both bodies and signed by the governor, to let people know that you have to be more responsible. We are the adults. We are not talking about hunting here, Senator. We are talking about leaving a loaded gun around. I, for one, I can't tolerate that.

SENATOR D'ALLESANDRO: I will be very brief. What we do in terms of our ability to legislate, is we try to do what we think is the best possible thing. I think that in this case, we are thinking about our most precious commodity, our children. Our children, our grandchildren, other people's children and grandchildren. I am kind of referencing what Senator Trombly said. If we think that we could save the life of one child, if one child's life is better because of something that we have done, then we have really accomplished something very good. I don't think that any gun owner has anything to worry about. Gun owners who respect their weapon and respect the right to carry that weapon, know that they must care for that weapon and store it properly, and take good concern and good care of what they are doing. It is the person who isn't doing that. I reference what Senator Fernald said, "the law is in place, the law will be obeyed." If one other person obeys the law, in turn, we have saved one child's life, we have done some very important things. I support this piece of legislation. Having been associated with youngsters all of my life, in a teaching capacity, having raised three youngsters myself, having three grandchildren out there that are growing up, I want them to grow up in a safer environment. I want their schools to be safe. I want youngsters who come to school to be safe. I think that this is one step in doing that. In doing that, we do something very positive for our environment. Thank you very much.

Senator Disnard moved the question.

Adopted.

Amendment adopted.

Senator Russman offered a floor amendment.

2000-3811s

05/04

Floor Amendment to SB 419-FN

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

AN ACT establishing the crime of negligent storage of a firearm and expediting the return of firearms, ammunition, and specified deadly weapons to a defendant upon dismissal of a domestic violence petition.

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

2 Protection of Persons From Domestic Violence; Procedure for Return of Firearms, Ammunition, or Specified Deadly Weapons to Defendant Amended. RSA 173-B:5, X is repealed and reenacted to read as follows:

X.(a) In the event an action commenced under this chapter is withdrawn or dismissed, or upon the expiration of a protective order issued under this chapter, the court shall order all firearms, ammunition, or deadly weapons confiscated from the defendant to be returned to the defendant within 24 hours of the withdrawal, dismissal, or expiration of the protective order.

(b) The law enforcement agency may charge the defendant a reasonable fee for the storage of any firearms, ammunition, or specified deadly weapons taken pursuant to a protective order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the firearms, ammunition, or specified deadly weapons. The defendant may make alternative arrangements with a federally licensed firearms dealer for storage at the defendant's own expense and upon approval of the court. The firearms, ammunition, or specified deadly

weapons shall be turned over to the appropriate law enforcement agency for transfer to the storage facility. Retrieval shall be through the law enforcement agency responsible for their transfer to the storage facility and shall comply with the provisions of subparagraph X (a).

(c) No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms, ammunition, or specified deadly weapons in its care, provided the law enforcement agency exercises due care in the storage or transportation.

3 Protection of Persons from Domestic Violence; Violation of Protective Order; Return of Firearms, Ammunition, or Specified Deadly Weapons to Defendant Amended. Amend RSA 173-B:9, I (b) to read as follows:

(b) Subsequent to an arrest, the peace officer shall seize any firearms and ammunition in the control, ownership, or possession of the defendant and any deadly weapons which may have been used, or were threatened to be used, during the violation of the protective order. The law enforcement agency shall maintain possession of the firearms, ammunition, or deadly weapons ~~[until the court issues an order directing that the firearms, ammunition, or deadly weapons be relinquished and specifying the person to whom the firearms and ammunition or deadly weapons will be relinquished]~~ *pursuant to the provisions of this chapter.*

4 Effective Date.

I. Section 1 of this act shall take effect January 1, 2001.

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

2000-3811s

AMENDED ANALYSIS

This bill makes it a class A misdemeanor to negligently store firearms, and provides for the expedited return of firearms, ammunition, and specified deadly weapons to a defendant upon dismissal of a domestic violence petition.

SENATOR RUSSMAN: I rise to offer a floor amendment. What this floor amendment does, basically, it happened to a client of mine. I had a case last fall in the court, I won't say which one in my district, but it was a domestic violence petition, and the judge in his order, said that...it happened to be a man who supposedly assaulted his partner...said that there was no creditable evidence that it happened, and he dismissed the complaint. It is now six months later and we still do not have this fellow's guns returned, even though I have filed a motion to do so. That is not right. What my amendment does, it says simply, if a judge dismisses the complaint or finds that there is no domestic violence, or if it is withdrawn, voluntarily withdrawn, by the person who filed it, within 24 hours, the person is put back where they were. Obviously this statute that we just passed, evidently would still apply, but certainly, I think that within 24 hours, there is no reason why, again, there has been no abuse found or the person voluntarily rescinded the request, there is no reason why that person shouldn't be made whole and have their guns returned to them immediately. So that is what this amendment does and I would be happy to answer any questions if necessary.

SENATOR COHEN: This is an important concept. It should have a public hearing. I will tell you that the police chiefs in the state of New Hampshire are adamant about this. That they need a court order to return guns. The guns are confiscated through a court order, and procedure would dictate that they be returned only with a court order. It is not their job to

do something contrary to a court order without a new direction from the court. It is not a responsibility that they want, nor should it be given to them. If the police or the courts return guns to someone who is barred from having guns, such as a felon or someone who has violated restraining order(s), they would be breaking federal law. Before guns are returned, a background check must be performed. This could be a potentially very dangerous time for the petitioner, and the restraining order, notwithstanding withdrawal or dismissal of an order. There are many reasons where either of these occurrences and the defendant may still be dangerous. Twenty-four hours is not sufficient time to notify the petitioner and provide safety. Twenty-four hours does not provide a sufficient cooling off period. There is currently, a detailed procedure in RSA 173-B for the return of weapons after the expiration of a restraining order, that allows for plaintiff notification, background check and a hearing, should that be necessary. This was worked out very recently, with input from all sides and agreed to, and there hasn't been sufficient time for the law to be in effect to determine if there will be any problems. In fact, the new law has only been in effect since January 1, 2000. At the very least, this amendment deserves a public hearing. I am certain that the Rules Committee would allow this in for a public hearing. There are certainly enough concerns and viewpoints to be considered that that would make the hearing appropriate. I would urge you, my colleagues, in the strongest way, to vote against this amendment and pass the bill as we have it.

Recess.

Out of Recess.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Fraser.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Krueger, Brown, Russman, Klemm.

The following Senators voted No: Below, McCarley, Trombly, Disnard, Fernald, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.

Yeas: 12 - Nays: 12

Floor amendment failed.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Pignatelli.

Seconded by Senator Francoeur.

The following Senators voted Yes: Below, McCarley, Trombly, Fernald, Squires, Pignatelli, Larsen, Krueger, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Disnard, Roberge, Eaton, Francoeur, Brown, Russman, Klemm.

Yeas: 13 - Nays: 11

Adopted.

Ordered to third reading.

SB 427-FN, banning the sale or transfer of "Saturday night specials." Judiciary Committee.

MAJORITY: Inexpedient to Legislate, Senator Trombly for the committee. Vote 3-2.

MINORITY: Ought to Pass, Senator Cohen for the committee. Vote 2-3.

SENATOR COHEN: This bill is an effort to deal with the so-called Saturday Night Specials, junk guns, which can go off. They are not particularly accurate guns, they are the guns of choice by criminals, street criminals. They are not used for hunting animals. There is just no need for these particular guns out there. I recognize where the numbers are so I will end my speech there.

SENATOR TROMBLY: I will be brief, Madame President. I think that the problem that the majority of the committee had was with the term as used by Senator Cohen, "so-called" Saturday Night Specials. We believe that there was some definitional problems with the bill that would lead to some enforcement ambiguities and perhaps some false prosecutions; therefore, that is why the majority of the committee voted against the bill. Thank you, Madame President.

Question is on the motion of ought to pass.

Motion failed.

Question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Trombly.

Seconded by Senator Francoeur.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Hollingworth.

The following Senators voted No: Wheeler, Cohen.

Yeas: 21 - Nays: 2

Committee report of inexpedient to legislate is adopted.

Recess.

Out of Recess.

SB 441-FN, relative to temporary orders in domestic situations where there has been no finding of abuse. Judiciary Committee. Vote 5-1. Ought to pass with amendment, Senator Fernald for the committee.

2000-3738s

04/09

Amendment to SB 441-FN

Amend RSA 173-D:3, I as inserted by section 2 of the bill by replacing it with the following:

I. Any person may seek relief under this chapter by filing a petition, in the county or district where the petitioner resides, alleging a breakdown of the domestic relationship between household members which makes it no longer prudent or possible for the parties to continue to live together. Any person filing a petition containing false allegations shall be subject to civil and criminal penalties. Notice of the pendency of the action and of the facts alleged against the respondent shall be given to the respondent, either personally or as provided in paragraph II. The

petitioner shall be permitted to supplement or amend the petition only if the respondent is provided an opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions filed under this section shall include the home and work telephone numbers of the respondent, if known. Any answer by the respondent shall be filed with the court and a copy shall be provided to the petitioner by the court.

Amend RSA 173-D:4, I as inserted by section 2 of the bill by deleting subparagraph (g) and renumbering the original subparagraph (h) to read as (g).

Amend RSA 173-D:4 as inserted by section 2 of the bill by inserting after paragraph V the following new paragraph:

VI. No order may be issued under this chapter unless the respondent has been served with process pursuant to RSA 173-D:3, II.

SPECIAL ORDER

Senator Fernald moved to have **SB 441-FN**, relative to temporary orders in domestic situations where there has been no finding of abuse, made a Special Order for next session, March 23, 2000.

Adopted.

HB 235-FN-A, increasing exemptions under the interest and dividends tax. Ways and Means Committee. Vote 5-3. Inexpedient to Legislate, Senator J. King for the committee.

SENATOR J. KING: The majority of the committee felt that under the current fiscal constraints facing the legislature, it would be irresponsible to promote such legislation without suggesting a way for paying for it. This would add at least \$10 million plus to the current deficit. We already have \$38 million that we know about it, so we would be getting close to \$50 million. Our task should be working to eliminate the deficit, and at the same time, address legislation such as HB 235. We felt that it should not be passed because of the cost obligation of balancing this budget should not be passed to a future Senate. We should do it ourselves. The Ways and Means Committee recommends inexpedient to legislate. Let me add that everybody is in favor of cutting it. This group here, felt that they don't want to cut it unless there is something else to take its place. Thank you.

SUBSTITUTE MOTION

Senator Below moved to substitute ought to pass for inexpedient to legislate.

SENATOR BELOW: Back in, I believe it was 1995, when the state was losing or had lost litigation on their attempt to tax interest and dividends paid by other than New Hampshire and Vermont banks, but to exempt interest and dividends paid by New Hampshire and Vermont banks. We realized, in the legislature, that we had to change the interest and dividends tax to make it uniform against all interest and dividends. I was in the House at the time, and one of the major selling features of the change was that it was going to be revenue neutral. The DRA had estimated an increase in the standard exemptions in such a way that the proposal was that this would bring in the same amount of revenue but against all interest and dividends. As it turned out, in 1995, the tax had returned about \$37 million. The first year of the new tax, fiscal 1996, the revenue jumped to \$51 million. That is a 38 percent increase in the revenue. According to IRS statistics, interest and dividends is a part of New Hampshire adjusted gross income only increased 7 percent between

1995 and 1996. So we saw a very large increase in revenue above and beyond what interest and dividend actually increased. This bill, in a small way, proposes to correct that, only in a small way, because DRA's estimate of the reduced revenue from the increased exemption is only about \$4.4 million per year. The problem, I think, with the interest and dividends tax is that it falls somewhat disproportionately on the elderly, particularly elderly of modest means who have their savings in money market accounts, who have not taken advantage of tax advantage retirement, which would return income in the form of ordinary income, such as pensions, which would not be subject to the tax or other more sophisticated returns that would produce capital gains, not subject to the tax. So we have a tax that is a particular burden, I think, in many cases, on the elderly. This is a very modest increase in the standard exemption level. It does not compensate, it doesn't return it to revenue neutrality, but it makes a small step in that direction. If the ought to pass motion is adopted, I will offer a floor amendment, which would change the effective date of the bill from this coming July 1 to July 1 of 2002, which is the beginning of the next biennium. You might say, well that is just putting it off, but it puts it off in a way that allows the next legislature to take it into consideration in the budget process. I do not think that it would be responsible to cut this revenue source at this time, in the current budget, because we haven't balanced even the current budget. I do think it is fiscally responsible and prudent and just and fair, to say that the correction that is needed here...we should anticipate it in the next biennium. Quite honestly, another \$4 million to account for is a small drop in the bucket compared to what we need to be planning on anyway for potential, additional revenue in the next biennium. So I would urge adoption of the ought to pass and a subsequent floor amendment.

SENATOR F. KING: We can all remember our late President when he often stood up to speak after a long debate and he would say, "You know, if you are in a hole – stop digging." I think that is what we ought to do. Earlier today I voted against a bill because it clearly implied raising \$6 million of general fund for a very good cause. I am going to vote against this because I think that is exactly what we are doing. To continue to defer the tough decisions for the next legislature is simply the wrong thing to do. The state can't afford to give up any source of revenue given our financial position. I think that we should take Junie's advice to heart and we are in a hole, let's stop digging it deeper by deferring revenues or by spending more money. Thank you.

SENATOR FERNALD: When the interest and dividends tax was put in it was a rich people's tax. When it was put into place, only the rich people had interest and dividends. Now it is considered a poor person's tax. Almost 45 percent of the people who pay this tax are over the age of 65. They are people who have saved and invested for their retirement and now they are living on their interest and dividends. Part of my practice as a lawyer is to do tax returns for people. Most of the people that I do tax returns for happen to be elderly. We have people in this state who are living on \$10,000 of social security and \$5000 of interest, and they are paying income tax to the state of New Hampshire. That is a travesty. We should do something about it and do it now. Thank you.

SENATOR LARSEN: I rise briefly to say that I think that we heard that this bill was "just" and it is "just". It is important that in the future we address how we tax incomes of all sorts and try to make them equal and just. But we also heard that this bill was fiscally prudent. I don't believe

that it is fiscally prudent at this point. I think that we have to be honest and say that if we are going to vote for the repeal of a revenue source, we have to know where the source to replace it is coming from. I would love to be able to vote for this bill. I don't feel that it is fiscally responsible to do that at this point. I urge a no vote on this bill.

SENATOR BROWN: I rise in support of the bill and the amendment that may be offered by Senator Below. As a member of Ways and Means, I voted with the committee to not pass the bill as a fiscally responsible thing to do, but as a Senator, as someone who represents people who are paying an unfair tax, it really bothers me to say that it is okay for them to have to come up with the money that we say that we can't afford to lose. They are losing it, in my opinion, unfairly, so I am going to support the bill and the amendment. Thank you.

SENATOR MCCARLEY: We have used the concept of fairness and taxation around this room endlessly for the past couple of years. Some of us have toiled in our local districts, with an unfair, very high property tax, and still have had trouble eking out an education that we might want to call adequate. We have started to address some of those issues, I think, in a very fundamental way for the last two years. I think that I am committed to do everything that I can to deal with fair taxation, but I also have to line that up against a school responsibility, and I, at this point-in-time, based on where we have gotten to in all of these debates, cannot support this legislation. Thank you.

SENATOR D'ALLESANDRO: I, too, will oppose this and voted against it in Ways and Means. We all want to do the right thing. I guess I am consistent with Senator Fred King when he said that if you are in the hole, stop digging, because the only thing that is going to happen is that it is going to collapse on us. We have the responsibility to do the right thing at this point, it is not the right thing, and at some other time we should come up with a comprehensive situation that addresses the entire issue. That is just the way that it is. Thank you.

Question is on the substitute motion of ought to pass.

A roll call was requested by Senator Gordon.

Seconded by Senator Roberge.

The following Senators voted Yes: Gordon, Below, Trombly, Disnard, Roberge, Eaton, Fernald, Pignatelli, Francoeur, Krueger, Brown, Wheeler, Cohen.

The following Senators voted No: F. King, Johnson, Fraser, McCarley, Squires, Larsen, J. King, Russman, D'Allesandro.

Yeas: 13 - Nays: 9

Adopted.

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

Sen. Fernald, Dist. 11

Sen. Brown, Dist. 17

2000-3818s

09/01

Floor Amendment to HB 235-FN-A

Amend the bill by replacing section 4 with the following:
4 Effective Date. This act shall take effect July 1, 2002.

SENATOR BELOW: I rise to offer this floor amendment. The amendment simply changes the effective date of the bill so that act shall take effect July 1, 2002 at the start of the next biennium so that we can plan on the impact of it.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Gordon.

The following Senators voted Yes: Gordon, Below, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Wheeler, Hollingworth, Cohen.

The following Senators voted No: F. King, Johnson, Fraser, McCarley, Larsen, J. King, Russman, D'Allesandro.

Yeas: 15 - Nays: 8

Floor Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Johnson moved to have **SB 132**, requiring the removal of the telecommunications tower on Mount Kearsarge, taken off the table.

A roll call was requested by Senator Francoeur.

Seconded by Senator Fernald.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, McCarley, Disnard, Eaton, Squires, Francoeur, Brown, J. King, D'Allesandro.

The following Senators voted No: Below, Trombly, Roberge, Fernald, Pignatelli, Larsen, Russman, Wheeler.

Yeas: 12 - Nays: 9

Motion adopted.

Question is on the committee amendment (3159).

Recess.

Out of Recess.

Senator Cohen moved to have **SB 132**, requiring the removal of the telecommunications tower on Mount Kearsarge, laid on the table.

A division vote was requested.

Yeas: 12 - Nays: 10

Adopted.

LAIID ON THE TABLE

SB 132, requiring the removal of the telecommunications tower on Mount Kearsarge.

SB 430-FN-A, authorizing the sweepstakes commission to allow electronic bingo games. Ways and Means Committee. Vote 5-3. Inexpedient to Legislate, Senator F. King for the committee.

SENATOR F. KING: The committee felt that these electronic bingo machines were too close to slot machines, both in manner and play of appearance. The Ways and Means Committee recommends inexpedient to legislate.

Senator Cohen moved to have **SB 430-FN-A**, authorizing the sweepstakes commission to allow electronic bingo games, laid on the table.

Recess.

Out of Recess.

A roll call was requested by Senator Gordon.

Seconded by Senator F. King.

The following Senators voted Yes: Below, McCarley, Trombly, Disnard, Fernald, Pignatelli, Larsen, D'Allesandro, Wheeler, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Krueger, Brown, J. King, Russman.

Yeas: 10 - Nays: 12

Motion failed.

Question is on the committee report of inexpedient to legislate.

SENATOR BELOW: I would just like to speak briefly on the committee report. If we pass this, New Hampshire would be the first state in the nation to open up a video bingo to charities as a fund-raising tool. I think that my concern is that the video bingo, electronic bingo is essentially, a video slot machine, and with a little bit of reprogramming, it could be video poker or anything else. It changes the nature of bingo from being a social function that is around the table, to an individual who is in front of a video terminal. It changes the role of volunteers as an ethic to raise money for a charity. It changes the whole nature of the operation to a commercial operation that could be 24 hours a day in specialized video lottery or video bingo halls. My concern is that if we start down this route, it is a significant expansion of gambling, and we would be leading our charities to be increasingly hooked on the revenue on gambling, and the next thing that we know, they will be saying that they need other forms of video slots for this purpose.

Question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator F. King.

Seconded by Senator Trombly.

The following Senators voted Yes: F. King, Gordon, Johnson, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, Russman, Wheeler, Hollingworth.

The following Senators voted No: Fraser, J. King, D'Allesandro, Cohen.

Yeas: 19 - Nays: 4

Committee report of inexpedient to legislate is adopted.

Recess.

Out of Recess.

SB 310, relative to New Hampshire state-chartered banks. Banks Committee. Vote 5-0. Ought to pass with amendment, Senator Fraser for the committee.

2000-3748s

09/01

Amendment to SB 310

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

AN ACT relative to New Hampshire state-chartered banks and interstate banking.

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

5 Banks; Insurance Activities. RSA 384:16-b, I is repealed and reenacted to read as follows:

I. Any state-chartered bank or association may directly or indirectly engage in, or otherwise organize, invest in or loan funds to, any corporation or other type of company formed to engage in, any activity that is financial in nature or incidental to such financial activity authorized under the federal Gramm-Leach-Bliley Act to the same extent and in the same manner as permitted for a national bank under the Act and any activity that is complementary to a financial activity that is authorized by federal regulatory authorities under the federal Gramm-Leach-Bliley Act. Any activity that is financial in nature or incidental or complementary thereto which is treated as insurance under the laws or regulations of this state shall be subject to regulation by the insurance commissioner. Any bank or association seeking to engage in any such insurance activity shall give prior written notice to the insurance commissioner and shall comply with all applicable insurance laws and regulations.

6 Interstate Acquisitions. Amend RSA 384:58, II to read as follows:

II. ~~[Except as otherwise provided in this paragraph,]~~ An out-of-state bank holding company may directly or indirectly acquire a New Hampshire bank or a national bank having its principal place of business in New Hampshire which has been in existence for at least 5 years. The 5-year aging requirement of this paragraph shall not apply to a New Hampshire bank which was incorporated pursuant to RSA 386-A or RSA 392 prior to September 29, 1995. ~~[For purposes of this section,]~~ An out-of-state bank holding company may *also* organize, and be the sole incorporator of, a New Hampshire bank which is chartered under applicable New Hampshire law ~~[solely for the purpose of acquiring control of, or acquiring all or substantially all of the assets and liabilities of, an existing New Hampshire bank or an existing national bank having its principal place of business in New Hampshire, provided that such newly chartered bank does not open for business prior to the consummation of the acquisition. Such newly chartered bank shall be deemed to have been in existence for the same period of time as the bank to be acquired].~~ No acquisition *of an existing bank* shall be permitted which will result in a violation of the ~~[20 percent]~~ deposit limitation contained in RSA ~~[384-B:3(2), except as otherwise permitted under RSA 384-B:3 and RSA 384-B:8]~~ *384-B. The authority granted by this section shall be available to the out-of-state bank holding company only if a New Hampshire bank holding company may acquire or organize a bank in the state in which the principal place of business of the out-of-state bank holding company is located under the authority of that state's laws substantially to the same extent and in the same manner as the out-of-state bank holding company is permitted to do so in this section.*

7 Interstate Bank Mergers. Amend RSA 384:59, I to read as follows:

I. Unless otherwise provided in this paragraph, a New Hampshire bank or a national bank having its principal place of business in New Hampshire may merge with any out-of-state bank in accordance with applicable laws

and regulations of New Hampshire and any other applicable state and federal authority. If the resulting bank is an out-of-state bank, the New Hampshire bank or national bank having its principal place of business in New Hampshire shall be required to be in existence for at least 5 years in order to be eligible to merge. The 5-year aging requirement of this paragraph shall not apply to a New Hampshire bank which was incorporated pursuant to RSA 386-A or RSA 392 prior to September 29, 1995. No merger shall be permitted which will result in a violation of the [20 percent] deposit limitation contained in RSA [384-B:2, I and II or RSA 384-B:3(2), except as otherwise permitted under RSA 384-B:3 and RSA 384-B:8] **384-B.**

8 Interstate Establishment or Acquisition of Branches. Amend RSA 384:60 to read as follows:

384:60 Interstate Establishment or Acquisition of Branches by a New Hampshire Bank.

I. A New Hampshire bank may establish a branch in any state or may acquire a branch or branches of an out-of-state bank in any state in accordance with the laws of such state. The New Hampshire bank shall be required to follow all procedures and to obtain all approvals necessary to establish or acquire a branch under applicable New Hampshire law and any applicable rules adopted by the bank commissioner consistent therewith. The New Hampshire bank shall file with the bank commissioner a copy of each application or notice filed with federal or other state regulatory authorities relating to the transaction at the same time such application or notice is filed with such federal or other state regulatory authorities. Upon consummation of the transaction, the New Hampshire bank shall have all the powers under the applicable laws and regulations of the state in which each branch is located, subject to the duties and restrictions thereof. In addition to any regulation by bank regulatory authorities in the state where a branch is located, each branch of the New Hampshire bank located outside of New Hampshire shall be subject to regulation by the bank commissioner as if such branch were located in New Hampshire and shall comply with New Hampshire law in the conduct of its banking business in such other state unless otherwise required or permitted under the laws of such other state.

II. *An out-of-state bank may establish one or more new branches in New Hampshire or may acquire one or more branches from a New Hampshire bank or a national bank or federal savings bank having its principal place of business in New Hampshire. The out-of-state bank shall be required to follow all procedures and to obtain all approvals necessary to establish or acquire the branch or branches under RSA 384-B and any applicable rules adopted by the bank commissioner consistent therewith. The authority granted by this section shall be available to the out-of-state bank only if a New Hampshire bank may establish or acquire one or more branches in the state in which the principal place of business of the out-of-state bank is located under the authority of that state's laws substantially to the same extent and in the same manner as the out-of-state bank is permitted to do so in this section. No branch may be established or acquired if it will result in a violation of the deposit limitation contained in RSA 384-B. The out-of-state bank shall file with the bank commissioner a copy of each application or notice filed with federal or other state regulatory authorities relating to the establishment or acquisition of a branch or branches at the*

same time such application or notice is filed with such federal or other state regulatory authorities. The out-of-state bank shall have all the powers held by a New Hampshire bank with respect to the operation of the branch or branches located in New Hampshire under applicable New Hampshire laws and regulations, subject to the duties and restrictions thereof. The branch or branches located in New Hampshire of an out-of-state bank, other than a national bank or federal savings association, shall be regulated by the bank commissioner as if such branch or branches comprised a New Hampshire bank. Any out-of-state bank having a branch or branches located in New Hampshire shall comply with applicable New Hampshire laws and regulations in the conduct of its banking business in New Hampshire. No branch of an out-of-state bank shall be permitted to engage in any activity not permissible for a New Hampshire bank. Notwithstanding the foregoing, if the out-of-state bank is a national bank or a federal savings association, it shall comply with New Hampshire law to the maximum extent allowed under federal law.

9 Waiver of Deposit Limitation. Amend RSA 384-B:8 to read as follows:

384-B:8 Waiver of Deposit Limitation. In any transaction involving the merger, consolidation or acquisition of any bank, banks, or bank holding company, whenever one or more of such banks or bank holding companies is in such condition that the Federal Deposit Insurance Corporation or any other federal agency having supervisory authority over banks or bank holding companies in New Hampshire could take action which would result in a merger, acquisition, consolidation or other similar structural change, and in the absence of such federal action such a change would be prevented by the provisions of RSA 384-B:2 or RSA 384-B:3, the board may waive the [20] **30** percent dollar volume of total deposit limitation in RSA 384-B:2 and RSA 384-B:3. Any such waiver shall be binding upon the board in any proceeding involving the merger, consolidation or acquisition of such bank, banks, or bank holding company.

10 Repeal. RSA 384:16-b, II, relative to banks engaging in certain activities, is repealed.

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

2000-3748s

AMENDED ANALYSIS

This bill increases the maximum dollar volume of a bank's deposits as a percentage of the dollar volume of total bank deposits in the state from 20 to 30 percent. The bill also allows New Hampshire state-chartered banks to engage in activities authorized pursuant to the federal Gramm-Leach-Bliley Act.

The bill also changes certain requirements for interstate banking.

SENATOR FRASER: Madame President, this bill increases the maximum dollar of volume of a bank's deposit as a percentage of the dollar brought in of total bank deposits in the state from 20 to 30 percent. Other states have increased the dollar volume limit, and this legislation will allow New Hampshire chartered banks to keep pace with other states. The cap was put in place in 1963 when intrastate banking started, to protect what were then community banks. Increasing the cap will allow state chartered banks to grow promoting competition with out-of-state banks. The amendment removes a prohibition **TAPE INAUDIBLE** branching by out-of-state banks and grants New Hamp-

shire state chartered banks the same privileges and rights afforded to federal banks. The committee was unanimous in voting this bill out as ought to pass.

Amendment adopted.

Ordered to third reading.

SB 353, relative to sales of insurance by financial institutions. Banks Committee. Vote 5-0. Ought to pass with amendment, Senator Fraser for the committee.

2000-3749s

09/10

Amendment to SB 353

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

1 New Section; Insurance Referrals. Amend RSA 402 by inserting after section 16-a the following new section:

402:16-b Insurance Referrals. Notwithstanding other provisions of this title, a person who has not complied with all applicable state insurance licensing and appointment laws and regulations may refer a party to a person who has complied with all applicable state insurance licensing and appointment laws and regulations, if the person making such referral is compensated for such referral in an amount that does not exceed a nominal amount and such amount is not based on or related to the party's purchase of insurance.

2 New Section; Insurance Referrals. Amend RSA 405 by inserting after section 17-b the following new section:

405:17-c Insurance Referrals. Notwithstanding other provisions of this title, a person who has not complied with all applicable state insurance licensing and appointment laws and regulations may refer a party to a person who has complied with all applicable state insurance licensing and appointment laws and regulations, if the person making such referral is compensated for such referral in an amount that does not exceed a nominal amount and such amount is not based on or related to the party's purchase of insurance.

3 Purpose; Reference to "Place With a Population of 5,000" Removed. Amend RSA 406-C:1 to read as follows:

406-C:1 Purpose. The purpose of this chapter is to **authorize and** regulate the solicitation for purchase and the sale in this state of insurance by financial institutions ~~in places with a population of 5,000 or fewer people and to direct and authorize the insurance commissioner to adopt such rules as may be necessary to protect the interests of insurance policyholders in this state~~ and to maintain parity with respect to the insurance powers of state and federally chartered financial institutions.

4 Definition; Financial Institutions. RSA 406-C:2, IV is repealed and reenacted to read as follows:

IV. "Financial institution" means a bank, savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act, as amended, 12 U.S.C. section 1813(c)(1), which is authorized to take deposits and make loans from a place of business in the state. For the purposes of this chapter, the term financial institution shall also include any non-depository affiliate or subsidiary of a financial institution but only in the instances when the non-depository affiliate or subsidiary is soliciting the sale or purchase of insurance recommended or sponsored by, on the premises of, or in

connection with a product offering of, the depository financial institution. Activities of employees and agents of a financial institution shall be deemed to the activities of the financial institution. The term does not include an insurance company subject to regulation under title XXXVII.

5 Definition; Nonpublic Customer Information. Amend RSA 406-C:2, V to read as follows:

V. "Nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims, and insurance history of an individual~~[-, and such other information as established by rules adopted by the commissioner]~~. "Nonpublic customer information" does not include customer names, addresses, and telephone numbers.

6 Separation of Activities. Amend RSA 406-C:7 to read as follows:
406-C:7 Separation of Activities.

I. Solicitation for the purchase or sale of insurance by the financial institution shall, to avoid customer confusion and to the extent practicable, be conducted in a physical location distinct from the area where retail deposits or credit transactions are being conducted ~~[in accordance with rules adopted by the commissioner]~~.

II. Solicitation for the purchase or sale of insurance by a licensed employee who exercises authority over credit transactions shall be conducted in a manner which addresses the potential for customer confusion and coercion~~[-, consistent with rules adopted by the commissioner]~~.

III. Signage, informational materials, and sales literature concerning the availability of insurance products through the financial institution shall be utilized and displayed in ~~[accordance with rules adopted by the commissioner]~~ *the manner required by this chapter*.

IV. If the product name under which the insurance contract is marketed includes the name of a financial institution, then the marketing material must~~[-, in accordance with rules adopted by the commissioner,]~~ prominently identify the insurance company which issues and underwrites the insurance contract.

7 Disclosures. Amend the introductory paragraph of RSA 406-C:8, I to read as follows:

I. To avoid customer confusion and in addition to any other requisite disclosures, all advertising, promotional material, and solicitation, including telemarketing contacts *in the case of life insurance and annuities*, shall~~[-, as required under rules, bulletins, or interpretive rulings adopted or promulgated by the commissioner,]~~ include a prominent disclosure that substantively states that a purchase of insurance:

8 Insurance Referrals. RSA 406-C:12, I is repealed and reenacted to read as follows:

I. An employee of a financial institution who is not licensed to sell insurance may refer a party to a person who is licensed to sell insurance, if the employee making such referral is compensated for such referral in an amount that does not exceed a nominal amount and such amount is not based on or related to the party's purchase of insurance.

9 Prohibited Practices. Amend RSA 406-C:12, III to read as follows:

III. An insurance product shall not be offered in a package with non-insurance products in ~~[violation of rules adopted by the commissioner to prohibit]~~ *a manner that constitutes* unlawful tying activities, rebating, and unfair competition with respect to insurance sales.

10 Service Corporations; "Place of 5,000" Removed. Amend RSA 384:16-b, III to read as follows:

III. [~~Provided further that any contrary provision of law notwithstanding, the provisions of paragraph II apply only to a bank or banking association and its subsidiary and do not apply to an affiliate thereof, and~~] The provisions of this section shall not be construed to prevent such bank, banking association, or subsidiary from conducting insurance activities pursuant to RSA 406-C and rules adopted under RSA 406-C, as permitted in RSA 394-A:9[~~, if such financial institution or its subsidiary is located in a place of 5,000. A place of 5,000 means a town or city in this state with a population not exceeding 5,000 as determined by the last federal decennial census~~]. An affiliate of any bank or banking association shall be bound by the provisions of RSA 406-C, with respect to sales of insurance in this state which are recommended or sponsored by a *depository* financial institution or sold on the premises of a *depository* financial institution.

11 Insurance; "Place of 5,000" Removed. Amend RSA 394-A:9, I to read as follows:

I. [~~(a) The insurance activity may be conducted only by the financial institution, or a subsidiary of the financial institution that is located in a place of 5,000. A place of 5,000 shall mean a town or city in this state with a population not exceeding 5,000 as determined by the last federal decennial census; and~~

(b) The conduct of the insurance activity shall comply with the provisions of RSA 406-C and any rules adopted thereunder, any applicable state insurance licensing laws and rules, and all applicable federal and state consumer protection laws, including the federal anti-tying provisions of 12 U.S.C. section 1972.

12 Repeal. RSA 406-C:2, VI, relative to the definition of "place of 5,000," is repealed.

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

2000-3749s

AMENDED ANALYSIS

This bill makes changes to the laws regulating sale of insurance by financial institutions, including removing the "place of 5,000" restriction on insurance sales, changing provisions regarding the separation of banking and insurance activities, and repealing certain rulemaking provisions.

SENATOR FRASER: Senate Bill 353 repeals the "place with a population of 5000" restrictions in current statute regarding the sale of insurance by financial institutions. The bill also allows for the payment of insurance fees to bank employees who are not licensed, as long as the payment is a nominal amount, and not based on the actual purchase of insurance. The committee was unanimous and recommends this bill ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 425, relative to the private activity bond limit. Banks Committee. Vote 5-0. Ought to pass. Senator Krueger for the committee.

SENATOR KRUEGER: This bill permits the New Hampshire Health and Education Facilities Authority to allocate a portion of state ceiling for bonds if the amount of the state bond ceiling exceeds \$150,000,000, which is the current ceiling. There is a plan to increase the cap to \$225,000,000. Allowing the NHHEFC a specific portion of the bonding cap is important for education. It will allow the NHHEFC to offer loans to students at lower

rates than normally available, encouraging those students who may not have considered higher education because of cost to re-examine the issue. Currently the NHHEFC does receive a portion of the bonding cap, but it fluctuates year to year preventing the NHHEFC from planning for the best possible use of the loans. The committee recommends this bill Ought to Pass.

Adopted.

Ordered to third reading.

SB 454, relative to penalties for engaging in the business of retail installment sales of motor vehicles after failure to renew a retail seller's license. Banks Committee. Vote 4-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3759s

09/04

Amendment to SB 454

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

1 Penalties; Commencement Date; Failure to Renew Retail Seller's License. Amend RSA 361-A:11, II(a) to read as follows:

(a) In the case of failure to renew an expired license, the first day of [January] **May** following the date of expiration of said license.

2 New Subparagraph; Penalties; Failure to Renew Retail Seller's License. Amend RSA 361-A:11, II by inserting after subparagraph (b) the following new subparagraph:

(c) In the case of a retail seller who fails to apply for renewal of its license by the license expiration date, the fine shall not exceed \$250 on the first occurrence of failure to renew, and shall not exceed \$500 for any subsequent occurrences of failure to renew. Notwithstanding the foregoing, subparagraph (b) shall apply to any retail seller who fails to obtain an initial license or who was not licensed during the previous license year.

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

2000-3759s

AMENDED ANALYSIS

This bill establishes fines for failure to renew a retail seller's license prior to the license expiration date.

SENATOR WHEELER: The issue addressed in this bill was brought to us by the New Hampshire Automobile Dealers. Currently the department is required to charge retailer sellers who do not renew their licenses \$25 per day of non-renewal. This daily fee can result in exorbitant charges for non-renewal. Usually the cases of non-renewal are matters of simple clerical error. As amended, this bill imposes a penalty charge of not more than \$250 on the first offense and not more than \$500 for any subsequent offense. The Banks Committee recommends this bill as ought to pass as amended.

Amendment adopted.

Ordered to third reading.

HB 305-A, relative to a lease-purchase agreement between Cheshire county and the state for construction of a new district courthouse to be located in the town of Jaffrey. Capital Budget Committee. Vote 7-0. Ought to pass with amendment, Senator D'Allesandro for the committee.

2000-3755s

09/10

Amendment to HB 305-A

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

AN ACT relative to a lease-purchase agreement between Cheshire county and the state for construction of a new district courthouse to be located in the town of Jaffrey and increasing a capital appropriation to the department of safety.

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

2 Capital Appropriation; Department of Safety. Amend 1999, 226:4, II, A to read as follows:

A. Design and construct Troop D barracks/DMC training ~~[\$910,000]~~ **\$1,510,000**

3 Totals Increased. Amend 1999, 226:4, II by replacing the total state appropriation paragraph II and the total state appropriation section 4 with the following:

Total state appropriation paragraph II ~~[\$1,194,000]~~ **\$1,794,000**

Total state appropriation section 4 ~~[\$8,819,000]~~ **\$9,419,000**

4 Bonds Authorized Increased. Amend RSA 226:8 to read as follows:

226:8 Bonds Authorized. To provide funds for the total of the appropriations of state funds made in sections 1, 2, 3, and 4 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of ~~[\$59,425,314]~~ **\$60,025,314** and for said purposes may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A.

5 Effective Date.

I. Section 1 of this act shall take effect July 1, 2000.

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

2000-3755s

AMENDED ANALYSIS

This bill authorizes a lease purchase agreement between Cheshire county and the state for construction of a new district courthouse to be located in the town of Jaffrey.

The bill also increases a capital appropriation to the department of safety for design and construction of Troop D Barracks/DMC training.

SENATOR D'ALLESANDRO: This bill provides a lease purchase between Cheshire county and the state for a new district court serving the Jaffrey and Peterborough district court. The current facility is in an old manufacturing building leased at a cost of \$53,230 per year. The Belette Family is donating land for the new court, with a four-year term limit for the construction expiring in 2001. If the state does not act soon, the donors many rescind their gift. The judicial branch has placed this project first on their list of priorities. The town has done environmental testing and engineering studies at its own expense. If Cheshire county and the state enter into a lease purchase agreement, the county will issue bonds in the amount of up to \$2.6 million to pay for the cost of construction. The state will pay rent to cover the county's repayment of the bonded construction cost over 20 years, beginning with the first year payment of \$238,712, declining to the last payment, of \$137,475. The state will pay all operating costs for the facility, including maintenance costs, man-

power for the building, grounds maintenance, building security and utilities. Current operating costs are \$53,230. The rent and operating costs will be charged against the general fund starting in FY 2002. The Capital Budget amended this bill. Amendment #3755 by increasing a capital appropriation to the Department of Safety for \$600,000 for the design and construction of Troop D barracks, DMC training. This appropriation will be taken from the Highway Fund. The Capital Budget Committee recommends HB 305 ought to pass as amended. Thank you.

SENATOR LARSEN: I just want to add something, since Senator Fernald is not here, that this is unique in a creative way using county bonding authority to build what is a necessary improvement in the court house of Jaffrey. We heard incredible stories of the police chief of Jaffrey who came and told us that their feet are blackened by black ooze coming from the surface of the Jaffrey court house floor. We heard that they do not have walls that go up to the top so that there is no security. We have heard that there is no juvenile facility that is separate. It is truly an item that needs to happen. It is unique that they were able to do it without using state bonding authority. I urge ought to pass.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

SUSPENSION OF THE RULES

Senator Larsen moved that the Rules of the Senate be so far suspended as to allow a committee report not shown in the calendar.

Adopted by the necessary 2/3 vote.

SB 401-FN-A-L, establishing the New Hampshire land and community heritage investment program and making an appropriation therefor.

Senator Larsen moved ought to pass.

SENATOR LARSEN: This bill was voted on by a 7-0 vote by the Capital Budget Committee in support of the bill. It allows for the purchase by the state, of property most valuable to the preservation of New Hampshire's unique lands. It is important at this point that this bill go to the Finance Committee for a report next week by the full Senate.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 397, making an appropriation from the education trust fund for certain alternative kindergarten programs. Education Committee. Vote 4-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-3693s

04/01

Amendment to SB 397-FN-A-LOCAL

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

AN ACT making an appropriation from the education trust fund for public kindergarten programs.

Amend the bill by replacing section 1 with the following:

1 Appropriation from Education Trust Fund. Notwithstanding the provisions of RSA 198:39, the sum of \$1,450,000 is hereby appropriated, for the biennium ending June 30, 2001, from the education trust fund to the

department of education for the purpose of funding public kindergarten programs pursuant to 1999, 65:9 as amended by 1999, 281:16. The governor is authorized to draw a warrant for said sum from any moneys available in the education trust fund.

2000-3693s

AMENDED ANALYSIS

This bill makes an appropriation of \$1,450,000, for the biennium ending June 30, 2001, from the education trust fund to the department of education for the funding of public kindergarten programs pursuant to 1999, 65:9 as amended by 1999, 281:16.

SENATOR MCCARLEY: Senate Bill 397 is simply the appropriation language to acknowledge the policy commitment that we made back last fall to those kindergarten districts. Those districts that chose to put in public kindergarten in the three-year period which are not captured by the formula in terms of a pupil count. Because most of those districts chose to put in public kindergarten because they had a \$750 incentive from the state from the prior kindergarten legislation, to put it in. This language simply appropriates the money that we agreed to last spring, that we would indeed allow to flow to those communities. I urge your support and I assume that it will be going on to Senate Finance.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

HB 86-A, making an appropriation for renovation of the Sawyer House at the Daniel Webster Birthplace in the city of Franklin. Energy & Economic Development Committee. Vote 6-0. Ought to Pass, Senator Cohen for the committee.

SENATOR COHEN: This bill authorizes the Department of Resources and Economic Development to match private donations to fund renovations at the Sawyer House in Franklin. These renovations will enable the Division of Parks to keep the property open year-round as a tourist attraction. The bill authorizes the Division of Parks to match private donations dollar to dollar up to \$52,590. The renovations are estimated to cost \$105,180. The bill is the result of a great deal of work by a sub committee of the House Finance Committee. The committee unanimously recommends ought to pass.

Adopted.

Ordered to third reading.

HB 580-FN-A-L, authorizing a grant from funds appropriated to the joint promotional program for the purpose of marketing the Connecticut river area as a travel and tourism destination. Energy & Economic Development Committee. Vote 6-0. Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: House Bill 580 as amended by the House authorizes the commissioner of Resources and Economic Development to shift up to \$25,000 during the current biennium within the joint promotional program to award a grant to promote tourism in the Connecticut River Valley. I-91 runs along the west bank of the river through Vermont. The state of Vermont diverts tourist traffic on I-91 into Vermont. New Hampshire does little to offset the appeal of Vermont. The tourist in the Connecticut River Valley come mostly from New York. New Hampshire draws most of its tourists from the greater Boston market, by making a greater effort to attract tourists along the Connecticut River, New Hampshire

would open a new market and draw a great share of the traffic going to Vermont. There was no opposition to the bill committee. We urge the adoption of this bill.

SENATOR BELOW: I rise to speak since I represent three towns on the Connecticut River and residing there myself, I wholeheartedly endorse this legislation.

SENATOR DISNARD: I wish to call the Senate's attention that this is a one-time request. It is not a continuous request, it is a one-time request.

SENATOR COHEN: I also support this bill as well. In a previous reincarnation, I used to drive an apple truck and deliver apples in this part of the state of New Hampshire, and I think that this is an important thing for people to see. It would be very helpful to this region.

Adopted.

Ordered to third reading.

SB 374, establishing a committee to study growth expansion and regional planning laws. Energy & Economic Development Committee. Vote 6-0. Ought to Pass, Senator Cohen for the committee.

SENATOR COHEN: Senate Bill 374 is intended to address the relationships between municipalities as they deal with development that has widespread impacts. The regional planning laws are 20 to 30 years old, and are due for reconsideration. The committee unanimously agreed that this study should reconsider the regional planning laws and recommends ought to pass.

Adopted.

Senator Below offered a floor amendment.

2000-3824s

10/01

Floor Amendment to SB 374

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

AN ACT relative to the duties of the study committee on land management, protection of farmland, rural character, environmental quality, and sprawl.

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

1 Study Committee on Land Management, Protection of Farmland, Rural Character, Environmental Quality, and Sprawl as amended by 1999, 23; Duty Added. Amend 1998, 197:4 to read as follows:

197:4 Duties. The committee shall examine the laws of states that provide mechanisms for local management of residential, commercial, and industrial development proposals and shall explore alternative approaches to protect and preserve the farmlands, rural and community character, and environmental quality of New Hampshire. *The committee shall also study growth expansion and regional planning laws, for the purpose of recommending criteria for involvement from community to community.*

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

2000-3824s

AMENDED ANALYSIS

This bill adds a duty concerning growth expansion and regional planning laws to the study committee on land management, protection of farmland, rural character, environmental quality, and sprawl.

SENATOR BELOW: I rise to offer this floor amendment. The amendment takes the charge of the committee and vests it with an existing committee. The committee on Land Management Protection of Farmland Rural Character Environmental Quality and Sprawl. The thought was that we don't need yet another study committee when there is an existing study committee dealing with a very closely related topic. The existing committee was agreeable to taking on this additional charge. The sponsor of the bill, Senator Trombly, was also agreeable to assigning to the existing study committee, which reports in the same timeframe, late this year. Thank you.

Floor Amendment adopted.

Ordered to third reading.

HB 387, relative to local telephone calling areas, access charges, and competitive telephone services. Executive Departments and Administration. Vote 6-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill sets criteria that the Public Utilities Commission should look to when determining whether or not a local calling area should be expanded. The bill further urges the Commission to consider intrastate charge reductions that coincide with reductions in federal interstate charges. The bill further authorizes the Commission to obtain information from telephone utilities regarding whether or not telephone utilities should be split up in a similar manner to electric utilities. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 407, establishing a committee to study unsolicited commercial telephone solicitation calls. Executive Departments and Administration. Vote 5-1. Inexpedient to Legislate, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: This bill would have created a committee to study options for creating and enforcing restrictions on unsolicited telephone calls. There are currently forms that people can fill out if they want direct marketers to stop calling. Additionally, this is not a New Hampshire issue, this is a national issue that would need to be addressed federally. These companies making the solicitation calls are not based in New Hampshire, but other states. The committee recommends this bill is inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 1287, relative to the membership of the water council. Executive Departments and Administration. Vote 6-0. Ought to pass with amendment, Senator Cohen for the committee.

2000-3727s

03/09

Amendment to HB 1287

Amend the bill by inserting after section 2 the following and renumbering the original section 2 to read as 3:

2 Water Management and Protection Compacts; Water Pollution Control Compact; Commissioners. Amend RSA 484:19 to read as follows:

484:19 Commissioners. The governor, with the consent of the council, shall appoint 5 commissioners to the New England Interstate Water Pol-

lution Control Commission. These commissioners shall include [~~the commissioner of the department of health and human services or his designee;~~] the commissioner of environmental services or his designee[;] and [3] 4 other persons to be nominated by the commissioner of environmental services. All commissioners, except [~~the commissioner of the department of health and human services and~~] the commissioner of environmental services, shall serve 4-year terms. A vacancy shall be filled for the remainder of the unexpired term.

2000-3727s

AMENDED ANALYSIS

This bill authorizes designees for ex officio members of the water council, requires members of the water council to take an oath, and removes the commissioner of the Department of Health and Human Services from mandatory membership on the New England Interstate Water Pollution Control Commission.

SENATOR COHEN: This bill simply allows various members of the water council to assign designees to attend council meetings. The bill further requires members to take an oath upon joining council. The amendment, offered by the committee, removes the commissioner of the Department of Health and Human Services from the New England Interstate Pollution Control Compact. The committee recommends this bill as ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 408, relative to an animal owner's right to choose animal care. Executive Departments and Administration. Vote 7-0. Ought to pass with amendment, Senator Larsen for the committee.

2000-3691s

08/09

Amendment to SB 408

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

AN ACT establishing a committee to study the application of non-conventional veterinary procedures for domestic animals.

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

1 Committee Established. There is established a committee to study the application of non-conventional veterinary procedures for domestic animals.

2 Membership and Compensation.

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

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

(b) Three members of the house of representatives, 2 of whom shall be from the environment and agriculture committee, appointed by the speaker of the house.

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 application of non-conventional veterinary procedures for domestic animals.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the commit-

tee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2000.

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

2000-3691s

AMENDED ANALYSIS

This bill creates a committee to study the application of non-conventional veterinary procedures for domestic animals.

SENATOR LARSEN: Senate Bill 408 was introduced in response to concerns raised last year after the passage of SB 83 that made changes to the veterinary practice act. The initial draft of this bill, SB 408, allowed animal owners the freedom to choose health care providers for their animals, including those practicing adjunctive therapies who are not licensed veterinarians. Because there are so many conflicting issues raised during the hearing on the bill, the Executive Departments and Administration Committee felt that this bill needed additional investigation. Clearly, the issue of alternative therapies for animals needs to be reviewed. The committee recommends creating a study committee to look at these issues over the course of next year. Thank you.

Amendment adopted.

Ordered to third reading.

SB 435-FN, relative to providing emergency 911 access from on-campus student housing at all postsecondary educational institutions within the state. Executive Departments and Administration. Vote 6-0. Interim Study, Senator Cohen for the committee.

SENATOR COHEN: This bill would have required the Postsecondary Educational Institutions in New Hampshire to cover unnecessary costs. It should be noted that the University of New Hampshire in Durham, currently has 911 service for its students. This bill would have incurred additional costs to the University at a time when the service is already available to the student. Still the issue of student safety at the Postsecondary Educational Institutions in New Hampshire is a very important issue and deserves more investigation; therefore the Executive Departments and Administration Committee recommends interim study.

Committee report of interim study is adopted.

SB 316, relative to "most favored nation" or "equally favored nation" provisions in insurance provider contracts. Insurance Committee. Vote 4-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, this bill bans the use of "Most Favored Nation" contracts and "Equally Favored Nation" contracts between health insurance companies and providers. These contracts require providers to guarantee the insurance company as low or lower reimbursement rates than they can grant to any other insurer. If the provider subsequently negotiates a contract that contains lower rates, that lower rate would then have to be offered to the insurer with whom the provider has an MFN or EFN contract. Theoretically, these types of contracts could reduce health care costs in markets with several insurers. However, in New Hampshire, the health insurance market is dominated

by two companies. This has the effect of tilting the market to the disadvantage of providers, especially smaller provider groups. Hence we do not have competition arising from MFN contracts, but instead provider groups are forced to accept the rates the insurers dictate. The insurance committee felt that this could only exacerbate an already difficult situation in New Hampshire's health insurance market. The committee voted unanimously that this bill ought to pass.

Adopted.

Ordered to third reading.

SB 364, relative to benefits for permanent bodily losses under workers' compensation. Insurance Committee. Vote 7-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-3343s

01/09

Amendment to SB 364

Amend the bill by replacing section 1 with the following:

1 Balance Paid to Estate. RSA 281-A:32, XIII is repealed and reenacted to read as follows:

XIII. BALANCE PAID TO ESTATE. The balance of an unpaid weekly scheduled award shall, upon the death of the employee, be paid to the estate of the employee.

2000-3343s

AMENDED ANALYSIS

This bill requires that the balance of an unpaid weekly scheduled permanent impairment award under worker's compensation be paid to the estate of the employee in the event of the employee's death. Current law voids such balances.

SENATOR MCCARLEY: When someone suffers an on the job injury that results in permanent bodily loss, they receive an impairment award. The award is fixed by statute, and is based on what the law says and on the person's salary at the time of the injury, and the terms of the award are spelled out in statute. The problem that this bill will fix is that if someone who is receiving weekly payments, dies while the payments are being made, under current law, the balance of the award is voided and the insurance company retains that balance. Supporters of this bill testified that the impairment award is an asset, and that upon a recipient's death, it should become an asset of the deceased person's estate. Several groups testified in support and there was no opposition. The amendment simply makes a continuation of payments part of the probate process. I urge your support.

Amendment adopted.

Ordered to third reading.

SB 389-FN, relative to medical benefits for group II members of the retirement system. Insurance Committee. Vote 8-0. Ought to pass with amendment, Senator J. King for the committee.

2000-3247s

10/09

Amendment to SB 389-FN

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

AN ACT relative to benefit options for surviving spouses and designated beneficiaries of deceased members of the retirement system.

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

1 Accidental Death; Group I; Option to Lump Sum Payment. Amend RSA 100-A:8, I(a) to read as follows:

(a) If, upon the receipt by the board of trustees of proper proof of the death of a group I member in service indicating that such death was the natural and proximate result of an accident occurring while in the performance of duty at some definite time and place, the board decides that death was the result of an accident in the performance of duty and not caused by willful negligence on the part of the member, a state annuity shall be paid to his widow, to continue during her widowhood; or if there is no widow, or if the widow dies or remarries before the youngest child of the deceased member has attained age 18, then to his child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivorship state annuity for the benefit of such child or children under said age until every child dies or attains said age; or if there is no widow or child under age 18 living at the death of the member, then to his dependent father or dependent mother as the board shall determine, to continue for life; or if the deceased member is a female, the foregoing benefits shall be payable to her widower, children or dependent parents only in like manner and amount; provided that if none of the aforementioned beneficiaries is living or eligible for benefits under the provisions of this section, there shall be payable to the person or persons nominated by the member, if living, otherwise to the member's estate, a lump sum amount which is equal to the deceased member's base salary plus accrued benefits not paid at the time of death, in addition to the amount payable under RSA 100-A:11. ***In lieu of such lump sum amount, the designated beneficiary or beneficiaries may elect to receive the applicable ordinary death benefit that, under RSA 100-A:9, would have been payable to the beneficiary or beneficiaries if the member's death had not been the result of an accident occurring while in the performance of duty.***

2 Accidental Death; Group II; Option to Lump Sum Payment. Amend RSA 100-A:8, II(a) to read as follows:

(a) If, upon the receipt by the board of trustees of proper proof of the death of a group II member in service indicating that such death was the natural and proximate result of an accident occurring while in the performance of duty at some definite time and place, or as the natural and proximate result of repeated trauma or gradual degeneration occurring while in the actual performance of duty or arising out of and in the course of employment or of any occupational disease arising out of or in the course of employment, as defined by RSA 281-A:2, XI and found to be compensable by the commissioner of labor pursuant to RSA 281-A:43; the board decides that death was the result of an accident in the performance of duty and not caused by willful negligence on the part of the member, a state annuity shall be paid to the member's surviving spouse, to continue until the surviving spouse remarries; or if there is no surviving spouse, or if the surviving spouse dies or remarries before the youngest child of the deceased member has attained age 18, then to the deceased members' child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivorship state annuity for the benefit of such child or children under said age until every child dies or attains said age; or if there is no surviving spouse or child under age 18 living at the death of the member, then to the member's dependent father or dependent mother

as the board shall determine, to continue for life; provided that if none of the aforementioned beneficiaries is living or eligible for benefits under the provisions of this section, there shall be payable to the person or persons nominated by the member, if living, otherwise to the member's estate, a lump sum amount which is equal to the deceased member's base salary plus accrued benefits not paid at the time of death, in addition to the amount payable under RSA 100-A:11. ***In lieu of such lump sum amount, the designated beneficiary or beneficiaries may elect to receive the applicable ordinary death benefit that, under RSA 100-A:9, would have been payable to the beneficiary or beneficiaries if the member's death had not been the result of an accident occurring while in the performance of duty.***

3 Ordinary Death Benefit. RSA 100-A:9 is repealed and reenacted to read as follows:

100-A:9 Ordinary Death Benefit; Group I and II Members.

I. Upon receipt by the board of trustees of proper proof of the death of a group I or group II member in service indicating that such death was not the result of an accident occurring while in the performance of duty, there shall be a death benefit payable to either the member's surviving spouse or, if the member has designated a beneficiary other than the member's spouse, the member's designated beneficiary or beneficiaries, if living, otherwise to the member's estate.

II. If the member was eligible for service retirement pursuant to RSA 100-A:5, I(a) or (c), RSA 100-A:5, II(a), or RSA 100-A:19-b at the time of the member's death, there shall be payable to the member's surviving spouse or designated beneficiary or beneficiaries, if living, a service retirement allowance, continuing until death equal to the survivor benefit payable under RSA 100-A:13, III, Option 2 had the member retired immediately prior to death, based on average final compensation and creditable service at the time of death. In lieu of the allowance, the surviving spouse or designated beneficiary or beneficiaries may elect to receive the lump sum benefit set forth in paragraph IV. If the member's spouse beneficiary or the member's designated non-spouse beneficiary or beneficiaries predecease the member, the member's estate shall receive the lump sum benefit set forth in paragraph IV.

III. If the member has at least 10 years combined creditable service, but was not eligible for service retirement pursuant to RSA 100-A:5, I(a) or (c), RSA 100-A:5, II(a), or RSA 100-A:19-b at the time of the member's death and has not designated a beneficiary or beneficiaries other than the member's spouse, there shall be payable to the member's surviving spouse an allowance, continuing until the spouse's death or remarriage, equal to 50 percent of the service retirement allowance that would have been payable to the member had the member retired immediately prior to death, based on average final compensation and creditable service at the time of death. In lieu of such allowance, the surviving spouse may elect the lump sum benefit set forth in paragraph IV. If the member has designated a beneficiary or beneficiaries other than the member's spouse, the designated beneficiary or beneficiaries, if living, otherwise the member's estate, shall receive the lump sum benefit set for the in paragraph IV.

IV. If the member did not have at least 10 years combined creditable services and was not eligible for service retirement at the time of death, there shall be payable to the member's surviving spouse or the member's designated beneficiary or beneficiaries, if other than a spouse, if living, otherwise to the member's estate, a lump sum benefit equal to the deceased member's annual earnable compensation at the time of death in addition to the amount payable under RSA 100-A:11.

V. A member may designate multiple beneficiaries, however, only the member's spouse and/or children shall be eligible to receive the survivor benefit set forth in paragraph II. When a survivor benefit is payable to multiple beneficiaries, the unanimous written consent of all multiple beneficiaries is required to authorize the receipt of a lump sum death benefit in lieu of the survivor benefit. If a member designates, as a multiple beneficiary, any person other than the member's spouse and/or children, all of the member's designated multiple beneficiaries shall be limited to receipt of the lump sum benefit in paragraph IV.

VI. Any beneficiary designation properly executed by a member and timely filed with the retirement system shall revoke any beneficiary designation previously filed by the member.

4 Optional Allowances; Survivorship Option. Amend RSA 100-A:13, I to read as follows:

I. [~~Any member who has reached service retirement age as provided in RSA 100-A:5, I(a) or II(a), or RSA 100-A:19-b;~~] **Any eligible member applying for retirement** or any retiree within 120 days after the effective date of retirement, may elect to receive, instead of the retirement allowance otherwise payable, a retirement allowance of equivalent actuarial value under one of the options named in paragraph III, or to redesignate any such option previously elected. When the member elects to receive an optional retirement allowance under paragraph III, the beneficiary or beneficiaries whom the member nominates may include the member's spouse and/or children. The notice of election or change of retirement option shall be on a form designated by the board. The optional allowance shall be effective upon retirement if the election is made before the effective date of retirement, and on the first day of the month following receipt by the board of the notice of election or change of option if made during the 120-day grace period. When an election or change of option is made during the 120-day grace period, no retroactive adjustments will be made in payments already received by the retiree. After expiration of the 120-day grace period no change in option selection shall be permitted except as provided in paragraph II. If a retiree dies after filing notice of election or change of option during the 120-day grace period but before the effective date, the election or change shall be effective as of the date of death. If a member dies after filing an election for a survivorship retirement option and before the effective date of retirement, [~~whether or not the member has filed for retirement;~~] the beneficiary who was nominated by the member in the election of the option may elect to receive either the optional survivor benefit which the member had elected or the ordinary death benefit provided under RSA 100-A:9, whichever is more advantageous to the beneficiary[~~;~~ ~~provided that, in the case of the member's death before retirement, if the beneficiary named in the survivorship option election is not the same person as the beneficiary under RSA 100-A:9, then the death benefit under RSA 100-A:9, II, and not the survivorship option shall apply~~].

5 New Paragraph; Optional Allowances; Beneficiary Designation. Amend RSA 100-A:13 by inserting after paragraph III the following new paragraph:

IV. Any beneficiary designation properly executed by a member and timely filed with the retirement system shall revoke any beneficiary designation previously filed by the member.

6 New Hampshire Retirement System; Medical Benefits; Application. Amend RSA 100-A:55, I to read as follows:

I. The additional benefits provided under RSA 100-A:52 shall apply to persons who are active or retired members of group II as of June 30,

[1995] 1997; to persons who prior to July 1, 1988, had completed no less than 20 years of group II creditable service, but who for reasons other than retirement or death ceased to be a group II member prior to attaining the age of 45, and who, as of July 1, 1993, are eligible for vested deferred retirement benefits; and to persons who are group II permanent policemen or permanent firemen members on disability retirement as the natural and proximate result of injuries suffered while in the performance of duty who become permanent policemen members of group II [~~after June 30, 1988, but~~] before July 1, [1995] 2000 or permanent firemen members of group II [~~after June 30, 1988, but~~] before July 1, [1995] 2000. Such additional benefits shall not apply to other persons who become members of group II after June 30, [1995] 2000, without future legislation to include them. It is the intent of the legislature that future group II members shall be included only if the total cost of such inclusion can be funded by reimbursement from the special account established under RSA 100-A:16, II(h).

7 Repeal. RSA 100-A:52, I(g), relative to payment of cost of medical benefits for certain retired police members on disability retirement, is repealed.

8 Effective Date. This act shall take effect July 1, 2000.

2000-3247s

AMENDED ANALYSIS

This bill provides for survivor benefits and options for spouses and designated beneficiaries of deceased retirement system members.

SENATOR J. KING: Senate Bill 389 extends the healthcare subsidies for group II members of the New Hampshire Retirement System hired after June 30, 1995, but before July 1, 1997. Currently, group II members of the Retirement System are eligible for the health care subsidy if they have been active or retired members as of June 30, 1995. The bill also extends the healthcare subsidy to those members hired after June 30, 1997, but before July 1, 2000, who go out on disability. The amendment eliminates the need for a member to go to the Retirement System office for a pre-selection form. Once the member becomes eligible for retirement benefits, his or her beneficiary will automatically be eligible for the maximum benefits provided by law. This member, however, may select a different option upon retirement. The committee recommends this bill ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 394-FN, making miscellaneous changes in the insurance laws. Insurance Committee. Vote 8-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: This bill makes several changes originally contained in SB 103 (1999), which was passed by both House and Senate, but vetoed by the Governor due to a provision regarding a pay increase for an unclassified employee. You might recall, Madame President, at that time, the Governor's message was to the extent that the whole concept of unclassified employees was being studied, and that was the reason that she vetoed the bill.

Section 1. Adds the word "financial" to describe the type of institution that can issue letters of credit under RSA 405:48.

Section 2. Clarifies examination procedures relative to copying company records on-site reinserting historical language that was omitted at some point from the statute.

Section 3. Replaces the existing appeal procedure by bringing hearings and appeals under RSA 541, thus allowing aggrieved persons to request a rehearing on decisions of the insurance commissioner and appeal such to the Supreme Court.

Section 4. Changes the reporting requirement regarding exclusivity contracts from semi-annual to at the request of the commissioner.

Section 5. Exempts from the administrative rulemaking process legislation developed by the National Association of Insurance Commissioners if the legislation enacted is substantially identical to the NAIC model.

Sections 6 and 7. Amends heading; adds the "liability" to a listing of other types of insurance policies to reflect a Supreme Court interpretation that "liability" is not inherently a part of "casualty" insurance.

Section 8. Lowers the salary classification of health care statistician from Group M (\$45,740 - \$59,454) to Group K (\$36,578-\$50,320).

The committee was unanimous in recommending this bill ought to pass.

SENATOR LARSEN: Senator Fraser, I am just curious with the statistician position, is that funded through restricted revenues?

SENATOR FRASER: No, no. The position itself is funded by the insurance industry. What had happened was, when I introduced the bill, I think that it was two years ago, the department, when they gave it to me to bring forth before the body, who should have been a "k" should have been an "m" and vice versa, so this would be able to reduce that statistician labor grade to the correct one.

SENATOR LARSEN: For \$50,000 group pay?

SENATOR FRASER: It reduced the price by \$10,000. Yes.

SENATOR LARSEN: But there is no fiscal affect to the general fund?

SENATOR FRASER: No.

SENATOR LARSEN: Okay. Thank you.

Adopted.

Ordered to third reading.

SB 415-FN-L, relative to payment of group health insurance premiums for eligible retired members of the retirement system. Insurance Committee. Vote 8-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-3743s

10/04

Amendment to SB 415-FN-LOCAL

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

1 Credit for Out-of-state Service; Eligibility for Medical Benefits. Amend RSA 100-A:4-b, III to read as follows:

III. In no case shall out-of-state service purchased as creditable service in the New Hampshire retirement system under the provisions of this section be deemed to be creditable state service for the purposes of eligibility for medical benefits after retirement under the provisions of RSA 21-I:30 or RSA [~~100-A:53-a~~] **100-A:52-a**.

2 New Section; Payment by Retirement System; Teachers and Political Subdivision Employees. Amend RSA 100-a by inserting after section 52 the following new section:

100-A:52-a Payment by Retirement System; Group I Teachers and Political Subdivision Employees.

I. The New Hampshire retirement system shall pay the cost for permanent group hospitalization, hospital medical care, surgical care, and other medical and surgical benefits, in the employer-sponsored plan provided for active employees of a retiree's former employer, subject to the provisions of this section, for the following persons:

(a) Any person, who has at least 20 years of creditable service as a group I member if age 60 or older, or at least 30 years of creditable service as a group I member if age 55-59, retired on or before July 1, 2004 as a group I teacher member or political subdivision employee member of the New Hampshire retirement system on service or ordinary disability retirement, provided that such person shall be entitled to retirement on the basis of group I creditable service, or any person retired on or before July 1, 2004, as a group I member whose service retirement benefit is based upon the provisions of RSA 100-A:19-c and who has a minimum of 20 years of creditable service as a group I member.

(b) Any person who has completed no less than 20 years of group I creditable service, but who for reasons other than retirement or death ceased to be a group I teacher member or political subdivision employee member prior to attaining the age of 60, and who, as of July 1, 2004, receives a vested deferred retirement allowance and who subsequently attains the age of 60.

(c) Any person who has completed no less than 20 years of group I creditable service and who retired as a group I teacher member or political subdivision employee member prior to age 60, and who subsequently attains the age of 60, or any person who has completed no less than 30 years of group I creditable service and who retired as a group I teacher member or political subdivision employee member prior to age 55, and who subsequently attains the age of 55.

(d) The surviving spouse of a deceased retired group I teacher member or political subdivision employee member who met the qualifications of subparagraphs (a), (b) or (c), or of a deceased member who died while in service as a group I teacher member or political subdivision employee member, provided that such surviving spouse was covered as the member's spouse in the employer-sponsored plan before the member's death and is entitled to a monthly allowance under RSA 100-A:8, 100-A:9, or 100-A:13.

(e) Any certifiably dependent child with a disability living in the household and being cared for by the qualified retired member, the member's spouse, or the qualified surviving spouse.

(f) The surviving spouse and children of a deceased teacher or group I political subdivision employee member who dies as the natural and proximate result of injuries suffered while in the performance of duty, provided that:

(1) Any such child shall be qualified under this subparagraph only if under 18 years of age, or under 23 years of age if attending school on a full-time basis; and

(2) Such surviving spouse shall cease to be qualified upon the remarriage of the surviving spouse; and

(3) No surviving spouse or child shall be qualified or continue to be qualified under this subparagraph while receiving or eligible to receive medical insurance or health care benefits from any employer's sponsored plan.

(g) Any group I teacher member or political subdivision employee member retired on or before July 1, 2004 on disability retirement as the natural and proximate result of injuries suffered while in the performance of duty.

(h) The spouse of a qualified retiree.

II. However, for the fiscal year beginning July 1, 2000, the maximum amount payable by the retirement system under this subdivision on account of each person qualified under paragraph I who is not entitled to medicare benefits, and on account of each person qualified under paragraph I who is entitled to medicare benefits, shall be the same as the amount provided in RSA 100-A:52, II for group II retirees. As of July 1, 2000 and on each July 1 thereafter, the maximum amount payable by the retirement system as provided in this paragraph shall be increased by 8 percent, compounded on previous increases.

III. In the case of group I members retired from employment by political subdivisions of the state, the amount payable by the retirement system on account of qualified persons shall be paid over to the employer, insurer, or health care administrator and used to pay for all or part of the medical benefits provided through the former employer for qualified persons. If the cost of the premium for any eligible person under paragraph I shall exceed the maximum under paragraph II, and the employer does not elect to pay the excess cost, the excess cost shall be paid by the retiree or qualified surviving spouse and may be deducted from retirement benefits as provided in RSA 100-A:51. The employer may require, as a condition for coverage, that the retiree or surviving spouse apply for deduction of such excess cost from retirement benefits as provided in RSA 100-A:51.

IV. There shall be no age limit to participate in the employer sponsored medical and health plan provided in paragraph I, and there shall be no physical examination or health statement required for such coverage, provided, however, that if an eligible retired group I teacher member or political subdivision employee member of the retirement system fails to apply for such coverage within the time required by the insurance contract, the insurer may require satisfactory evidence of insurability as a condition for becoming insured.

V. Any group I teacher member retired before January 1, 2000, or other eligible person under paragraph I, who would have been eligible for medical benefits under this section if this section had been in effect on the member's date of retirement, shall have the option of re-joining the medical or health plan sponsored by the retired member's former employer and of receiving benefits under this section, provided that such eligible person shall apply to the employer for such benefits before January 1, 2002. Upon receipt of such application, the former employer shall enroll such retiree or other eligible person in the employer's plan in the same manner and subject to the same conditions as enrollment of a new employee but without any benefit-waiting period which may be applicable to new employees of that employer. Neither an employer nor an employer's group plan or insurer shall be liable for any claims incurred prior to the date of enrollment under this paragraph.

VI. Any group I political subdivision employee member retired before January 1, 2001, or other eligible person under paragraph I, who would have been eligible for medical benefits under this section if this section had been in effect on the member's date of retirement, shall have the option of re-joining the medical or health plan sponsored by the retired member's former employer and of receiving benefits under this section, provided that such eligible person shall apply to the employer for such benefits before January 1, 2003. Upon receipt of such application, the former employer shall enroll such retiree or other eligible person in the employer's plan in the same manner and subject to the same conditions as enrollment of a new employee but without any benefit-waiting period which may be applicable to new employees of that em-

ployer. Neither an employer nor an employer's group plan or insurer shall be liable for any claims incurred prior to the date of enrollment under this paragraph.

VII. The retirement system shall notify all group I teacher and political subdivision employee retirees and surviving spouse beneficiaries, who are currently drawing monthly allowances from the retirement system, of their possible right to re-join and active-employee medical insurance or health plan and to receive benefits under this section.

VIII. Any person who is eligible to receive group insurance or other medical benefits under the provisions of this section, but who does not need and who declines such benefits because they would be duplicative of coverage under any employer-sponsored plan, shall nevertheless continue to be eligible and, upon ceasing to be eligible for the other coverage, shall be permitted to receive the benefits allowable under this section without any waiting period.

3 References Changed. Amend RSA 100-A:53-b to read as follows:

100-A:53-b Method of Financing; Group I Teachers.

I. The benefits provided under RSA [~~100-A:53-a~~] **100-A:52-a** shall be provided by a 401(h) subtrust of the New Hampshire retirement system. The 401(h) subtrust shall be funded by allocating 25 percent of future group I teacher employer contributions made for group I teachers in accordance with RSA 100-A:16 to the subtrust until such time as the benefits are fully funded. Thereafter the subtrust shall receive only that portion of each year's contribution as is necessary to keep the benefits fully funded.

II. All contributions made to the retirement system to provide medical benefits under RSA [~~100-A:53-a~~] **100-A:52-a** shall be maintained in a separate account, the 401(h) subtrust. All funds and accumulated interest shall not be used for or diverted to any purpose other than to provide said medical benefits. Similarly, none of the funds accumulated to provide the retirement benefits set forth in this chapter may be used or diverted to provide medical benefits under RSA [~~100-A:53-a~~] **100-A:52-a**. The funds, if any, providing medical benefits under RSA [~~100-A:53-a~~] **100-A:52-a** may be invested pursuant to the provisions of RSA 100-A:15.

4 New Section; Method of Financing Group I Political Subdivision Employees. Amend RSA 100-A by inserting after section 53-b the following new section:

100-A:53-c Method of Financing; Group I Political Subdivision Employees.

I. The benefits provided under RSA 100-A:52-a shall be provided by a 401(h) subtrust of the New Hampshire retirement system. The 401(h) subtrust shall be funded by allocating 25 percent of future group I employer contributions made for group I political subdivision employees in accordance with RSA 100-A:16 to the subtrust until such time as the benefits are fully funded. Thereafter the subtrust shall receive only that portion of each year's contribution as is necessary to keep the benefits fully funded.

II. All contributions made to the retirement system to provide medical benefits under RSA 100-A:52-a shall be maintained in a separate account, the 401(h) subtrust. All funds and accumulated interest shall not be used for or diverted to any purpose other than to provide said medical benefits. Similarly, none of the funds accumulated to provide the retirement benefits set forth in this chapter may be used or diverted to provide medical benefits under RSA 100-A:52-a. The funds, if any, providing medical benefits under RSA 100-A:52-a may be invested pursuant to the provisions of RSA 100-A:15.

5 Reference Changed. Amend RSA 100-A:55, I-a to read as follows:

I-a. It is the intent of the legislature that future group I teacher members eligible after July 1, 2004 shall be included under the provisions of RSA ~~[100-A:53-a]~~ **100-A:52-a** only if the total cost of such inclusion can be terminally funded from the special account established under RSA 100-A:16, II(h).

6 New Paragraph; Application; Funding. Amend RSA 100-A:55 by inserting after paragraph I-a the following new paragraph:

I-b. It is the intent of the legislature that future group I political subdivision employee members eligible after July 1, 2004 shall be included under the provisions of RSA 100-A:52-a only if the total cost of such inclusion can be terminally funded from the special account established under RSA 100-A:16, II(h).

7 Transfer; Application of Repeal. Any person who applied for and was eligible to receive the benefit provided by RSA 100-A:53-a prior to the repeal by section 9 of this act shall be considered to have applied under and shall have eligibility transferred to the provisions of RSA 100-A:52-a as inserted by this act. Funds transferred for the purpose of RSA 100-A:53-a prior to its repeal shall be available for the purpose of providing the benefits under the RSA 100-A:52-a as inserted by this act.

8 Funding.

I. The sum of \$34,759,000 is hereby transferred from the group I employee special account balance existing on June 30, 2000 for the purpose of funding RSA 100-A:52-a and RSA 100-A:53-c as inserted by this act.

II. The sum of \$14,628,000 is hereby transferred from the group I teacher special account balance existing on June 30, 2000 for the purpose of funding RSA 100-A:52-a as inserted by this act.

9 Repeal. RSA 100-A:53-a, relative to medical benefits payment for teachers, is repealed.

10 Effective Date. This act shall take effect January 1, 2001.

2000-3743s

AMENDED ANALYSIS

This bill provides for the payment by the retirement system of the cost of group health insurance for eligible retired political subdivision employees and integrates the payment obligation for eligible retired teachers. The additional benefits shall be funded from the special account for current retired political subdivision employees until 2004.

SENATOR MCCARLEY: As amended, the bill would provide the same health insurance premium subsidy to employees of political subdivisions that eligible teachers, policemen and firefighters receive. Currently, political subdivision employees are the only group of retirement system members who do not have this benefit. The benefit would be funded from the retirement system special account. This bill would also address those situations where someone was a teacher for a number of years, then became a school administrator, and thus did not reach 20 years of service as a teacher. Under current law, such individuals are not eligible for the health insurance benefit. The committee recommends this bill ought to pass as amended with the intention that the Finance Committee will determine how much this bill would cost the special account.

Amendment adopted.

Ordered to third reading.

SB 300, establishing a committee to study the administrative functions and procedures of the state court system. Judiciary Committee. Vote 4-2. Inexpedient to Legislate, Senator Gordon for the committee.

SENATOR GORDON: The majority of the committee members felt that the scope of the committee was too broad. It would have examined the court system from the perspective of the consumer and develop recommendations for reducing cost litigation, appeal and improving public access to the court information and increasing public confidence in the judicial system. The majority of the committee members felt that a study committee might be appropriate, but it should be a narrow scope and containable, therefore, the committee recommended, by majority, inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 308, relative to adoption of a minor child by the natural grandparents. Judiciary Committee. Vote 7-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3765s

04/09

Amendment to SB 308

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

AN ACT relative to the adoption of a minor child by the natural grandparents and relative to de novo appeals to the superior court in abuse and neglect proceedings before the family division in Grafton and Rockingham counties.

Amend RSA 170-B:14, V as inserted by section 1 of the bill by replacing it with the following:

V. Notwithstanding the provisions of RSA 170-B:14, I and II, where a neutral grandparent or grandparents seek to adopt the minor child, the court may proceed to a hearing and a decree without an investigation when both of the following circumstances are met:

(a) The parents of the minor child have consented to the adoption; and

(b) The minor child has resided with the natural grandparent or grandparents for at least 3 years prior to filing the petition for adoption.

Amend the bill by replacing all after section 2 with the following:

3 Child Protection Act; Appeals to Superior Court Added. Amend RSA 169-C:28 to read as follows:

169-C:28 Appeals.

I. An appeal under this chapter may be taken to the superior court by the child or the child's authorized representative or any party having an interest, including the state, or any person subject to any administrative decision pursuant to this chapter, within 30 days of the final dispositional order; but an appeal shall not suspend the order or decision of the court unless the court so orders. The superior court shall hear the matter de novo, and shall give an appeal under this chapter priority on the court calendar. For purposes of this chapter, a "final dispositional order" includes a dismissal of a petition for abuse and neglect by the district court. "Final dispositional order" shall also include any ruling or order arising from an administrative hearing held or initiated by any administrative agency, including the department, in which a finding of child abuse or neglect is made.

II. *This section shall apply to all appeals under this chapter, including appeals in proceedings before the family division in Grafton and Rockingham counties.*

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

2000-3765s

AMENDED ANALYSIS

This bill provides that upon the fulfillment of certain criteria, the court may proceed directly to a hearing and decree in cases where the natural grandparent or grandparents seek to adopt a minor child. The bill also provides that a de novo appeal to the superior court in abuse and neglect proceedings shall be provided in cases before the family division in Grafton and Rockingham counties.

SENATOR GORDON: Senate Bill 308 provides that upon the fulfillment of certain criteria, the court may proceed directly to a hearing and decree in cases where the natural grandparent or grandparents seek to adopt a minor child. If grandparents have already been caring for a minor child for at least three years, and have the parent's permission, there is no logical sense for the court to have to have a full background investigation. This is an unnecessary expense and waste of time when the grandparents have already proven themselves able to care for the child. The committee amendment provides that a de novo appeal to the superior court in cases of abuse and neglect proceedings in the Rockingham and Grafton County Family Divisions. When the Family Division adopted their rules, the ability for de novo appeal was removed. It is unfair that persons in only two counties in our state have fewer rights than persons in the other eight counties. The amendment was requested by the study committee during DCYF field practices. The Judiciary Committee recommends SB 308 as ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 412-FN, adopting the "Court Integrity and Attorney's Independence Act." Judiciary Committee. Vote 6-1. Inexpedient to Legislate, Senator Wheeler for the committee.

SENATOR WHEELER: Senate Bill 412 would have adopted a number of court-related provisions. It proposed to phase out all part-time judges by January 1, 2006; to terminate the Integrated Bar in New Hampshire; to make the NH Bar Association an independent charity; to reestablish both the judicial conduct committee and the professional conduct committee as independent boards. Senate Bill 412 is an incredibly complex bill which combined numerous large issues. While some of the issues have individual merit, the Judiciary Committee feels that this legislation is too broad, has not been appropriately investigated, and not in the best interest of the courts. The Judiciary Committee recommends that SB 412 be inexpedient to legislate.

SENATOR GORDON: I just wanted to speak briefly on this because as Senator Wheeler said, there are parts of this bill that have a substantial merit and two in particular. One is looking at the district courts and making a determination as to whether or not we should have full-time judges or that we have evolved to a point in time where that would be appropriate. Secondly, whether or not we should continue, at least in full scale, to having the integrated bar. I agree with the majority of the committee that this should be inexpedient to legislate this year, because I am not sure that we are prepared to study it and do what we have to do, but I would hope that those that are here in the next session, would take the time, in the year between the two years of this session, to study these issues and come back with recommendations for the future.

Committee report of inexpedient to legislate is adopted.

SB 413-FN, relative to confidentiality of addresses for victims of domestic violence, stalking or sexual assault. Judiciary Committee. Vote 7-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: This bill would assist victims of domestic violence, stalking, and sexual assault, by protecting their address, by enabling them to list their address as the Secretary of State office, who would in turn, forward the mail to the victim. The victim could use this address on all government documents, such as a license if they are qualified for it. This program was adopted first, by the state of Washington in 1991. The testimony at that time, said that domestic abuse survivors typically dread leaving a trail of paper or computerized information that could identify their new locations. As a result, many victims do not enroll their children in school, register to vote, open bank accounts, order telephone service, or obtain credit cards. They continue to live in fear, literally dropping out of sight and starting all over again. They cannot go to the grocery store and use an ATM card. They are not able to have a phone, they can't go back to where they worship. With the advent of computer technology, it is even harder for women to hide. We believe that this would be a very important program that would cost very little. It is estimated that maybe 10-20 people per year, would take advantage of it in New Hampshire. You would use the Secretary of State as your address, but in reality, the mail would come to a post office box and there would be a fake street address that would be assigned to you by the Secretary of State's office. We feel that it is quite possible that we could have qualified volunteers to collect the mail several times a week from the post office box and forward it to the person in this program. To qualify for the program, obviously you would have had to be willing to move to change your address, to relocate. A lot of people aren't going to do that, but for some people, it is the only way that they are going to feel safe. We know that unless we could put people in prison who are stalkers, we can't prevent the violence that they do. We obviously are not going to be able to impose life in prison on people who are stalking others and yet, we know that those victims are targets and can end up being killed because of the tenacity of their pursuer. So this is one way of helping the victims of domestic violence. I hope that you will support it. Thank you.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 420-FN, increasing the penalty for cruelty to animals taking place in front of children. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Cohen for the committee.

2000-3725s

08/09

Amendment to SB 420-FN

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

AN ACT increasing the penalty for people convicted of purposeful cruelty to animals taking place in front of children and with intent to intimidate them and relative to criminal threatening.

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

1 Intent. The general court recognizes that exposing children to acts of cruelty to animals may increase the likelihood that such children will themselves commit similar acts. The general court also recognizes that

certain persons use acts or threats of cruelty to household pets as a means of intimidating, threatening, coercing, or terrorizing other people, particularly in situations of domestic turmoil. The general court therefore determines that it is appropriate and beneficial to impose extended terms of imprisonment for purposeful acts of cruelty to animals in the presence of children; to make acts or threats of cruelty to animals with the purpose of intimidating, threatening, coercing, or terrorizing another person a criminal threatening offense; and to make an act or threat to commit cruelty to animals with a deadly weapon a class B felony.

2 New Subparagraph; Criminal Threatening; Cruelty to Animals With Purpose of Intimidating, Threatening, Coercing, or Terrorizing. Amend RSA 631:4, I by inserting after subparagraph (e) the following new subparagraph:

(f) The person commits or threatens to commit cruelty to animals, as provided in RSA 644:8, III-a, with the purpose of intimidating, threatening, coercing, or terrorizing another person.

3 Criminal Threatening; Cruelty to Animals With Specific Intent While Using a Deadly Weapon. Amend RSA 631:4, II (a)(2) to read as follows:

(2) Uses a deadly weapon as defined in RSA 625:11, V in the violation of the provisions of subparagraph I(a), I(b), I(c), ~~or~~ I(d), *or I(f)*.

4 Cruelty to Animals in Front of Children; Extended Term of Imprisonment. Amend RSA 644:8, III-a to read as follows:

III-a. *(a)* A person is guilty of a class B felony who purposely beats, cruelly whips, tortures, or mutilates any animal or causes any animal to be beaten, cruelly whipped, tortured, or mutilated.

(b) A person who commits a crime under subparagraph III-a(a) with the purpose of intimidating, threatening, coercing, or terrorizing a person under 13 years of age and while in the presence of such person under 13 years of age shall be guilty of a felony and shall be sentenced to a minimum of one year imprisonment and a maximum of 9 years imprisonment.

5 Effective Date. This act shall take effect January 1, 2001.

2000-3725s

AMENDED ANALYSIS

This bill provides that a person convicted of purposeful cruelty to animals while in the presence of a child under the age of 13 and with the intent of intimidating, threatening, coercing, or terrorizing such person may be sentenced to a term of imprisonment not exceeding 9 years and shall be sentenced to at least one year's imprisonment. This bill makes the act of committing or threatening to commit cruelty to animals with the purpose of intimidating, threatening, coercing, or terrorizing another person a criminal threatening offense. This bill also provides that such an act that is committed with the use of a deadly weapon shall be a class B felony.

SENATOR COHEN: Senate Bill 420 affects two sections of the criminal code. In so doing it fills an important gap in our laws. First, SB 420 creates a new category of behavior under the criminal threatening statute. We all understand that it is considered a criminal act to do, or threaten, certain things in order to coerce, terrorize or control another person. Using animal cruelty to terrorize someone does happen here in New Hampshire, but existing provisions do not cover this behavior. Criminal courts are reluctant to innovate in terms of charging and sentencing, they want a clear statement of legislative intent. This bill provides it. It says that it is a crime to commit or threaten to commit a felony level offense of cruelty to animals with the purpose of intimidating, threatening, coercing or terrorizing another person. We heard harrowing testimony from sev-

eral people who described these incidents happening to them. We heard from mental health professionals who say that this behavior is an all too common family dynamic. We need to send a message here, that such an act shall be considered a crime. To be consistent with the existing laws, under SB 420, any such act is a misdemeanor unless it is done using a deadly weapon, in which case it is a Class B felony. This bill also adds to the Cruelty to Animals section of the statute, to enhance the penalty for a felony level that is done in order to terrorize or control a child under 13, by creating a mandatory 1 year sentence. Standard Class B felonies carry a sentence of up to seven years, but the court can choose to give no time at all. This bill tells the court that this crime shall result in a sentence of a least one year. Children can be grievously harmed psychologically, when, for example, an adult brutalizes a cherished pet as a way to punish or control them. The increased sentence would only apply to those acts already considered felonies by the state of New Hampshire. In other words, misdemeanor level offenses like negligence are not affected by this bill. Just the really egregious acts of depravity and cruelty. To quote the statute, a felony includes when someone "purposely beats, cruelly whips, tortures, or mutilates any animal..." What children see, not on television or in a movie, but really happening right in front of them and specifically in order to have a certain effect on them, is very harmful. Again, we heard testimony that was appalling and extremely convincing. I urge you to vote this bill ought to pass as amended.

SENATOR MCCARLEY: Was there a particular reason or discussion around the age of 16? We seem to regard our children at varying ages in all of the legislation that we pass? I am just wondering about the discussion around 16 years of age?

SENATOR COHEN: In the committee hearing, there wasn't any discussion about that. This just applies to the current code as it is right now.

SENATOR MCCARLEY: Thank you.

Amendment adopted.

Ordered to third reading.

SB 439-FN, relative to motor vehicle offenses resulting in death or serious bodily injury. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3736s

05/10

Amendment to SB 439-FN

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

AN ACT relative to motor vehicle offenses resulting in serious bodily injury.

Amend the bill by deleting section 1 and renumbering the original sections 2 and 3 to read as 1 and 2, respectively.

2000-3736s

AMENDED ANALYSIS

This bill creates a new criminal classification for aggravated vehicular assault.

SENATOR WHEELER: This bill addresses a problem that has plagued the law enforcement community for years. Currently, if the driver of a motor vehicle is operating negligently and causes an accident in which

someone is killed or seriously injured, there are very few charging options. There have been several incidents in recent years, including two last year in our colleague Senator Russman's district in Derry, where an innocent motorist has been killed because of reckless or negligent driving, and the driver was only given a traffic ticket. County prosecutors tell us that juries in these cases routinely refuse to find someone guilty of negligent homicide unless alcohol was involved. There needs to be a middle-ground option. This bill, as amended, only addresses situations where someone sustained serious bodily injury. The bill adds a charging option of a Class A misdemeanor for someone who causes serious bodily injury to another while violating any state law relating to the operation or use of a propelled vehicle or vessel. Originally the bill included a penalty under the negligent homicide statute for those whose negligence caused a death, but that was removed, because although they all support the concept, the AG's office and the County Attorneys weren't able to agree on language. They have told us they intend to work on this provision and have a bill introduced next session to address cases where someone is killed. At the hearing, not only did the attorney general's office, two county attorneys, and the Department of Safety support this bill, but we heard from the widow of a man who was killed when someone willfully broke a traffic law and ended up with \$72 ticket. She asked the legislature to do something to show that a human life is worth more than \$72. In the interests of justice, and to send a message to people that driving a car, or a boat, requires a level of responsibility, and that there are consequences for ignoring that basic fact, I ask you to vote in favor of this bill.

SENATOR F. KING: Just so I understand, if someone is speeding and have an accident and someone dies, they could go to prison for five years? Speeding being a violation of the law? They didn't intend to do it...is that what would happen?

SENATOR WHEELER: I would like to defer to Senator Russman.

SENATOR RUSSMAN: I believe that the amendment changed that, if I am not mistaken. I am pretty sure.

SENATOR WHEELER: We took out the vehicular manslaughter part. Did you know that?

SENATOR RUSSMAN: Yes. Let me just take a look here. This is just left of the second part. Aggravated vehicular assault. Any person who without intent caused serious bodily injury to another while violating the laws shall be subject to being guilty of a class A misdemeanor. Basically it is the case where somebody decides to run a red light and they do cause it, technically they could be criminally liable for it. I guess the notion is that when you get in the car, you have to understand, it is just like what we heard this morning, it is a dangerous instrument and you have to be extremely careful, or otherwise you can incur some criminal liability.

SENATOR MCCARLEY: Senator Russman, what is the stiffest penalty or judgement normally handed out for a Class A misdemeanor in the state?

SENATOR RUSSMAN: It can be a year in jail with a fine, but it is different than a felony charge. Obviously it is something much less than that. That is discretionary with the judge. If you have somebody that is 80-years-old and their vision is failing and something happened, I don't think that they are going to put them in jail, but if you have someone who has been going 80 miles per hour and they are a young person, they

may look at it differently. It would be up to the case-by-case situations, they would be some prosecution discretion, and there would be some judicial discussion as far as the sentencing goes.

Amendment adopted.

Ordered to third reading.

HB 1150, relative to voter registration for official ballot meetings. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: House Bill 1150 permits and amends RSA 654:7 by adding all official ballot meetings where persons may vote by absentee ballot to existing statute defining where voters may register on the same day at the polling place. Currently official ballot meetings were excluded from same day voter registration. However, all state primary and general elections, as well as town, city, school and village district elections were qualified to do same day voter registrations. House Bill 1150 corrects this inequity. The Public Affairs Committee recommends that HB 1150 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1198, establishing a procedure for the 2001 voter checklist verification. Public Affairs Committee. Vote 6-0. Ought to pass with amendment, Senator Disnard for the committee.

2000-3702s

05/09

Amendment to HB 1198

Amend paragraph IV as inserted by section 2 of the bill by replacing it with the following:

IV. For the purpose of this section, a person shall be deemed reregistered and need not appear before the supervisors if the person voted during the year 2000 in the presidential primary election; the state primary election; the state general election; or in a municipal election; school district election; special election; or any municipal vote, including the elections of 1999, in which the checklist was used.

2000-3702s

AMENDED ANALYSIS

This bill establishes a procedure for the 2001 voter checklist verification that automatically reregisters only those persons who voted during the year 2000 and the municipal elections of 1999.

This bill is a request of the committee established by 1999, 11.

SENATOR DISNARD: House Bill 1198 establishes a procedure for the 2001 voter checklist verification that automatically re-registers those persons who voted at any of the elections during the year 2000. The committee amendment clarifies that anyone voting in the state primary election, the state general election, any municipal and/or school district election, any municipal vote or special election, will remain on the voter checklists. Notification would be sent to persons on the checklists who had not voted in any one of these elections. Only if the person does not respond would they be removed from the checklist. With same day voter registration, even if someone should be accidentally removed from the checklist, the mistake could be quickly remedied at the polls. Current

statute already calls for a ten-year purge of the voter checklists. House Bill 1198 expands the regular purge in an attempt to clean up the accuracy of our voter checklists. Recent news articles have reported instances where numbers of people voting appeared to be larger than residents or eligible voters. The Public Affairs Committee recommends unanimously, that HB 1198 be ought to pass as amended. The amendment is on page 25. All that it does is include the elections of 1999 and that is because some of the cities vote in the odd years.

Amendment adopted.

Ordered to third reading.

HB 1566, relative to perambulation between states. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: House Bill 1566 revises the laws dealing with perambulations or strolling of boundary lines between the states and was requested by the Department of Transportation. House Bill 1566 clarifies and updates the existing statute. We did make an absolute assurance that because of where the perambulation, relative to where the boundaries between New Hampshire and Maine are, they start someplace in Wakefield and go north. So there is no issue remotely associated with this bill that has any impact on the boundary disputes. So with having said that, this committee asks that you pass this bill.

Adopted.

Ordered to third reading.

HCR 21, urging the federal government to increase the pay to military personnel. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator Eaton for the committee.

2000-3701s

05/09

Amendment to HCR 21

Amend the title of the resolution by replacing it with the following:
A RESOLUTION urging the federal government to increase the pay to all active and retired military personnel.

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

That the federal government increase the compensation and benefits of all active and retired military personnel to a level adequate to ensure retention of personnel necessary for the military to fulfill its duties; and

That the federal government increase the compensation and benefits of all active and retired military personnel to a level sufficient to ensure that no military personnel shall be forced to rely on federally-funded social service programs; and

That the clerk of the New Hampshire house of representatives forward copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and to the members of the New Hampshire congressional delegation.

2000-3701s

AMENDED ANALYSIS

This house concurrent resolution urges the federal government to increase the pay to all active and retired military personnel.

SENATOR EATON: House Concurrent Resolution 21 is a resolution urging the federal government to increase the pay to all active and retired military personnel. The purpose in encouraging the federal government to appropriately compensate our military personnel is twofold: First, to ensure retention of the personnel needed to protect our nation and people; and second, to ensure that no military personnel shall be forced to rely on federally-funded social programs. The Public Affairs Committee recommends that HCR 21 be ought to pass as amended, and urges your support. Thank you.

Amendment adopted.

Ordered to third reading.

HCR 22, urging the federal government to ensure that defense appropriations are spent in support of defense programs. Public Affairs Committee. Vote 6-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: House Concurrent Resolution 22 urges the federal government to ensure that defense appropriations are spent in support of defense programs. The important defense department's budget is no place for "pork". Recently \$200 million was sent to Venezuela for flooding assistance. If practices such as this were continued, this trend could result in dangerous compromises to the national defense and our national security. The Public Affairs Committee recommends that HCR 22 be ought to pass and urges your support. Thank you.

Adopted.

Ordered to third reading.

SB 312, relative to fluoride. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: Senate Bill 312 changes the percentage of signatures necessary to obtain in order to put the question of fluoridation of water onto the ballot. Senate Bill 312 has nothing to do with the debate over whether or not to fluoridate a water system. Senate Bill 312 merely changes the percentage of the signatures necessary to the same standard used if a community is voting on whether or not to have a liquor store or to allow the lottery. The Public Affairs Committee recommends that SB 312 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1378, establishing a task force to conduct an ongoing study of the feasibility of re-establishing passenger rail service on the Eastern Line from Newburyport, Massachusetts to Kittery, Maine. Transportation Committee. Vote 2-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-3686s

05/10

Amendment to HB 1378

Amend paragraph I as inserted by section 1 of the bill by inserting after subparagraph (j) the following:

(k) A representative of TRAIN RIDERS/Northeast.

(l) The commissioner of the department of environmental services, or designee.

SENATOR PIGNATELLI: House Bill 1378 establishes a taskforce to study reestablishing the passenger rail service on the Eastern Line from

Newburyport, Mass., to Kittery, Maine. House Bill 1378 was filed as a result of the work of a study committee. In order to officially communicate with the states of Maine and Massachusetts regarding the re-opening of this rail line, a taskforce under the auspices of the state needs to be formed. The seacoast area is an important tourism region which would be well served by this rail line. The Transportation Committee recommends that HB 1378 be ought to pass as amended. Thank you.

Amendment adopted.

Senator Gordon offered a floor amendment.

2000-3777s

05/10

Floor Amendment to HB 1378

Amend subparagraph I(c) of section 1 of the bill by replacing section 4 with the following:

(c) Two representatives appointed by the governor, one of whom shall represent the interests of intercity bus service.

SENATOR GORDON: This piece of legislation establishes a commission. Currently, there are 12 members on the commission and they all have some particular interest in the legislation. Most of whom are representatives of the communities which would be affected. There is also a representative from the New Hampshire Rail Road Revitalization Association, from the Portsmouth Chamber of Commerce and from the Rockingham County Planning Association. One of the persons that was left off of this, I think, or one of the interests that was left off this is the existing interest. That is, as you probably know, there are land routes, there are plenty of people who are commuting today using buses out of Portsmouth, Southern New Hampshire and Maine to Boston. What I would propose doing in my amendment, is having somebody from the inter city bus service be appointed and become a member of the commission so that there would be some representation on the commission. That is what this amendment does. It simply makes one of the governor's appointees from the interest of the intercity bus service.

Floor Amendment adopted.

Ordered to third reading.

HB 1409, establishing a committee to study the feasibility of reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire rail service line and the Concord to Lebanon Northern passenger rail service line. Transportation Committee. Vote 3-1. Ought to pass with amendment, Senator Russman for the committee.

2000-3685s

05/10

Amendment to HB 1409

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the feasibility of reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire passenger rail service line and the Concord to Lebanon Northern passenger rail service line and coordinating passenger rail service with existing intermodal transportation systems within the identified transportation corridor.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall identify existing intermodal passenger ridership and evaluate increasing potential ridership demand over the

next 5 to 10 years, the costs associated with reestablishing the lines, the opportunities for private/public partnerships to assist in funding the project, and the interactions required between participating states. The committee shall work collaboratively with all geographically associated regional planning commissions and other New Hampshire intermodal transportation systems providing a transportation service to the public within the identified transportation corridor. In addition, the committee shall utilize 2000, 7 (HJR 6) as a guide in addressing issues pertaining to the northern rail corridor.

2000-3685s

AMENDED ANALYSIS

This bill establishes a committee to study the feasibility of reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire passenger rail service line and the Concord to Lebanon Northern passenger rail service line and coordinating passenger rail service with existing intermodal transportation services.

SENATOR RUSSMAN: House Bill 1409 establishes a committee to study the feasibility of reestablishing the Lawrence, Mass., to Manchester, NH, rail service line and the Concord to Lebanon Northern passenger rail service line. The Northern Line is probably one of the most undervalued lines, and except for about 6 miles along the southern section, the entire Northern Line of approximately 60 miles is already owned by the state. As land becomes more scarce, we approach the end of the great road building boom. We must be prepared to go forward with rail travel as a responsible alternative. The Transportation Committee recommends that HB 1409 be ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

HB 1616-FN, relative to registration fees for certain construction equipment vehicles. Transportation Committee. Vote 4-0. Ought to Pass, Senator Russman for the committee.

SENATOR RUSSMAN: House Bill 1616 establishes one fee for registration by the state for construction equipment vehicles and provides for a rebate of fees paid in excess of this fee which were charged as a result of legislation passed last year. Thousands of dollars of increase in registration fees were assessed by the Department of Safety. This legislation is revenue neutral. It was not supposed to have been collected, therefore, rebating it does no harm to the state's revenues. The Transportation Committee recommends that HB 1616 be ought to pass as amended.

Adopted.

Ordered to third reading.

SB 302, relative to certain employment requirements for liquor licenses. Ways and Means Committee. Vote 7-0. Ought to Pass, Senator Below for the committee.

SENATOR BELOW: Senate Bill 302 specifies that restrictions on liquor licenses related to the employment of convicted felons apply only to the license holder and persons designated as being in charge of the premises in absence of the license holder. This bill allows someone who has committed a felony to obtain employment as a waiter or a waitress, providing that they are not designated as a person in charge at an establishment

that has a liquor license, before getting a waiver by the liquor commission. At the present time, the waiver would have to be granted before the persons could be employed, which may create a hardship to the individual seeking employment. There was no opposition to this bill at the hearing, however, as the sponsor of the bill, I expect to work with the liquor commission on an amendment in the House. The Ways and Means Committee recommends SB 302 as ought to pass.

Adopted.

Ordered to third reading.

SB 452, increasing to \$25 per game date the amount operators of bingo games may be reimbursed for out-of-pocket expenses. Ways and Means Committee. Vote 7-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: Presently the fee is \$8. There was significant testimony at the hearing that volunteers at many bingo games held throughout the state, require this increase for various reasons. In the interest of one Jaycees organization, babysitting was the top at their list. There was no opposition to this bill at the hearing. Ways and Means recommends this bill ought to pass.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Gordon moved to have **SB 349**, relative to the sale of the marital residence or other real property in a domestic proceeding, taken off the table.

Adopted.

SB 349, relative to the sale of the marital residence or other real property in a domestic proceeding.

Question is on the committee report of inexpedient to legislate.

SUBSTITUTE MOTION

Senator Gordon moved to substitute ought to pass for inexpedient to legislate.

Adopted.

Senator Gordon offered a floor amendment.

2000-3836s

04/10

Floor Amendment to SB 349

Amend RSA 458:16, I (h) as inserted by section 1 of the bill by replacing it with the following:

(h) Ordering the sale of the marital residence or other real property held by the parties, provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, the sale of the marital residence may be ordered if the parties have insufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due. No temporary order shall be made for the sale of the marital residence or other real property as long as the party residing

within the marital residence is determined to have adequate financial resources to pay any debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

2000-3836s

AMENDED ANALYSIS

This bill sets forth circumstances allowing the court, in a divorce, separation, or annulment proceeding, to issue an order for temporary relief which would include the sale of the marital residence or other real property, with the prior written consent of both parties.

SENATOR GORDON: I rise to offer a floor amendment. You may recall the issue at the last session on this particular bill. The testimony that we had in the committee was that in the process of obtaining a divorce, the parties went to court and the court ordered that the marital residence be sold, and that it be ordered to be sold prior to a final disposition in the divorce. The issue there was that it pretty much eliminates any opportunity anyone would have for appeals over issues involving the house, if in fact it is ordered during that period of time. The testimony that we received in the committee was that if a party has the ability to continue to pay the ongoing expenses of maintaining the house, the mortgage, the insurance, the taxes and the other costs of maintenance, they ought to be able to maintain the house at least until the divorce proceeding becomes final, and at that point in time, a determination would be made. This particular legislation applies to temporary orders of the court. The amendment that has been handed out basically says three things. That the court can order the sale of the marital residence prior to the end of the divorce if the parties agree to sell the house. The second thing that it says, is that if they don't agree, and they don't have the sufficient assets, financial resources to pay the debts or obligations generated by the property, including the mortgage and taxes and insurance, it may order the sale of the house. So the court has the discretion to do that. But the final sentence in here, which I think is the most important one is, that no temporary order shall be made for the sale of the residence or other property as long as the party residing in the residence is determined to have adequate financial resources to pay the debts or obligations generated by the property including the mortgage, taxes and insurance and ordinary maintenance as they become due. I think that would clarify the law. I think that it is probably unnecessary, but unfortunately a case has been brought to us again where common sense may have applied otherwise. I would ask that you support the amendment.

Floor Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Francoeur moved to have **SB 438-FN**, relative to habitual simple assault, taken off the table.

Adopted.

SB 438-FN, relative to habitual simple assault.

Question is on the committee amendment (3458).

Amendment adopted.

Senator Francoeur offered a floor amendment.

2000-3752s

05/01

Floor Amendment to SB 438-FN

Amend the bill by replacing section 1 with the following:

1 New Classification; Habitual Simple Assault. Amend RSA 631:2-a, II to read as follows:

II. *Except as provided in paragraph III*, simple assault is a misdemeanor unless committed in a fight entered into by mutual consent, in which case it is a violation.

III. *Simple assault shall be a class B felony where the actor has been twice previously convicted of an offense under RSA 631 within a 10-year period, either as a felony or as a class A misdemeanor.*

SENATOR FRANCOEUR: I thought that we had some discussion at the last session here on habitual simple assault. All that my amendment does is...I was concerned about the individual that being as a teenager, got in trouble a couple of times, and then all of a sudden you are 40 or 50 years old, and you push somebody and you get charged with a third simple assault that it became a mandatory felony. What I tried to do was to put a 10-year limit on it so that those who got in trouble as kids, which I think that if they are going to get in trouble two and three times, that if they have been good from the time that they got out of school and then on, then it should be a block of time, and it would be more fair to those that are out there.

SENATOR LARSEN: Senator Russman, the question came up in our discussion of this over the course of this week, was that could a simple assault of a conviction, say of a young person, where the person who punches two people in one incident, would that be considered two convictions upon which the third conviction by a person would be...

SENATOR RUSSMAN: If it is two separate assaults and heard by two separate judges.

SENATOR LARSEN: So, if a young person were in a fight and punched two people, they were convicted of both simple assaults, then that would be their third time, is that correct?

SENATOR RUSSMAN: It could be, yes. I would think that it could be. Again, I hope that there would be some prosecutorial discretion. This is a bill that was requested by the county attorney's office. As I say, we are just finding more and more fight opportunities, and more and more people getting into fights. It seems like we need to ratchet it up a bit.

SENATOR LARSEN: Senator Russman, when it says "simple assault shall be a Class B felony" does that leave discretion to the prosecutor?

SENATOR RUSSMAN: No, but I am thinking in terms...an example that you gave me, if somebody had one before and then there were two other assaults where two people got hit, you might, as part of a plea bargain, enter into where there would be one conviction and the other would be placed on file without a finding, providing there was anger management seminar, or counseling, or things of that nature. That would be what it would be, otherwise, it does say that, "shall be convicted of a felony." Yes.

SENATOR MCCARLEY: Senator Russman, as I recall during the testimony on the bill, last week, you indicated that it came as a result from a discussion with the county attorney's office, where they had repeatedly

seen someone...and this was part of my confusion, because my understanding, and as clarified earlier today, is that a Class A misdemeanor, allows discretion on the part of the judge to put somebody in jail for a year.

SENATOR RUSSMAN: Yes it does.

SENATOR MCCARLEY: So is that not happening in these county attorney situations where they are seeing the same bad ticket come in time after time, and just slap them with an assault and a fine?

SENATOR RUSSMAN: Yes, in most cases I can tell you this much from experience, in most cases, the first simple assault usually is...there may be a fine and that is it. The second one, there may be a suspended jail sentence, depending on the seriousness of it or there may not be, there may be another fine. The third one, again, depending on how long it has been and things of that nature, you may get some suspended time, and if there was a very serious beating, there is going to be some jail time. It is my understanding that the county attorney offices were just feeling that people should be taking this seriously and that it is a big deal and we are seeing more of it. I think that is part of their frustration, is seeing more and more combativeness by people and more and more assaults that people in these road rage cases and things of that nature. People need to think twice before they get out and start duking it out.

SENATOR MCCARLEY: By virtue of the fact that we are not leaving the discretion, on this third time you are out, because it does say, "shall be a Class B felony", do you anticipate getting one of those unintended consequences that we will see fewer and fewer judges actually making a call to send someone to jail by virtue of facing what is a three and a half to seven-year sentence?

SENATOR RUSSMAN: Even if they are convicted of a felony, it doesn't mean that they are going to do jail time. They may get, for example, three and a half to seven years suspended, you know, that the judge really hangs it over their head. For example, one to three in state prison is a pretty serious offense to have suspended, okay, for fighting. But if that person, on their third time, would need to know that, one more time, the fourth time, that they would be committed, you would be committed on that assault during a probationary period or whatever it might be. You may be put on probation for a few years during that period if you have violated probation, you would be going to jail for one to three.

SENATOR MCCARLEY: I raised this question last week, I have not had a chance to speak to Senator Russman about it, but I certainly appreciate his efforts to respond to a couple of the concerns that I had about the legislation.

SENATOR GORDON: Senator Russman, I don't remember this and you practice in this area and you might know, but aren't a lot of people able to expunge their records after a period of time?

SENATOR RUSSMAN: Provided that they meet all of the criteria that has been set by the court. There are expungements that are allowed. In this type of case here though, that wouldn't expunge it for the purposes of a third offense. For example, they couldn't go in five years later and have it expunged, and then it never existed because there is an additional offense statute on the books. It would either be my first or second, I mean, those things don't get...expunges stay on the record.

SENATOR GORDON: The issue is, the ordinary period is seven years for expungement?

SENATOR RUSSMAN: No, it depends on the class of the offense that it is, but some are immediately, fairly quickly afterwards, you can have a conditional discharge for a certain period of time and then you can have time in another record. It varies in certain cases.

SENATOR GORDON: Senator Francoeur, I was just reading this and I have a concern with the language in there. It says, "has been twice previously convicted of an offense under RSA 631 within a ten-year period". Your intention there, I assume, was to say ten years prior to this offense as opposed to just two convictions within ten years?

SENATOR FRANCOEUR: I think that this is the third conviction.

SENATOR GORDON: It would be the third conviction, but you would want it within ten years prior to that third conviction.

SENATOR FRANCOEUR: Second conviction. Actually it is within the ten-year period. I thought that it would be covered between the first and the third as long as it is within ten years, it would cover the intent of the statute.

SENATOR WHEELER: As I said the last time that I spoke to this bill, although I signed on as a cosponsor, after giving it more thought and listening to the debate, I really do think that this is an extreme reaction that we would be putting into statute. I don't think that the amendment improves it. The definition of simple assault is very broad from this big shoving to something worse than that. I don't think that we should be expanding our criminal code to put the opportunity to put more people in prison that don't need to be in prison. I know that it is only an option to put them in prison, but I don't think that is the direction that we ought to be moving in. I don't think that it should say that it "shall be a Class B felony" and not to give any **TAPE CHANGE**. I urge you to vote against the amendment and to vote against the bill. If we need to do something about repetitious events, then it needs to be phrased differently. Repeated conduct is something worth talking about. Where it establishes a clear pattern of bullying. But this does not, and therefore, I oppose it.

SENATOR RUSSMAN: I hear what you are saying, in all of these cases, it depends upon the circumstances surrounding the offense. If you get some kid that punches their teacher, or shoves them against the wall in a classroom, that certainly would be considered a simple assault. That kid is not going to jail. I had a fellow who was 31 come in a couple of days ago that actually, in a barroom fight, hit his brother with a beer bottle and had 28 stitches to the side of the head. He was charged with a Class A assault, which is a very serious offense. You know, it varies. I think that we are seeing more and more of that and the county attorney's office, for whatever reason, maybe they feel that they would get more enhanced penalties if the crime is that much more serious, but the mere fact that they shall be charged with a felony charge, does not mean that they are necessarily going to go to jail. It is not as if they are absolutely, positively going to jail. It is still discretionary with the court and the prosecutor as to what the sentencing should be. It just gives them the opportunity that if the circumstance is serious enough, that they would actually, could conceivably be sent to state prison. My hope would be... I will tell you, several years ago, I had a case that rose out of Hampton. There was a couple of gang problems and somebody stole some material, and one of the gang went over to the other people's house that were having a party and took one of the kids upstairs and tied him up to the chair

and started punching him, punching him and punching him. Finally, he said to the kid, "give me one of your teeth". The kid said no. So he began punching him and punching him some more until finally, the kid reached in his mouth and pulled one of his teeth out and gave it to him, okay? That kid went to state prison. Rightfully so. People have no idea what is going on out there in terms of difficulties that people are getting into in terms of violent confrontations. That was 15 years ago, that case. I see it in schools. I see it in other areas. I defend people on some of these charges, but some of the police are frustrated, because perhaps they don't think that they are getting serious enough punishments. All that I can tell you is that anybody that is going to be charged with a felony is obviously going to be represented by an attorney, because it is a serious offense, if it actually comes to it. At some point, you need to say that three assaults on people, and I don't think that you are going to be seeing people that are just going to happen to go up and hit somebody with their finger, which technically is an assault, that isn't there, because I am probably privileged with this fellow senator, but somebody on the street, I suppose you would be. So it obviously is up to you. This is not something that is a must do, but I think that because it has been requested by law enforcement agencies and they take it very seriously, and that is why the bill was put in, it was not an idea that I came up with myself. It was requested by the county attorney's office in Rockingham county.

Floor Amendment adopted.

Referred to the Finance Committee (Rule #24).

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled House Bill sent down from the Senate:

HB 75, changing the number required for a quorum on the commission for human rights.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Michael O'Neil
Robert Mercer
William Zolla
Robert Murphy

SENATE ACCEDES TO HOUSE REQUEST

HB 75, changing the number required for a quorum on the commission for human rights.

Senator Cohen moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Cohen, Larsen, Roberge

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time,

that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

ANNOUNCEMENTS

LATE SESSION RESOLUTION

Senator Cohen moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings, enrolled bills and amendments and that when we adjourn we adjourn to Thursday, March 23, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

HB 86-A, making an appropriation for renovation of the Sawyer House at the Daniel Webster Birthplace in the city of Franklin.

HB 235-FN-A, increasing exemptions under the interest and dividends tax.

SB 302, relative to certain employment requirements for liquor licensees.

SB 308, relative to the adoption of a minor child by the natural grandparents and relative to de novo appeals to the superior court in abuse and neglect proceedings before the family division in Grafton and Rockingham counties.

SB 310, relative to New Hampshire state-chartered banks and interstate banking.

SB 312, relative to fluoride.

SB 316, relative to "most favored nation" or "equally favored nation" provisions in insurance provider contracts.

SB 349, relative to the sale of the marital residence or other real property in a domestic proceeding.

SB 353, relative to sales of insurance by financial institutions.

SB 364, relative to benefits for permanent bodily losses under workers' compensation.

SB 374, relative to the duties of the study committee on land management, protection of farmland, rural character, environmental quality, and sprawl.

HB 387, relative to local telephone calling areas, access charges, and competitive telephone services.

SB 389, relative to benefit options for surviving spouses and designated beneficiaries of deceased members of the retirement system.

SB 394-FN, making miscellaneous changes in the insurance laws.

SB 408, establishing a committee to study the application of non-conventional veterinary procedures for domestic animals.

SB 409-FN, relative to health insurance coverage of qualified clinical trials.

SB 415-FN-L, relative to payment of group health insurance premiums for eligible retired members of the retirement system.

- SB 419-FN**, establishing the crime of negligent storage of a firearm.
- SB 420**, increasing the penalty for people convicted of purposeful cruelty to animals taking place in front of children and with intent to intimidate them and relative to criminal threatening.
- SB 425**, relative to the private activity bond limit.
- SB 439**, relative to motor vehicle offenses resulting in serious bodily injury.
- SB 447-FN**, relative to campaign contributions and expenditures.
- SB 452**, increasing to \$25 per game date the amount operators of bingo games may be reimbursed for out-of-pocket expenses.
- SB 454**, relative to penalties for engaging in the business of retail installment sales of motor vehicles after failure to renew a retail seller's license.
- HB 580-FN-A-L**, authorizing a grant from funds appropriated to the joint promotional program for the purpose of marketing the Connecticut river area as a travel and tourism destination.
- HB 1150**, relative to voter registration for official ballot meetings.
- HB 1198**, establishing a procedure for the 2001 voter checklist verification.
- HB 1287**, relative to the membership of the water council.
- HB 1378**, establishing a task force to conduct an ongoing study of the feasibility of re-establishing passenger rail service on the Eastern Line from Newburyport, Massachusetts to Kittery, Maine.
- HB 1409**, establishing a committee to study the feasibility of reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire rail service line and the Concord to Lebanon Northern passenger rail service line.
- HB 1566**, relative to perambulation between states.
- HB 1616-FN**, relative to registration fees for certain construction equipment vehicles.
- HCR 21**, urging the federal government to increase the pay to military personnel.
- HCR 22**, urging the federal government to ensure that defense appropriations are spent in support of defense programs.

In recess.

Out of Recess.

HOUSE MESSAGE

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

- HB 1109**, relative to the modification of spousal support orders.
- HB 1113**, raising the maximum price for lucky 7 tickets.
- HB 1139**, establishing a committee to study involuntary emergency admission hearings.
- HB 1160**, relative to access to the enhanced 911 system.

HB 1171, restricting the payment of salaries to suspended judicial officers.

HB 1172, providing staggered terms for agricultural advisory board members.

HB 1185, extending the report date of the committee established to study mercury source reduction and recycling issues to November 1, 2000.

HB 1191-FN-L, relative to the adoption of charter school and open enrollment provisions in cooperative school districts and authorized regional enrollment areas.

HB 1194, relative to the composition of planning boards in certain cities.

HB 1234, relative to special commissions to perform marriages in New Hampshire.

HB 1239, relative to durable powers of attorney.

HB 1242, relative to the standard for modification of a child custody order.

HB 1282, establishing a committee to study the possibility of self-insuring state employees.

HB 1319, extending the reporting date of the committee studying negotiated risk agreements and requiring the department of health and human services to conduct a study.

HB 1321, relative to certain funds collected by order of the public utilities commission.

HB 1326, relative to managed care programs under workers' compensation.

HB 1327, relative to residency of prisoners for purposes of voter registration.

HB 1331, relative to campaign contributions by corporations.

HB 1390, establishing a commission to study the relationship between public health and the environment.

HB 1404, creating a study committee to address mechanisms for the preservation or disposal of state records.

HB 1405, exempting 50/50 raffles from the laws regulating games of chance.

HB 1541-FN-L, relative to the cremation of deceased persons.

HB 1548-FN, abolishing the death penalty.

HB 1570, requiring parolees and probationers from other states to comply with the Interstate Compact on Parole in order to be lawfully present in New Hampshire.

HB 1582, establishing a committee to study workplace policies and practices of small business for their effect on New Hampshire employees and their families.

HB 1617-FN, relative to suspension of a driver's license for sufficient cause.

HJR 20, urging the United States Congress to fully fund the Ricky Ray Hemophilia Relief Fund Act for HIV victims.

HJR 25, urging the United States Secretary of Agriculture, the Director of the Drug Enforcement Administration, and the Director of the

Office of National Drug Control Policy to revise regulations to permit the controlled, experimental cultivation of industrial hemp in New Hampshire.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 1109-HJR 25 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 1109, relative to the modification of spousal support orders. **Judiciary**

HB 1113, raising the maximum price for lucky 7 tickets. **Ways and Means**

HB 1139, establishing a committee to study involuntary emergency admission hearings. **Public Institutions, Health and Human Services**

HB 1160, relative to access to the enhanced 911 system. **Executive Departments and Administration**

HB 1171, restricting the payment of salaries to suspended judicial officers. **Finance**

HB 1172, providing staggered terms for agricultural advisory board members. **Executive Departments and Administration**

HB 1185, extending the report date of the committee established to study mercury source reduction and recycling issues to November 1, 2000. **Environment**

HB 1191-FN-L, relative to the adoption of charter school and open enrollment provisions in cooperative school districts and authorized regional enrollment areas. **Education**

HB 1194, relative to the composition of planning boards in certain cities. **Public Affairs**

HB 1234, relative to special commissions to perform marriages in New Hampshire. **Executive Departments and Administration**

HB 1239, relative to durable powers of attorney. **Judiciary**

HB 1242, relative to the standard for modification of a child custody order. **Judiciary**

HB 1282, establishing a committee to study the possibility of self-insuring state employees. **Insurance**

HB 1319, extending the reporting date of the committee studying negotiated risk agreements and requiring the department of health and human services to conduct a study. **Public Institutions, Health and Human Services**

HB 1321, relative to certain funds collected by order of the public utilities commission. **Executive Departments and Administration**

HB 1326, relative to managed care programs under workers' compensation. **Insurance**

HB 1327, relative to residency of prisoners for purposes of voter registration. **Public Affairs**

HB 1331, relative to campaign contributions by corporations. **Public Affairs**

HB 1390, establishing a commission to study the relationship between public health and the environment. **Environment**

HB 1404, creating a study committee to address mechanisms for the preservation or disposal of state records. **Internal Affairs**

HB 1405, exempting 50/50 raffles from the laws regulating games of chance. **Ways and Means**

HB 1541-FN-L, relative to the cremation of deceased persons. **Public Institutions, Health and Human Services**

HB 1548-FN, abolishing the death penalty. **Judiciary**

HB 1570, requiring parolees and probationers from other states to comply with the Interstate Compact on Parole in order to be lawfully present in New Hampshire. **Judiciary**

HB 1582, establishing a committee to study workplace policies and practices of small businesses for their effect on New Hampshire employees and their families. **Public Affairs**

HB 1617-FN, relative to suspension of a driver's license for sufficient cause. **Transportation**

HJR 20, urging the United States Congress to fully fund the Ricky Ray Hemophilia Relief Fund Act for HIV victims. **Public Institutions, Health and Human Services**

HJR 25, urging the United States Secretary of Agriculture, the Director of the Drug Enforcement Administration, and the Director of the Office of National Drug Control Policy to revise regulations to permit the controlled, experimental cultivation of industrial hemp in New Hampshire. **Environment**

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 730, establishing a house committee to review methods for recording committee sessions, authorizing a request for proposals, and making an appropriation therefore.

HB 1141, relative to access highways to public waters.

HB 1223, changing the name, amending the duties, and extending the reporting date of the committee to study the unclassified salary structure for state officers.

HB 1397, relative to naming a certain island in Lake Winnepesaukee in the town of Moultonborough.

SB 356, extending the committee to study and identify or establish the duties of the fish and game commission.

SB 362, relative to the length of buses and single unit vehicles.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 580, authorizing a grant from funds appropriated to the joint promotional program for the purpose of marketing the Connecticut River area as a travel and tourism destination.

HB 1616, relative to registration fees for certain construction equipment vehicles.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 1136, relative to the university system of New Hampshire board of trustees.

HB 1386, designating segments of the Souhegan River as protected under the rivers management and protection program.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 1186, extending the reporting date of the Sullivan County regional refuse disposal district issues study committee.

SB 348, extending the committee to study the establishment of a permit system for vessels registered in another state temporarily using the waters of New Hampshire.

Senator D'Allesandro moved adoption.

Adopted.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, March 23, 2000 at 10:00 a.m.

Adopted.

Adjournment.

March 23, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Senator Wheeler.

Gentle Creator of all that is, seen and unseen, we thank You for the wonderful gift of life and citizenship in this beautiful state. We especially thank You for the many state employees who work diligently beyond the limelight for our comfort and safety. This morning we especially remember Don and Miriam Shumway and their son, and their other beloved son and family. Let us pray: As the warm days and cool nights of March encourage the sugar maples to awaken from their winter's rest, to share the sweetness of Your creation, so awaken us so that we may tap the deep resources of Your goodness as a blessing upon all that is done in this hallowed chamber today. Amen.

Senator Krueger led the Pledge of Allegiance.

INTRODUCTION OF GUESTS HOUSE MESSAGE

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

SB 348, extending the committee to study the establishment of a permit system for vessels registered in another state temporarily using the waters of New Hampshire.

SB 354, relative to an exemption from the seat belt law for passengers in motor vehicles in parades.

SB 356, extending the committee to study and identify or establish the duties of the fish and game commission.

SB 362, relative to the length of buses and single unit vehicles.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 86, making an appropriation for renovation of the Sawyer House at the Daniel Webster Birthplace in the city of Franklin.

HB 387, relative to local telephone calling areas, access charges, and competitive telephone services.

HB 1150, relative to voter registration for official ballot meetings.

HB 1566, relative to perambulation between states.

SB 354, relative to an exemption from the seat belt law for passengers in motor vehicles in parades.

Senator D'Allesandro moved adoption.

Adopted.

SPECIAL ORDER

SB 441-FN, relative to temporary orders in domestic situations where there has been no finding of abuse. Judiciary Committee. Vote 5-1. Ought to pass with amendment, Senator Fernald for the committee.

2000-3738s

04/09

Amendment to SB 441-FN

Amend RSA 173-D:3, I as inserted by section 2 of the bill by replacing it with the following:

I. Any person may seek relief under this chapter by filing a petition, in the county or district where the petitioner resides, alleging a breakdown of the domestic relationship between household members which makes it no longer prudent or possible for the parties to continue to live together. Any person filing a petition containing false allegations shall be subject to civil and criminal penalties. Notice of the pendency of the action and of the facts alleged against the respondent shall be given to the respondent, either personally or as provided in paragraph II. The petitioner shall be permitted to supplement or amend the petition only if the respondent is provided an opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions filed under this section shall include the home and work telephone numbers of the respondent, if known. Any answer by the respondent shall be filed with the court and a copy shall be provided to the petitioner by the court.

Amend RSA 173-D:4, I as inserted by section 2 of the bill by deleting subparagraph (g) and renumbering the original subparagraph (h) to read as (g).

Amend RSA 173-D:4 as inserted by section 2 of the bill by inserting after paragraph V the following new paragraph:

VI. No order may be issued under this chapter unless the respondent has been served with process pursuant to RSA 173-D:3, II.

SENATOR FERNALD: I introduced this bill because we have a very good law in this state that has unintended consequences. The good law is 173-B, which has to do with domestic violence restraining orders. Under that law that we have now, if a person in the household has been abused or threatened with abuse, they can get a restraining order to keep the offending party away. The unintended consequence is this, that too often, in our court system, people feel that they are scared, and there hasn't been any abuse, there hasn't been any threats, but they want some sort of restraining order, so they go to court to ask for it. Too often we have situations where someone is looking to get an advantage in a divorce and by asking for a restraining order where the circumstances really don't justify it. If they get the restraining order...what does happen is that too often domestic violence restraining orders are granted when the circumstances don't justify it. Where there has been no abuse, where there have been no threats. But the problem is this: if you are a judge and you have a petitioner before you who is clearly upset and clearly is afraid, are you going to be the judge that denies that restraining order? The answer is no. Judges grant them, not because they are justified in those circumstances, but because they do not want to be the judge who denies a restraining order in a tense situation, and then someone gets shot and they feel like they are going to be blamed. So they give the benefit of the doubt to the petitioner, and then the respondent gets branded as an abuser or a violent person, and that is something that follows them around for the rest of their lives. This bill is intended to give judges another tool. It is, if you will, a no fault restraining order. That if the judge finds that there has been a breakdown in the domestic situation, such as these people really shouldn't be together anymore, we don't have to wait until somebody hits somebody or shoots somebody before we do a restraining order, we can nip this in the bud. It provides for a 90 day restraining order. So it is really like a cooling off period. It allows us to separate the warring parties without having to wait until there is actual abuse that will trigger a restraining order under 173-B. I worked with Linda Griebisch from the New Hampshire Coalition Against Domestic and Sexual Violence to draft this bill, because she recognizes that there is a problem here. One problem that I see is that because restraining orders are being granted whether or not justified, respect for the law is affected. There are a lot of people that are angry because they know that they have been tagged with one of these orders unjustly, and it is affecting the respect for the legal process. I have a quote here that I think is very interesting on this point. This is from Elaine Epstein, who is the former President of the Massachusetts Bar Association talking about the same situation, "The facts have become irrelevant. Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply. As one judge patiently told me, you don't understand, we have to issue these things. The truth is that it has become impossible to effectively represent a man against whom any allegation of domestic violence has been made." There is injustice being done here, and this bill will allow another approach in the district courts. There were a number of objections that were raised in the committee, and I addressed those in the amendment

that is in the calendar. One objection was a provision concerning custody of children involving the state. I took that out so that there is no provision in there that the court can grant custody of children to the state. There was a concern expressed by a judge who came to testify, that this would open the floodgates and that people would come in and file these things regularly when they are contemplating a divorce. I don't think that is the case. You don't gain any advantage by filing for one of these 90-day restraining orders because the judge doesn't find anyone at fault, they don't necessarily rule in your favor. You could file this petition and then end up with not the relief that you requested. I think that concern is misplaced. I think that this is a good bill. I have one other point. Linda Griebisch did have a concern about what RSA number was put on the bill. I believe that it is 173-D is what was put on it by Legislative Services, and if this passes today, I have promised Linda that in the House, I will work on an amendment to put it under a different RSA number that is more appropriate. She doesn't feel that it belongs next to the domestic violence because it really is talking about something else entirely.

SENATOR FRANCOEUR: Senator Fernald, if you want a restraining order, you have to go and show that...correct me if I am wrong, but there is something, a reason to fear the other individual, is that correct?

SENATOR FERNALD: Under current law, you have to show that you have been threatened or you have been physically abused.

SENATOR FRANCOEUR: Okay. Currently, under this change here, that you propose, if I was going to go out and purchase a gun two months later because I had one on order and it came in, would I be able to purchase a gun under this temporary restraining order without actually having ever threatened somebody or felt in those circumstances that they were at harm?

SENATOR FERNALD: Because there is no finding of fault under this bill, it does not implicate your ability to purchase a gun. It would not show up on a background check.

SENATOR FRANCOEUR: Currently when you go in, it asks you if you have a restraining order on your application, your federal application when you purchase a weapon. It does not discriminate between whether it is a temporary or a permanent restraining order. Would you agree with me that it would restrict your ability to purchase a weapon with those circumstances?

SENATOR FERNALD: I am not familiar with the exact language of the federal law, but if it is talking about domestic violence restraining orders, then it would not apply to this.

SENATOR FRANCOEUR: Would you believe that it asks, is there a restraining order against you?

SENATOR FERNALD: As I said, I am not familiar with the federal law.

SENATOR RUSSMAN: I guess I would rise against...in opposition to the amendment and the bill. In the past 27 years, having done virtually hundreds and hundreds of divorce type hearings, I think that the abuse section, the definition is far more reaching than simply like physical or what have you. It talks about criminal threatening and interference with freedom, destruction of property, unauthorized entry, harassment and things of that nature. It is fairly broad. Now in the first instance, there is no question that the courts tend to give out the restraining orders pretty easily. I think that in some cases, perhaps too easily, but at the same time, if you are going to err, you need to err on the side of caution when it comes to these restraining orders. Then you usually have a hearing a week or two later, but you have a right to have a hearing within five days

if you ask the court to give it to you within five days. Then you can have an evidentiary hearing on whether or not the conduct constituted abuse. I have had a couple of them in the past few months where the both of them, the judge found that they were not, and one of them in fact, was where he actually said that he thought that the woman's testimony was not credible, and that is the one that I tried to get the guy's gun back and we still haven't been able to get those guns back even at this particular point. I am concerned that...and there is no question in divorce cases, people can get a leg up by filing a domestic violence petition if it is appropriately timed and it takes an unfair advantage of the other spouse. In this first case that I had, frankly, they were just living together, they were a boyfriend, girlfriend type thing. The judge found that there was no abuse, she had hired, she actually had New Hampshire Legal Assistance representing her, the judge still gave her a couple of months to vacate the home, because at the time she wasn't working. So she is living in his home, he is paying the bills, and she is in there, and yet there was no finding of creditable finding or any finding of abuse of any nature in that particular case. I am concerned that...I don't see that the Superior Court or the Family Division being a social service agency that... I mean it is going to get to the point where they are going to go in and file a motion to say they're sorry. It could get to that point. That is not what these are for. You don't see it so much now, but a number of years ago, this is what happened with divorce cases. When I first started practicing, it was not uncommon for a woman to bring a divorce action with an idea that when he steps back in the line, they will withdraw the divorce action. You don't see that so much now, because obviously the cost and everything have gone up, and it is a little more complicated. There is still abuse out there, and I think that this particular...this is a quantum leap in terms of what the courts would be able to do, in terms of acting as essentially guidance counselors, if you will. My guess is, in most temporary instances or ex parte instances, where it is granted without a hearing, when they first go in, it will still be granted, but then when there is a hearing on the merits, there is very often, not very often, but not uncommon to have a different decision made by the judge, so I think that this allows too much hedging of that responsibility. It expands it too much, I think, and unnecessarily so. So I think that it is perhaps, unwise.

Question is on the adoption of the amendment.

A division vote is requested:

Yeas: 11 - Nays: 12

Amendment failed.

Senator Francoeur moved inexpedient to legislate.

SENATOR TROMBLY: I think that many of the remarks made by Senator Russman were right on the head. I understand the concerns of Senator Russman. There is a problem in my mind, **TAPE CHANGE** a vast, vast minority, a vast minority do, to try and gain an advantage in an anticipated divorce. To me, when you have those very, very, very few cases, where the restraining order is granted, it cheapens the real need for domestic violence restraining orders. I do believe that many people do need a guidance counselor because they don't hate their partner or their husband or wife, but sometimes they just get into a situation where things escalate to the point where it is intolerable for those people to live together at that time. That is where this legislation was headed. If a majority of you believe that is a quantum leap in the domestic relations, then rather than killing this bill, I think that it has significant merit

relative to the stability of families, and what I think that we should encourage is exploring all options that don't force two people, who are arguing, or at that point in time, to be separated by a domestic violence restraining order, is a way to prevent violence. So if that is a quantum leap for the majority to do that, that is why you voted against the amendment, then rather than kill this thing, let's...I am interested in sending it to interim study and perhaps Senator Fernald is too, let's study this issue and come up with a better way for you, but if you kill it, then we wouldn't be able to do that over the summer. So if you kill this, I think that would be in the interest of preserving the absolute need for domestic violence restraining orders, but while the same time recognizing that sometimes people go through a rough spell in their life and judicial intervention at that time, may help preserve the family or the relationship to stay together, then we should encourage that. So if you defeat Senator Francoeur's motion to kill it, I will make a motion to study it.

SENATOR GORDON: Very briefly. Since you heard from the other three attorneys, I felt compelled to speak. I am going to vote against...I am going to vote without the amendment, certainly...I don't think that this thing ought to go forward, and I am going to vote to kill it. I did want to speak just very briefly about concerns that I have in regard to the use of the court. The fact is that most people have a perception that the courts in this state should be where someone, when it is absolutely necessary, can go and have their day in court, where they can be in front of an objective, neutral fact finder, who can make decisions in regard to controversies or disputes. Unfortunately, what we are continuing to do is to rely upon the courts to resolve day to day disputes that we have in our lives. I think that what Senator Trombly said is true. I think that we need to study, basically, what our expectations are of the court system. I have a tendency to think that it is growing a little bit out of hand and that maybe we need to set up some other agency to perform these types of functions. The only other comment that I would like to make is, I would really be chagrined to think that anybody would support this legislation and vote for it, thinking that we need this type of mechanism, and then vote against the family division expansion, because I think that those are absolutely two inconsistent concepts. Thank you very much.

SENATOR BROWN: Senator Gordon, would you be opposed to an interim study on this subject?

SENATOR GORDON: I wouldn't be opposed to interim study, it is just that my experience is that when you send something to interim study, nothing happens.

SENATOR BROWN: Thank you.

SUBSTITUTE MOTION

Senator Trombly moved to substitute Interim Study for inexpedient to legislate.

Adopted.

SB 441 is sent to interim Study.

NOTICE OF RECONSIDERATION

Senator Trombly served notice of reconsideration on **HB 235-FN-A**, increasing exemptions under the interest and dividends tax.

SB 380-FN-A, relative to improvements to South Fruit Street and Industrial Drive at the New Hampshire state hospital campus in the city

of Concord and making an appropriation therefor. Capital Budget Committee. Vote 7-0. Ought to pass with amendment, Senator Larsen for the committee.

2000-3880s

04/09

Amendment to SB 380-FN-A

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

AN ACT relative to the availability of matching funds for improvements to South Fruit Street at Industrial Drive in the city of Concord.

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

1 Improvements to South Fruit Street in the City of Concord. For the purpose of completing improvements to South Fruit Street at Industrial Drive in the city of Concord as part of the federal Congestion Mitigation and Air Quality Program (federal project CM-X-5099(032)), state matching funds in the amount of \$45,000, for the biennium ending June 30, 2001, shall be made available from existing budgetary allocations within the department of health and human services.

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

SENATOR LARSEN: Senate Bill 380 makes improvements to the Industrial Drive Fruit Street access to the New Hampshire Hospital campus. This access is one of three into the State Hospital Campus. The improvements to the Industrial Drive and Fruit Street access are part of the 1994 master plan for the New Hampshire Hospital Campus. The city of Concord would like to begin improvements at this time due to federal funds being available for a park and ride through the federal Congestion Mitigation and Air Quality Program. Capital Budget Committee has amended the bill to make available \$45,000 for the biennium, ending June 30, 2001, to approve matching funds from existing budgetary allocations within the Department of Health and Human Services. The Capital Budget Committee recommends SB 380 as amended ought to pass and I would recommend that it go to Finance.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

HB 1283, establishing a commission on the education of the deaf and hard of hearing in New Hampshire. Education Committee. Vote 8-0. Ought to Pass, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: House Bill 1283 establishes a two-year commission on the education of the deaf and hard of hearing in New Hampshire. This commission is one of the recommendations of the SB 456 study committee which met over the summer. The committee to study issues of the deaf community in New Hampshire realized last summer that the education of our deaf students is simply too large an issue to have been incorporated into that study. At the public hearing, we heard compelling testimony from many members of the deaf community, regarding the need for this type of study. This commission, will among other things, will look into certification standards for educational interpreters and the feasibility for regional schools for the deaf and hard of hearing and review the current status of support services for the deaf and hard of hearing. Passage of this bill will help enable us to provide the best education possible

for our deaf and hard of hearing students. The Senate Education Committee unanimously recommends that HB 1283 ought to pass. I urge your support for this recommendation.

Adopted.

Ordered to third reading.

HB 617-FN-A-L, relative to funding and monitoring seacoast harbor issues. Environment Committee. Vote 7-0. Ought to Pass, Senator Cohen for the committee.

Senator Cohen moved to have **HB 617-FN-A-L**, relative to funding and monitoring seacoast harbor issues, laid on the table.

Adopted.

LAID ON THE TABLE

HB 617-FN-A-L, relative to funding and monitoring seacoast harbor issues.

SB 307, relative to biosolids. Environment Committee.

SPLIT REPORT: Ought to pass with amendment, Senator Johnson for the committee. Vote 4-4

SPLIT REPORT: Inexpedient to Legislate, Senator Pignatelli for the committee. Vote 4-4

2000-3804s

08/09

Amendment to SB 307

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

AN ACT relative to biosolids and short paper fiber.

Amend the bill by replacing section 1 with the following:

1 New Paragraphs; Water Pollution and Waste Disposal; Definitions; Biosolids; Short Paper Fiber. Amend RSA 485-A:2 by inserting after paragraph XXI the following new paragraphs:

XXII. "Biosolids" means any sludge derived from a sewage wastewater treatment facility that meets the standards for beneficial reuse specified by the department.

XXIII. "Short paper fiber" means any sludge derived from a pulp or paper mill wastewater treatment facility that meets the standards for beneficial reuse specified by the department.

2000-3804s

AMENDED ANALYSIS

This bill adopts definitions for the terms "biosolids" and "short paper fiber."

SENATOR JOHNSON: As the sponsor, I rise in support of SB 307. The goal of this bill is clarification. This bill, as amended, adds two new definitions to RSA 485 for the terms "biosolids" and "short paper fiber". These two terms are commonly used in journals, newspapers throughout the wastewater community and by the New Hampshire legislature. These definitions are needed because not all sludge is the same. There are many different kinds of sludge, each of which is required to meet different standards for classification. For example, biosolids are just one variety of municipal wastewater treatment sludge. The term "biosolids"

and the "short paper fiber" provide a more detailed description of the content of these materials. These words illustrate more clearly, the strict content of the sludge referred to. It is important to note that based on its continual appearances in publications, biosolids was added to the 1998 edition of Merriam Webster Collegiate Dictionary. In addition, DES testified in support of SB 307 as amended. The department believes that there is value in defining the terms "biosolids" and "short paper fiber" in law to refer to those sludges that meet the standards for beneficial reuse specified by DES rules. DES supports this bill since it would clarify the common use of the word "sludge" "short paper fiber" and "biosolids" that qualify their regulatory use. I ask your help in clarifying our New Hampshire statute by adding these two very useful definitions to our RSAs and please vote in favor of SB 307 as amended. I would also like to have further comment after the other report, Madame President.

SENATOR KRUEGER: Senator Johnson, was it not true to the best of your memory, that during the hearings on this particular bill, that there was support from the Department of Environmental Science, Farm Bureau, White Mountain Rivers Management, Water Pollution Control Association, Municipal Association and the Business Industry Association?

SENATOR JOHNSON: Thank you for asking that question. Yes, they were there in support.

SENATOR BROWN: Senator Johnson, what happens to the definitions of Class A and Class B sludge. Is that still in the law or this replacing it?

SENATOR JOHNSON: That would still be in the law.

SENATOR PIGNATELLI: I rise in opposition to SB 307. The word "biosolid" is defined in this bill is not scientifically determined. In fact, during the hearing on the bill, the sewerage industry told us that the term "biosolid" came about through a contest. The industry felt that the term "sludge" was not consumer friendly, that it had some negative connotations, and so there was a contest by this industry to come up with a more... a term that would make it easier for people to accept. The contest was an advertising and marketing effort only; however, the material substance of SB 307 attempts to define biosolids is already defined. It is either Class A or Class B sludge. We already have a name for it. We know what Class A is and we know what Class B is. The bill is an illustration of the continued efforts put forth by the sewerage industry to make sludge more marketable by giving it a more friendly name. You know, I have been a member of this legislature for fourteen years. During that time I have had to deal with countless issues regarding sludge. I have to say that the sludge that I dealt with 14 years ago is the same stuff that we are dealing with now. Sludge is sludge. It was sludge 14 years ago and it is still sludge now. In my opinion, the state of New Hampshire would do well to continue using the terms that we are using now to define it, and we have all come to know and not necessarily love, and that term is "sludge". I urge you to vote SB 307 inexpedient to legislate. Thank you.

SENATOR FERNALD: Senator Johnson, you said that the definitions of Class A and Class B sludge would remain in law, and this is an additional definition. I guess that I am trying to understand what is the different between Class A sludge and this new definition of biosolid?

SENATOR JOHNSON: I guess if you will allow me to further my comments, maybe that will give you an understanding of what biosolids are about.

SENATOR FERNALD: Sure.

SENATOR JOHNSON: Madame President, if I may, I would like to read a couple of inserts from the New England Bio-Solids and Residuals Association. This is by Ned Beecher who is the program coordinator. Ned is a local boy who lives in Tamworth, New Hampshire, and is involved in wastewater treatment biosolids. "Biosolids are one variety of municipal wastewater treatment sludge. Traditionally, the solids moving through, in which are eventually removed from the wastewater treatment process has been called sludge. Wastewater treatment operations require careful management of sludge not only after removal or wasting from the treatment process, but also during the treatment process. Sludge is a biologically active thick mix of solids, microorganisms and water, some of which is recycled in the treatment facility to provide optimum treatment, but batches of sludge are removed regularly from the treatment operations and must be utilized or disposed of in some manner. This raw sludge is typically 2-3 percent solids and 97-98 percent water. It comes either from the primary settling tanks (clarifiers) or the secondary settlement tanks. It is a slightly thick gray/brown liquid containing small inorganic particles, dead and living micro organisms, including pathogens and trace metals and chemicals. Note that the solids that settle to the bottom of the septic tank in which must be pumped out every two-three years is also sometimes called sludge, but is often called septage. The sludge is removed from municipal wastewater treatment facilities and can be used or disposed of in three ways. Land filling, incineration or recycling through some beneficial reuse. Only some sludge's are recycled, and to do so, they must be treated, tested and stabilized in accordance with state and federal laws. Only these sludge's are considered biosolids." Here are some of the descriptions. "It should be noted that sludge is defined above remains a technical term widely used in the water quality field; however, sludge is a term with many, many other uses, both in and out of the environmental field. At a quick oil change business, a flier uses sludge in reference to engine maintenance. "If the valve is heavily loaded with sludge." Two years ago, the Manchester Union Leader printed an editorial entitled "Filth Watch" it was not about sludge or biosolids, it was about pornography. It included the following, "the hard core porn industry long has spewed out even worse sludge." Sludge describes a form of modern music. A children's book, "Chattanooga Sludge" is a story of cleaning up toxic sludge from the bottom of the creek. Thick black stinking, tarry sludge. Pokemon put the gooey, yucky image of the word sludge to good use. Two of Pokemon characters are Sludge Pokemon, Muck and Grimer. Muck is thickly covered with a filthy vile sludge. It is so toxic even footprints contain poison. Clearly, there is a considerable chance from misunderstanding if the term sludge is used to describe biosolids is because of this kind of confusion, that water quality professionals use the term "biosolids" to denote a particular kind of sludge. Municipal sewer sludge that meets the standards and can be beneficial recycled. Thank you, Madame President. Sorry to be so lengthy.

SENATOR FERNALD: I am not sure I heard what the difference will be between Class A sludge and biosolids if this bill is adopted?

SENATOR JOHNSON: Class A and Class B sludges will still be in the statute, but I think that by what I just read, I think that the word "sludge" is used in many other areas. I think that the determination of using biosolids does give the connotation of something that is different than sludge.

SENATOR WHEELER: I assume that you all received one of the many packets from me today, that includes a response to Ned Beecher's article as well as a letter from me. I would have you remember, as I rise in opposition to SB 307, that Mr. Beecher's New England BioSolids and Residuals Association is indeed in the business of making money. They are not here to talk about the quality of our environment. Just keep that in mind. It is not straight scientific information, it has a bias. That is all right, but you just have to know that. When I was thinking about this bill, I thought, you know, this is as Senator Pignatelli said, an advertising gimmick, to find a more acceptable name than sludge. Sludge does have a horrible sound to it, but perhaps that black goo that is at the bottom of our tanks after they have processed the human industrial waste, perhaps sludge is the best name for it. Changing its name isn't going to change what it is. A rose by any other name would smell as sweet, and sludge by any other name is going to be just as toxic and just as hazardous as it was before treatment. This does indeed, as my letter said, removed the distinction between Class A and Class B sludge. It says "biosolids", meaning any sludge that meets the standards for beneficial reuse specified by the department. Right now, both Class A and Class B sludge have to meet the standards for beneficial reuse. So where is the distinction if we call them both biosolids? Short paper fibers we're really not defining in our statute right now, but suddenly we are going to call them biosolids, they are full of dioxin. I don't call that, something that we really want to encourage people to put on our agricultural lands. This is all a gimmick to be able to spread it on our crops. I don't think that we ought to fall for this gimmick. I urge you to vote against this bill. Thank you.

SENATOR LARSEN: Senator Johnson, we have dueling opinions as to whether...if you change the name from "sludge" to "biosolids" there will continue to be a visual distinction between Class A and Class B, and whether you call it biosolid or sludge, if you change the name to biosolids, will the public still be aware of the difference between Class A and Class B?

SENATOR JOHNSON: I believe that there still will be a distinction between bio-solids and sludge as I just alluded to on this paper that I have here. So I think that there still be that distinction.

SENATOR LARSEN: And that the public will be aware of which is being applied to a land on a land application?

SENATOR JOHNSON: Yes, I believe so.

SENATOR GORDON: Senator Johnson, right now, if there is a land application, somebody who might be told that they are going to spread sludge, and I guess if this passes, they are going to be told that they are going to be spreading biosolids. Would anybody be either more or less, apt to know whether it is Class A or Class B sludge or biosolids?

SENATOR JOHNSON: Well certainly that determination has already been made by DES, and so I think that distinction has already been made.

SENATOR GORDON: My understanding, and perhaps I am wrong, is that the classification of Class A and Class B is a federal classification?

SENATOR JOHNSON: I think that is probably correct. I think that the state has followed federal standards.

SENATOR GORDON: If the state changes the name of the product, will that in any way, change federal law?

SENATOR JOHNSON: No, it will not.

SENATOR BELOW: I rise in support of ought to pass with amendment. The universe of what we call sludge is this big...and this proposed bill helps to provide some clarification about our common and regulatory use of the terms. It creates a subset from the big world of sludge to biosolids and for short paper fibers. Under bio-solids, there is Class A and Class B. Those are the...the reference is two standards for beneficial reuse specified by the department. Our department of Environmental Services has adopted rules to find out what is Class A and Class B. Those standards, from my understanding, are significantly stronger, more stringent than those that exist in federal rules or most other states. I would just like to point out that commissioner, Robert Varney from the Department of Environmental Services did support, does support, providing these definitions in statute. I think that it is important to be clear about our use of language and I would just like to quote one sentence. He says, "Under this legislation, the use and regulatory application of the term "biosolids" and "short paper fibers" would be applied to quality, nutrient rich organic products, the wastewater treatment process, to meet stringent state and federal requirements. It really clarifies the use of these terms. I think that we have a built-in cultural bias. I think that maybe it is genetic about human waste. Human excrement. It is not something pleasant, but it is a reality of life as sure as the sun rises. It is something which we create on a daily basis and something that we have to deal with. I don't think that there is enough lime, landfill space in the world to permanently store all of our human waste, so I think that it is useful to think about what it consists of in nature, in our ecological system. What is one person's waste or one living thing's waste, is another...is part of the nutrient cycle, part of the enrichment cycle and part of the beneficial function of our ecology. I just think that this is a reasonable thing that is supported by the Department of Environmental Services. Thank you.

SENATOR RUSSMAN: Senator Below, it does sound like a lot of crap to me, but...I am just curious on this genetic link that you just referred to..

SENATOR WHEELER: Senator Below, would you agree with me that we are not just talking about nutrients? That there is more to sludge than human excrement or even animal excrement, and that not everything in sludge is a nutrient, and that the treatment that we are giving it, whatever we call it, is not making it totally only nutrients?

SENATOR BELOW: I agree and that is precisely why we need the stringent rules that we have, and we need to be clear about the use of our terms, so that people can't use the terms...we don't use the terms "biosolids" to include things that don't meet the stringent standards.

SENATOR WHEELER: Senator Below, you can tell me if you think I am wrong, but I think that I am correct, that in our treatment plants. We are not separating industrial waste from our septage and therefore what we produce what we call sludge or biosolids or whatever else we want to call it, has a component of industrial waste. Isn't that true?

SENATOR BELOW: Not necessarily. Many sewage treatment systems don't have industrial waste going into them. Many do, but then again, there are standards what goes in. There is permanent requirements, and again, that is something that we need to manage and deal with.

SENATOR JOHNSON: Senator Wheeler, I just can't let this go by. I believe in your statement about Beecher. That they were in the business of making money. I would hope that you would not take offense of a company making money?

SENATOR WHEELER: I don't take offense that a company makes money, but I think that we can't take the statements made by somebody representing that company as being without bias.

SENATOR BROWN: I just want to speak briefly in opposition to SB 307, and in support of the inexpedient to legislate motion. There are over 50 towns in New Hampshire who have banned sludge. Now we would have to go back to those people and tell them that they have to redo this because now it is something else, it is biosolid. I am not a scientist. I don't think that most of us are. I have a friend though, that is much more knowledgeable than I am. He did audits for super fund cleanups. He told me that you can be required to clean up an area for less stringent reasons than we can spread sludge. So I have some real concerns about this and that is why I don't want to change the name to make it sound less awful. It's sludge, let's call it sludge. Thank you.

SENATOR RUSSMAN: It never ceases to amaze me the amount of time that we dwell on and no one can say that we don't give everything a good airing, sort to speak. Now, I went to the dictionary to look up what "sludge" was. A sludge, it says is, "a muddy deposit as on a river bed, ooze, or a muddy or slushy mass, deposit or sediment as precipitated solid matter produced by water and sewage treatment process, a muddy sediment in a steam boiler, a precipitate or settling from a mineral oil as a mixture of impurities in acid." Now, I think that our constituents know what sludge is. I don't think that there is any question about as to witness of the fact that 50 towns have passed laws relative to sludge. We always talk about sound science. That is one of the catch words that we like to hear. There is no sound science here except for a contest in which to come up with a catchy name that would go. The other thing **TAPE CHANGE** biosphere and biosafety and bioxy and things of that nature. I don't think that it rises to that level. No pun intended, truly. But all this is in an effort to fool the people so that obviously they can sell more of this stuff. I happen to agree that this material probably should be spread in some pasture, we have to do something with it. We can't just burn it in a landfill. We do have to do that, but we have to do it under certain safeguards, and I think that DES has gone an extraordinarily long way. I know they are sick to death of us dealing with this issue, and they have put some very good standards in place, and I think that those standards are very good. I think that DES has done an excellent job with them. If we need to call this material fertilizing sludge, fine, let's call it fertilizing sludge so that it can be used on crop lands or what not, if that is the thing that has to be done. Clearly, there is no question that it is an industry base name change and work, essentially doing the bidding of industry so that industry can do what they want, and essentially in some affects, try and make it sound better than it is. I would dare say that the bill smells to me.

SENATOR KRUEGER: Senator Russman, would you not agree, however, that Merriam Webster Collegiate Dictionary tenth edition, picked up on this distinction defining the term "biosolid" in its 1998 edition, "solid organic matter recovered from a sewage treatment process and used especially as fertilizer" and further would you not agree that the

new Oxford Dictionary of English 1998 Edition, did likewise, "biosolids, plural noun, organic matter recycled from sewage, especially for use in agriculture" Senator?

SENATOR RUSSMAN: I would believe that that was part of the idea of having a contest to be able to get the name changed in the dictionary. I mean it is a coup for the industry, and certainly a minus for the people that have to live in this state, and in terms of what they really know what it is. I think that people know what sludge is and I think that they have an understanding.

SENATOR F. KING: Senator Russman, I believe that you said that this is an issue driven by the industry?

SENATOR RUSSMAN: I think by and large.

SENATOR F. KING: My real question is, is commissioner Varney a tool of the industry, or is he a scientist?

SENATOR RUSSMAN: No, I don't think that anybody ever suggested that he was a tool of the industry. I think that it is more like we are the tools of the industry.

SENATOR F. KING: How do you explain that he is supporting the bill then?

SENATOR RUSSMAN: I have no idea. I think perhaps for them to deal with the standards that they are dealing with, maybe in some fashion, they think that it would be easier, or there would be less controversy, because I know that there are tons of telephone calls generated to DES when trucks pull up to dump this stuff; people are not happy about it and I think that it is part of the overall idea that somehow making this go away is an issue that if we change the name, we can try to get people to think of it differently.

SENATOR F. KING: Do you think of Commissioner Varney more meets the definition of a scientist than legislators do?

SENATOR RUSSMAN: I frankly don't know what his qualifications or his background is in terms of what degrees he does hold. I don't think that he is a PHD level commissioner, but I could be wrong.

SENATOR F. KING: Nor are we.

SENATOR RUSSMAN: That is for sure, and that is why it never ceases to amaze me how much we debate these types of issues.

SENATOR COHEN: We are here working for the people of our districts, the people of the state of New Hampshire. While I agree with both Senator Below and Senator Russman that you can't just ignore this stuff forever. You can't pretend that it doesn't exist, it does. You have to find something to do with it that would benefit the environment, there is no question about that. However, given the fact that we work for our constituents, the people who create this stuff, this does not help the distinction. I think that this blurs the distinctions between what is okay and what is not okay. It doesn't clarify things. I think that it smudges it all up or just confuses people, it doesn't help the people that we work for. I think that Senator Russman's suggestion, perhaps, fertilizer grade sludge or something like that might help, but we are not here to help any particular industry and be part of the marketing plan. That is what this is. So I would urge my colleagues to go along with Senator Wheeler and Senator Pignatelli. Thank you.

SENATOR JOHNSON: I just want to point out that at the public hearing the only opposition for this bill was the New Hampshire Sierra Club. Thank you.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Wheeler.

Seconded by Senator Cohen.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Disnard, Roberge, Eaton, Squires, Francoeur, Larsen, Krueger.

The following Senators voted No: Trombly, Pignatelli, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Cohen.

Yeas: 13 - Nays: 9

Amendment adopted.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Cohen.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Disnard, Roberge, Eaton, Squires, Francoeur, Larsen, Krueger, Hollingworth.

The following Senators voted No: Trombly, Pignatelli, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Cohen.

Yeas: 14 - Nays: 9

Adopted.

Ordered to third reading.

SB 373-FN, directing the public water access advisory board to prepare a report relating to the types of public access and recreational uses appropriate to different types of public bodies of water. Environment Committee. Vote 5-2. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3841s

03/09

Amendment to SB 373-FN

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

AN ACT directing the department of environmental services to prepare a report which shall include a recreational use impact model, relating to the types of public access and recreational uses appropriate to different types of public bodies of water.

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

1 New Section; Access to Public Waters; Public Waters Access Advisory Board; Recreational Use Impact Model Required. Amend RSA 233-A by inserting after section 2 the following new section:

233-A:2-a Recreational Use Impact Model; Report.

I. The department of environmental services shall develop, provided appropriate funding is secured, a report which includes a recreational use impact model for assessing the best types of public access facilities and recreational uses for public bodies of water with different charac-

teristics. The report shall also include various potential recreational management strategies to enhance public enjoyment of state water resources. After completion of the report, the department of environmental services shall provide the report to, and seek input regarding the report from, the public water access advisory board. The report shall then be submitted to the senate president, the speaker of the house of representatives, the governor, the commissioners of the departments of environmental services, safety, transportation, resources and economic development, the executive director of the department of fish and game, and the director of the office of state planning, no later than October 1, 2002.

II. In planning for the development of new or expanded public access sites or recreation related uses on state public waters, the commissioners of the departments of environmental services, safety, transportation, resources and economic development, the executive director of the department of fish and game, and the director of the office of state planning, shall consider the recommendations of the report, including the recreational use impact model developed pursuant to paragraph I and shall consider the impact of new or expanded public access on a water body's water quality, fish and wildlife resources, shoreland integrity, scenic qualities, and other considerations suggested by such access.

III. In evaluating proposals for altering permissible boating activities on a public body of water, including considerations of speed, type of propulsion, or horsepower, the commissioner of the department of safety shall consider the recommendations of the report, including the recreational use impact model developed pursuant to paragraph I and shall consider the impact of proposals for altering permissible boating activities on the water body's water quality, fish and wildlife resources, shoreland integrity, scenic qualities, and other considerations suggested by such proposals.

IV. For each proposal involving new or expanded public access or recreation related uses, the commissioners of the departments of environmental services, safety, transportation, resources and economic development, the executive director of the department of fish and game, and the director of the office of state planning, shall submit to the public water access advisory board a report addressing the specific impacts upon the water body or bodies identified by the model established under paragraph I.

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

2000-3841s

AMENDED ANALYSIS

This bill directs the department of environmental services to prepare a report which shall include a recreational use impact model, relating to the types of public access and recreational uses appropriate to different types of public bodies of water. The bill also directs that the commissioners of the departments of environmental services, safety, transportation, resources and economic development, the executive director of the department of fish and game, and the director of the office of state planning document use of the model in making decisions on new or expanded public access or recreation related uses.

SENATOR WHEELER: I rise in support of SB 373 and the committee report of ought to pass as amended. The amendment is on page seven of your calendar. The amendment addresses many of the issues that were raised at the hearing. Senate Bill 373 as amended, directs the Department of Environmental Services to develop a report which will include a recreational use impact model for assessing the best types of public access

facilities and recreational uses for public bodies of water with different characteristics. However, and this is an important part of the amendment. The report is to be drafted only if appropriate funding is secured. Also, the amendment removes that section of the original bill which asks Fish and Game to apply for federal funds. We eliminated the section referring to Fish and Game. The amendment also has DES developing this report, which they are willing to do. Once completed, DES is to provide the Public Water Access Advisory Board with a copy of the report and ask the board for its input. You don't even have to give input, they are just going to be asked for their input. The report is then to be submitted to various state officials and agencies, no later than October 1, 2002. We pushed the date up in the amendment also, to give more time to see if we could secure funds to pay for the personnel needed to develop the impact model. This legislation is important because as new or expanded public access sites are developed, we consider the impact of such a site on water quality, fish and wildlife resources, shore land integrity, scenic qualities etceteras, and not just from the point of view of the people fishing on the water, although that is a very important access to provide, we need to take bigger concerns into consideration, that is why we need a model. We don't expand access to our public waterways to lead to the destruction of our most valuable natural resources. This report will assist state agencies in determining the impacts of development on our environment and allow us to both appreciate the beauty of our New Hampshire waterways and to protect them. In the report from the hearing, Jacquie Colburn from DES and Lakes Management Advisory Committee, in our report, is quoted as saying, "That DES supports the intent of this bill and feels that the Public Water Access Advisory Board is the proper entity to oversee this effort, due to the agencies and stakeholder groups represented on the board; however, board members are concerned about the adequacy of resources to carry out this work. DES believes that resources and staffing support should be identified for the Public Water Access Advisory Board." That is what the amendment does. It doesn't make the Public Water Access Advisory Board do the work. Her further testimony of this summary says, "New Hampshire Lakes Management Advisory Committee supports the need for SB 373, and testified as to its own responsibility of preparing a guidance document to be used by stakeholder groups when developing lake management plans." So, therefore, the need is definitely supported. John Stephen of the Department of Safety, supports also the intent of the legislation, saying that it is very much needed. He emphasized the need to keep this bill alive, perhaps by amending it to meet the concerns of others. That is what we have done. We eliminated the term saying "shall incorporate, to shall consider" we have softened it a great deal, and we have made it something that is completely feasible to have happened. So I really do urge you to support the bill as amended. Thank you.

SENATOR DISNARD: Once again, we have an attack on our Fish and Game Department. Do we really need a turf battle between DES and Fish and Game? I served as Commissioner before I was lucky and able to rejoin this body. Never did I hear any complaints about the characteristics and the items that are included within this amendment. If there are some people in the state who are unhappy with the way the Fish and Game Department uses and extends, renovates and makes, access to lakes. Why don't they go over and sit down with the commissioner or the Fish and Game director, and talk things out. We have laws such as 233-A:4. "The Fish and Game Department will carry out the statewide boat access program. The department will cooperate with the board." It

goes on and on. Do we need to have another bill to come in to do this? It is not realistic. I have never heard one of you people. I have never heard a House member. I have never heard any legislator complain about the method of study that the Fish and Game Department uses. They have to have their impacts. They have to have their environmental studies. They don't just go out and pick a spot. They are under the same rules and regulations as any private contractor would be. I hope that you will sit down and think about how it is always the same people that are attacking the Fish and Game Department, and wondering why. Thank you.

SENATOR F. KING: Senator Disnard, it is my understanding that when Fish and Game deals with these access areas and does the work and installs them, they really are utilizing federal dollars to do that. It is also my understanding that those federal dollars come with some pretty strict guidelines. Is that not true?

SENATOR DISNARD: Partly. Statewide...I would like to now quote RSA 233-A:13. "Statewide public boat access fund established. There hereby is established a non-lapsing statewide public boat access fund. The five dollar boat registration" and it goes on to say more. I am assuming a large amount of that, or a good part of the money, is the fishermen or the recreational people who use the lakes and are taxed for that.

SENATOR F. KING: Thank you.

SENATOR WHEELER: Senator Disnard, this is a two-part question. First of all, would you believe that there is no intention in this bill, nor do I feel that there is any language that shows that there is either an attack on Fish and Game or a turf fight. But perhaps you don't agree with that?

SENATOR DISNARD: I would agree with that, but the sportsmen don't, and they elect me, and they help by their viewpoint and I listen.

SENATOR WHEELER: Senator Disnard, am I correct in feeling...judging by the meetings that I have been to where I have been sitting in and observing. I believe that Fish and Game has a representative on the Public Water Access Advisory Board? Am I correct in that?

SENATOR DISNARD: I think that you are.

SENATOR WHEELER: Am I correct then in drawing the conclusion that Fish and Game would be involved in this entire process?

SENATOR DISNARD: Involved but out voted.

SENATOR GORDON: First of all, I wanted to respond to Senator Disnard because he indicated that he hasn't heard anybody complain about the activities, and I just want to indicate that isn't historically true, and that I happen to represent a community, the community of Bristol, and in the community of Bristol we did have a public access go in. I can tell you that at the time, this was four years ago or so, that it was obvious that this facility was built, and it was built in a manner in which, I think, unhappy, and over the objections to many people who are living in the community. In fact, the department came in and basically clear cut five and a half acres of old stand growth trees on the shores of Newfound Lake. I believe that the department was totally irresponsible. It didn't care what the town thought about it. It just went ahead and did it. It was only after the fact, when people raised their objections, that they did something about it. So I just wanted to let you know that there are concerns and there were concerns at the time. On the other hand, I have to tell you, Senator

Disnard, that I am going to vote with you on the bill. I am going to vote with you on the bill because this particular director of Fish and Game, has in my opinion, acted responsibly in the way that he has carried out his duties. I would have supported it and have supported it in the past, the idea that when you have a project like this, it ought to be subjected to some type of local process where local people have the opportunity of input. I don't think that we are going to solve the type of problems that we had in Bristol on Newfound Lake, by having another state agency involved in making the decision-making. I just don't think that is advisable. I do know that DES already has a member on the Public Access Advisory Board. They have a say at the table, and they may be out voted too, but they are currently in the process. So, Senator Disnard, I just want to say that I agree with you, and I am going to vote against the committee report of ought to pass with amendment because I don't think that this solves the problem. I did want to tell you that there have been problems in the past, and that is why so many people are so concerned. Sunapee Lake, as you are well aware, and at Squam Lake, which, I and Senator Johnson represent, because of what did happen on Newfound Lake, and we don't want to see those types of fiascoes repeated. Would you believe?

SENATOR WHEELER: Senator Gordon, from your remarks, I think that it is conceivable, although I would hesitate to suggest it, that you have misunderstood what the bill is asking for. Because it is not asking for another agency or another committee, it is asking for a recreational use impact model to be developed. If we had had such a model in existence before the public access was developed in Bristol, do you not think that perhaps some different kind of access might have happened?

SENATOR GORDON: Well I can just tell you that if that is done on the state level, my experience was that no matter what agency that I went to before in dealing with the Newfound Lake subject matter, I didn't find a particularly good response. The fact is that this community felt run over, the community of Bristol felt run over by the state, and I suspect the same thing would happen, even if this model were in place.

SENATOR JOHNSON: I serve on the Public Water Access Advisory Board. I want to say that when the bill was first introduced to the board, there was an overwhelming support for the piece of legislation. But as it developed, and in the legislation, they said that the Public Water Access Advisory Board would be involved in this at any level. I want you to understand that we only meet 16 hours a year. The second thing is, that by statute, we are not charged with looking at recreational uses for public bodies of water with different characteristics. That is not our charge. I spoke to Mr. McAllister, who is the chairman of our board, yesterday. He is still very adamant that we should not be involved in this piece of legislation, because it is not something that we really should be involved in by statute. If DES, DOS and OSP want to put something together and do this, fine. But I just have to vote against the bill with the Public Water Access Advisory Board listed as a copartner.

SENATOR RUSSMAN: I have a couple of things. One, I think that we can all agree that the Department of Fish and Game does an excellent job under commissioner Wayne Vetter. I would certainly commend him for the job that he does. There is absolutely no question about that. I don't think...when I voted on this thing, I don't think that was an issue, and I am not sure how that would even appear as an issue. At the same time, a number of different agencies said that this was a good idea to do this, and DES felt that they would do it. The original bill, I am a little

puzzled by the Public Water Access Advisory Board saying that they liked it, because the original bill only called for them, "they shall prepare a report on the types of public access and recreational uses appropriate to different types of public bodies of water." That was going to be their job. Now if they supported that.... Now the amendment, frankly, says that the "Department of Environmental Services shall develop, provided appropriate funding is secured." I mean, it is up to them to find the money to do it. A report which includes a recreational use impact model for accessing the best types of public access facilities and recreational uses for public bodies of water with different characteristics. After that, for each department, all that it requires them to do is, they shall consider it. They aren't mandated to follow it. It just says that "they shall consider it." So if DES is willing to do the report, dealing with finding the funding to do the report, why would it not make sense...and to ask these other agencies, to at least consider the findings of the report, when they make their determinations. That is not an awful lot to ask. I frankly, don't understand why there would be opposition to that type of thing when it is being done by an agency that is willing to do it, and we are only asking the others to consider the results.

Question is on the committee amendment.

A roll call was requested by Senator Disnard.

Seconded by Senator Wheeler.

The following Senators voted Yes: Below, McCarley, Pignatelli, J. King, Russman, D'Allesandro, Wheeler, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, Trombly, Disnard, Roberge, Eaton, Squires, Francoeur, Larsen, Krueger, Brown, Klemm.

Yeas: 8 - Nays: 14

Amendment failed.

Question is on the motion of ought to pass.

Motion failed.

Senator Trombly moved inexpedient to legislate.

Adopted.

SB 373 is inexpedient to legislate.

SB 396-FN-A-L, assessing a fee on water withdrawn for commercial purposes from water supply sources in the state and establishing a public water supply land protection fund. Environment Committee. Vote 5-3. Interim Study, Senator Russman for the committee.

SENATOR RUSSMAN: I rise in support of the committee recommendation of interim study. I think that it is important to recognize that DES supports this legislation. Now earlier we thought it was important that they supported a piece of legislation revolving, I think that it was biosolids, that we now call it. So they are a newly dubbed item. They support this legislation. The department testified that it is critical for the state to permanently protect the land around its public water supplies and reservoirs, and that sooner that New Hampshire creates permanent incentives for water supply land conservation, the more cost effective New Hampshire's drinking water program will be. It was the Society for the Protection of New Hampshire Forest that released the initial report describing the need for source water protection in the state

and the need for source protection has been well documented. There are a number of wells, while some are protected, a huge number of wells are not protected, or the land around them, and this would help to fund that; however, some committee members felt that the tax imposed by SB 396 was too narrowly based and therefore, recommended interim study. I believe that this is both the positive and valid recommendation as the legislature needs to find a permanent source of funds for long-term water source protection and I urge you to vote in favor of the interim study.

Committee report of interim study is adopted.

SB 406-FN-L, clarifying water pollution control restrictions. Environment Committee. Vote 6-2. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3803s

08/09

Amendment to SB 406-FN-LOCAL

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

AN ACT prohibiting the use of certain 2-cycle marine engines and reformulated gasoline with watercraft on or in bodies of water that provide public water supplies.

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

1 New Section; Water Management and Protection; New Hampshire Safe Drinking Water Act; Water Pollution Control; Use of Certain 2-Cycle Engines and Reformulated Gasoline on Certain Water Bodies Prohibited. Amend RSA 485 by inserting after section 17 the following new section:
485:17-a Use of Certain Engines and Fuel Prohibited.

I. As of January 1, 2002, 2-cycle marine engines that do not meet federal model year 2007 standards and reformulated gasoline shall not be used with any watercraft on or in any lake, pond, reservoir, or stream tributary thereto, from which the domestic water supply of a city, town, or village is taken.

II. A person who violates any provision of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

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

2000-3803s

AMENDED ANALYSIS

This bill prohibits, as of January 1, 2002, the use of 2-cycle marine engines that do not meet federal model year 2007 standards and reformulated gasoline with any watercraft on or in any body of water that provides the domestic water supply of a city, town, or village. This bill also provides penalty provisions.

SENATOR WHEELER: I am beginning to feel that my support is the kiss of death. I hope that that will not be your feeling about SB 406. I assure you that we have spent a lot of time talking with people, working with people, and trying to bring parties together. I do indeed, although albeit cautiously, rise in support of SB 406 as amended. This bill, in its original form, would have eliminated power boats from almost all lakes and waterways in New Hampshire. Even for me, that went a little too far. It really wasn't my intention. My intent was and is, to introduce legislation to address the issue of MTBE, and the continued contamination of New Hampshire waterways. Therefore, I have amended the bill

such that, as of January 1, 2002, two-cycle marine engines that do not meet the federal model year 2007 standards, and also that reformulated gasoline, will be prohibited from use from any watercraft on or in any lake, pond, reservoir or stream tributary from which the domestic water supply of a city, town or village is taken. As you will hear later, in opposition testimony, this is a lot of water bodies. I understand that. I understand that there are a lot of boaters, but believe me, there are more of us that drink water than own two cycle engines. Much of the current pollution in the New Hampshire waterways has been caused by the careless behavior of boaters. I believe that the toxic effect of MTBE on our population and environment is a serious issue. Just this week, the Clinton administration has announced plans to eliminate the use of MTBE, as it is they're saying that it is a human carcinogen. It is also used in about 85 **TAPE CHANGE** ask Congress for legislation to ban and significantly reduce MTBE use while the agency begins a more lengthy process to do that using its existing authority. I would say that it is high time that they did this. We have been asking for that in New Hampshire for quite some time. This legislation will help to prevent contamination, while still allowing the citizens of the state to enjoy our natural resources. DES supports taking additional steps to further protect the state's drinking water supplies and is pursuing an education effort, which this bill compliments. As you may know, the sale and manufacture of old technology two-cycled engines is to be phased out by 2006. Marine engine dealers in New Hampshire have signed an agreement with DES to phase out the sale of two-cycled engines even before the 2006 date. Of course that does not affect the use of those two-cycled engines. That is what this bill is addressing. You will have, on your desk, letters from Laconia Waterworks and Manchester Waterworks, supporting this bill. They know the importance of keeping our drinking water supply as pure as possible. We know that we can't get MTBE out of it. Other states have taken action in this area. California, which of course has all of our problems, magnified, they have temporarily banned the use of two stroke craft on a reservoir which provides the water for the city of San Jose. Also, Lake Tahoe in San Pablo Reservoir near Oakland were closed to two stroke craft after troubling levels of MTBE and other pollutants were detected in the water. That is kind of the canary and the mime. It is showing us that we have a problem and we need to act. We shouldn't just wait and put it off and say that it is going to inconvenience some people who won't be able to upgrade their engines. I am really sorry for inconvenience, and I approve of boating, and I think that it is a lot of fun, but I also care deeply about the public health hazard caused by the contamination of our drinking water supplies. So I urge you to support this bill as amended. Thank you.

SENATOR DISNARD: I don't think that anyone here is going to be surprised, but I will surprise you. The sportsmen, and I, do support the elimination of the MTBE gasoline, and so does the federal government, and they are working on that as you know, from your recent newspapers and articles. But we have all read as politicians, about the small print. You were asked to read the letters from the Manchester Waterworks, and from the Laconia city supporting the bill. Did you read in there, the elimination on January 1, 2000 or the use of two-cycled engines? I had to learn the other day that a two-cycled engine is described as an engine that uses oil mixed with gasoline. Who is going to be harmed by this? Who are the fishermen who own the two-cycled engines? Most of the outboards on our bodies of water today... They aren't the people who can afford the large expensive

boats and motors with the newer type of engines. They are the ordinary men and women that like to go out, and maybe some of us. I have, and I don't know if I should read every one of them, I am looking at the clock. I will take an example. That means that on Winnepesaukee, on Lake Sunapee, on Contoocook River, on the Lamprey River, over in Portsmouth, we have a Gilman Pond, we have the Merrimack River, we have Lake Waukegan, we have Round Pond and we have other lakes in Rochester, we have perhaps Canobie Lake in Salem. We have in Hanover, the Hancock River, we have Perkins Gulch in Gorham, we have the Androscoggin River, we have the Connecticut River, we have the rivers in the Lebanon areas, we have all of these and more. Are you willing to face the public? Is it realistic to say that in January 2001 that none of these two-cycled engines should be used on our lakes and rivers? Look at the tourism department, what do they do? They tell people to come and use our lakes and go fishing. Come up and spend your money in the motels. How many motels are going to lose on this? It is not against the drinking water. I heard in the testimony once this morning, that 25 percent of the gasoline used in these motors go into the lakes. Do you believe that? That is what they are telling us. I will pass this around, and if you would like to glance through it and look at your areas. I hope that you vote against this.

SENATOR F. KING: I oppose this legislation. I agree with Senator Disnard about the reformulated gas. I think that we all recognize that that is something that has to go, not only in our boats, but in our automobiles. I think that is progressing. There has to be thousands and thousands of these two-cycle motors that people have bought and paid for. A 14-horsepower Evinrude outboard motor today costs about \$2,500. It appears that the federal government is probable going to outlaw those in 2007. But I think that we should not adopt a policy that is going to force people to make anchors out of their outboard motors if that is what is going to happen if they can't use these motors after January 1, 2002. They are worthless. I think that is terrible, because a lot of these engines are very important to people, and that is how they get their recreation. I think that we should make it clear that these two-cycle engines can continue to be used. I have used those engines for years, and I can tell you that the bodies of water that I can think of that might be affected by this, if there is contamination there, it is not because of outboard motors. Occasionally, somebody may spill a little gas into the river when they are putting gas into their engine, but most of the engines today have separate gas tanks, and you just plug it into the motor. That is something that just doesn't happen. I think to take away people's property over something that doesn't exist is the wrong thing to do.

SENATOR WHEELER: Senator King, I have two things, first of all, would you believe that you are not right? It is happening, that there is a lot more gasoline spillage than you are indicating in your comments, and that the gasoline being used in our boats is probably gasoline that probably contains MTBE? Would you believe that?

SENATOR F. KING: I would believe that the people where you live may be more careless than the people where I live. I will tell you that I have a boat that I keep on the Androscoggin River. I have two fishing boats that I use occasionally, and I will tell you that I do not see gas in the river. I do not see it along the shores of the river where I keep my boat on the Androscoggin River and there are several boats there. If you drop a teaspoon full of gasoline on the water and you see it. It is very obvious.

I will tell you that it doesn't happen. Now where you live, if you want to make this a home rule issue, and if these communities that have...depend on these lakes for their water, if they want to vote it out of existence, that is fine with me, but leave our lakes and rivers alone, because our tourists need them, and our people need them, and it is not fair to take it away. If you want to do away with the gas, do away with the gas, I support that. I don't believe...as I say, I have been running outboard motors for 40 years and I know that occasionally you spill a little on the water and it is very obvious, but the lakes and rivers in the Northern part of this state are not contaminated by people running outboard motors with two-cycle engines.

SENATOR JOHNSON: I just want to add a couple of comments to Senator King and Senator Disnard. We are also dealing with about 300 marinas. Now not all of those marinas stock two-cycled engines, but there is a tremendous amount of impact on the marinas. The other thing is, and I don't know if Senator Wheeler is aware of it or not, and I don't have the information with me, but DES has a very aggressive program going on relative to the issue that we are dealing with here today. They already have 15 marinas, in the short period of time, which is just over a month. They have 15 marinas who have signed memorandums of understanding that they will try to be very aggressive in phasing out the two-cycle engines. Also, to educate the public relative to the spillage of gasoline on the waters. So I would agree with Senator King and Senator Disnard that this piece of legislation should be inexpedient to legislate.

SUBSTITUTE MOTION

Senator Below moved to substitute interim study for ought to pass with amendment.

SENATOR BELOW: I voted for this in committee. I think that protecting our public water supplies is absolutely critical; however, in the meantime, the United States Environmental Protection Agency announced an intention to phase out MTBE. We should not have to choose between clean water and clean air. In light of that, I think that we need to take more time to look at this and look at whether it is necessary in this timeframe, to take this step. Thank you.

Motion failed.

Recess.

Out of Recess.

Senator Wheeler moved to have **SB 406-FN-L**, clarifying water pollution control restrictions, laid on the table.

Recess.

Out of Recess.

A division vote is requested.

Yeas: 12 - Nays: 11

Adopted.

LAIID ON THE TABLE

SB 406-FN-L, clarifying water pollution control restrictions.

SB 411-FN, establishing the New Hampshire returnable beverage container law. Environment Committee. Vote 5-3. Interim Study, Senator Below for the committee.

SENATOR BELOW: I rise in support of the committee recommendation for interim study. New Hampshire does need to reduce, reuse and recycle the packaging products that we use and consume. However, as co-sponsor of this bill, I recognize that this legislation, as introduced, does not fit well with how we recycle in New Hampshire, and we need to examine whether or not it can be amended to enhance the recycling of containers through our local recycling centers already established throughout the state. It is also important to note that bottle bills have proven effective in other states in drastically reducing litter and boosting recycling. In all 11 states that have container redemption laws, however, I understand that the committee's hesitation to go forward with this bill as drafted. It is my hope that by putting the bill into interim study, we may discuss other concepts for consideration not included in the current bill; therefore, I would urge you to support the committee recommendation of interim study for SB 411.

Committee report of interim study is adopted.

HB 246, relative to personnel transfers at the department of safety. Executive Departments and Administration Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill strikes the language which requires concurrence between the fire standards and training commission on changes given prior to the governor and council, prior to them being undertaken to consultation with. There was no one in opposition to the bill.

Adopted.

Ordered to third reading.

SB 337-FN, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations. Finance Committee. Vote 7-0. Inexpedient to Legislate, Senator F. King for the committee.

SENATOR F. KING: Senate Bill 337 was referred to Senate Finance by the Senate Transportation Committee. The Department of Safety determined that this bill as amended would result in increased highway fund expenditures. These costs are arbitrarily to salary, benefits, vehicles, uniforms, vehicle expense and training materials for five new state police officers, salary and benefits for two clerks, and one additional hearings officer. There will also be a one-time expense for computer programming. There was discussion in the hearing on this bill of possible sources of revenue. I think that the testimony did not support that the bill...that the revenue would compensate for the cost of the program. The Finance Committee recognizes that there is a merit in what is attempted to be done with this legislation, but the expenditure of money in a year like this, the Finance Committee didn't feel that we could vote for it. The vote was 7-0 as inexpedient to legislate.

SUBSTITUTE MOTION

Senator Trombly moved to substitute ought to pass for inexpedient to legislate.

SENATOR TROMBLY: As I indicated to the Senate President, Senator Fernald had an amendment to this bill that would strike those portions of the bill that dealt with license renewals, which by far would be the

most significant number of people that are undergoing this check, which would probably reduce, significantly, the amount of money spent on this bill. I am sponsoring that amendment on his behalf. I understand that the sponsor of the bill, Senator Roberge, will speak after, in favor of the amendment. I think that it attempts to strike some sort of a common middle ground on this. The information that I have relative to fee income generated by this is that the state could realize that up to \$840,000. Now if those numbers are suspect, then I think certainly reducing it down by the amount that is needed would not eliminate entirely, the revenue stream that would help support this. I just call your attention to the reason why this was put in. This is a safety measure for the citizens of the state of New Hampshire. This simply says that if people from out-of-state are going to apply for a license here, that we are going to be able to do that check. If these people are stopped on our highways for speeding, we do the check, so why don't we just protect the citizens of the state of New Hampshire, in the first instance, rather than doing it after somebody is hurt or killed in the last instance. I reluctantly support this amendment, out of respect to the sponsor, because I think that we ought to do it on everybody, but in terms of striking a middle ground, I will defer to the judgement of the sponsor, and if she agrees with the amendment, I will go with that.

SENATOR ROBERGE: I urge you to pass this amendment. I do agree with the amendment. I agree with Senator Trombly that I would have liked the original bill. It is more encompassing, but I will settle for just checking the people coming into the state. When a trooper stops someone on the road for speeding, or for some reason, he checks NCIC anyway. It is not a question that NCIC cannot be checked for these people who are coming into our state. I agree that we don't have to wait for a serious accident in order to enact this piece. Safety has said that they don't want to check NCIC for everybody, fine, just check it for the people coming into the state. It is a good compromise. It won't cost anywhere as much money. The other part of the bill that we had would allow for an interest on money owed to the state, penalties owed. We don't do that currently. I think that even if your credit card is late, you have to pay a penalty on that. I think that we should charge interest on money that is owed to the state that is delinquent.

Senator Larsen moved to have SB 337-FN, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 337-FN, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations.

SB 387-FN-L, relative to proposed toll booths in the city of Nashua and relative to alternatives to the state-wide toll booth system. Finance Committee. Vote 7-0. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: Senate Bill 387 was referred to Finance by the Transportation Committee. This bill would eliminate proposed new toll booths being placed at the newly constructed portion of route 3 in Nashua.

It further requires that the commissioner of the Department of Transportation create alternatives to the state's toll booth system. This bill, remarkably enough, has the support of the Department of Transportation. The Senate Finance recommends SB 387 ought to pass.

SENATOR PIGNATELLI: I rise to speak briefly because I know that we have had a long morning, and we are going to have an even longer afternoon. I just wanted to thank the members of the Finance Committee and the members of the Transportation Committee for giving this bill your unanimous support. It makes a big difference, and will make a big difference to my constituents and anyone traveling through the city of Nashua into Massachusetts, and from Massachusetts into New Hampshire. Thank you very much.

SENATOR GORDON: I just wanted to make people aware that there is another bill which will be coming, and it has to do with the Cheshire bridge. What the people in that particular community have asked is that we do away with the tolls on that particular bridge. The only reason that I bring it up now is so that everybody will remember having voted for this today, and that when you have the other vote, you want to vote consistently.

Adopted.

Ordered to third reading.

SB 397-FN-A-L, making an appropriation from the education trust fund for public kindergarten programs. Finance Committee. Vote 7-0. Ought to pass with amendment, Senator Below for the committee.

2000-3896s

04/10

Amendment to SB 397-FN-A-LOCAL

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

AN ACT making an appropriation from the education trust fund for public kindergarten programs and relative to the adequate education grant amount and property tax warrant for the town of Orange.

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

1 Appropriation from Education Trust Fund. Notwithstanding the provisions of RSA 198:39, the sum of \$925,000 is hereby appropriated, for the biennium ending June 30, 2001, from the education trust fund to the department of education for the purpose of funding public kindergarten programs pursuant to 1999, 65:9 as amended by 1999, 281:16. The governor is authorized to draw a warrant for said sum from any moneys available in the education trust fund.

2 Town of Orange; Adequate Education Grant Calculations Revised.

I. Notwithstanding RSA 198:40 through RSA 198:42, for the fiscal year ending June 30, 2001, the total adequate education grant for the town of Orange shall be \$127,287. In addition to the provisions of 1999, 17:52, I, an additional payment of \$11,398 shall be distributed to the town of Orange by June 30, 2000 from the education trust fund for an adequate education grant total of \$127,287.

II. Notwithstanding RSA 198:40 through RSA 198:42, for the tax year beginning April 1, 2000, the state education property tax warrant for the town of Orange shall be \$90, 694.

3 Effective Date. This act shall take effect July 1, 2000.

2000-3896s

AMENDED ANALYSIS

This bill makes an appropriation of \$925,000, for the biennium ending June 30, 2001, from the education trust fund to the department of education for the funding of public kindergarten programs pursuant to 1999, 65:9 as amended by 1999, 281:16. This bill also adjusts the adequate education grant amount for the town of Orange for fiscal year 2000, and adjusts the property tax warrant in the town of Orange for the tax year beginning April 1, 2000.

SENATOR BELOW: The amendment offered by the committee does two things. First it changes the amount that is appropriated out of the Education Trust Fund to \$925,000, which is what was recommended, I believe by the executive branch, I am not sure exactly whom. That is all that is actually needed. I think the Department of Education, based on the kindergarten programs that have been adopted for this biennium at this point.... The other aspect of this bill is that it makes...or this amendment, is that it makes a correction to a situation from the town of Orange. The town of Orange ended up in a situation where they had an approximately \$2 million error in their 1998 assessment. They had included \$2 million on nontaxable land in their assessment, and they sought to correct that, but through a series of glitches, interacting with the Department of Revenue Administration, that was not corrected and they could not procedurally correct it because of the timeliness of when some of the issues were raised. So there is additional language in here that was drafted by the assistant commissioner, the Department of Revenue Administration to correct that error, and to set it right for the town of Orange, so that they end up on the same basis with all of the other towns in terms of their state-wide property tax for education. If you adopt this committee amendment, there will be an additional floor amendment that corrects an error in the committee amendment. Thank you.

SENATOR MCCARLEY: I rise to speak very briefly. I sit on Senate Finance and I was not able to be there. I appreciate what they did. I think that the amendment for Orange is a something that we should definitely do. I also want to say that I think that every now and then it is good to remind ourselves, and in this case, we are actually taking a step that we made a commitment to last spring and summer, and occasionally we get accused of not living up to our commitments, particularly in the education area. I think that this legislation does that in terms of the appropriation. I am certainly very appreciative of the support that the legislation has had. Thank you.

Amendment adopted.

Senator Below offered a floor amendment.

2000-3926s

04/10

Floor Amendment to SB 397-FN-A-LOCAL

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

AN ACT making an appropriation from the education trust fund for public kindergarten programs and relative to the adequate education grant amount and property tax warrant for the town of Orange.

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

1 Appropriation from Education Trust Fund. Notwithstanding the provisions of RSA 198:39, the sum of \$925,000 is hereby appropriated, for the biennium ending June 30, 2001, from the education trust fund to the department of education for the purpose of funding public kindergarten programs pursuant to 1999, 65:9 as amended by 1999, 281:16. The governor is authorized to draw a warrant for said sum from any moneys available in the education trust fund.

2 Town of Orange; Adequate Education Grant Calculations Revised.

I. Notwithstanding RSA 198:40 through RSA 198:42, for the fiscal year ending June 30, 2001, the total adequate education grant for the town of Orange shall be \$127,287. In addition to the provisions of 1999, 17:52, I, an additional payment of \$11,398 shall be distributed to the town of Orange by June 30, 2000 from the education trust fund for an adequate education grant total of \$127,287.

II. Notwithstanding RSA 198:40 through RSA 198:42, for the tax year beginning April 1, 2000, the state education property tax warrant for the town of Orange shall be \$90, 694.

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

2000-3926s

AMENDED ANALYSIS

This bill makes an appropriation of \$925,000, for the biennium ending June 30, 2001, from the education trust fund to the department of education for the funding of public kindergarten programs pursuant to 1999, 65:9 as amended by 1999, 281:16. This bill also adjusts the adequate education grant amount for the town of Orange for fiscal year 2000, and adjusts the property tax warrant in the town of Orange for the tax year beginning April 1, 2000.

SENATOR BELOW: I guess this is the time to get things, when everybody is out eating lunch. The correction is on line 22, the effective date. The effective date becomes effective upon passage. The committee amendment had an effective date that was after some of the events that are to occur in the bill.

Floor Amendment adopted.

Ordered to third reading.

SB 399-FN-A, making an appropriation to the fish and game department for the purposes of the wildlife damage control program. Finance Committee. Vote 6-1. Interim Study, Senator Fraser for the committee.

SENATOR FRASER: Madame President, this bill was referred to Finance by the Senate Wildlife and Recreation Committee. The Finance Committee agreed that although they believe that funding should come from general fund money, it is impossible at this time to appropriate the sum of \$500,000 requested by the department. In other words, we ain't got the bucks. The majority of the committee reported this bill out as interim study.

Senator Larsen moved to have **SB 399-FN-A**, making an appropriation to the fish and game department for the purposes of the wildlife damage control program, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 399-FN-A, making an appropriation to the fish and game department for the purposes of the wildlife damage control program.

SB 438-FN, relative to habitual simple assault. Finance Committee. Vote 5-2. Inexpedient to Legislate, Senator Larsen for the committee.

SENATOR LARSEN: This bill was referred to Finance by the Judiciary Committee. Senate Bill 438 is a well-intentioned attempt to address the issue of repeat offenders of the assault laws, by establishing a new category of assault and classifying it as a Class B offense; however, the fiscal impact resulting from added prosecution costs, increased incarceration when we know that it costs \$19,358 per inmate. The increased cost of probation for the state and county cannot be estimated. As a result, the Senate Finance Committee recommends SB 438 as inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 569, relative to the tax credit for service-connected total disability. Finance Committee. Vote 6-0. Ought to Pass, Senator Eaton for the committee.

SENATOR EATON: This bill resolves a question of eligibility for property tax credits for total and permanently disabled veterans. The bill states that municipalities shall accept certification of total and permanent disability from the United States Department of Veteran's Affairs. The municipality can still question the disability, though they have to furnish specific evidence and allow reasonable review by the applicant. This ensures that there will be a consistent manner to establish eligibility for property tax credits for total and permanently disabled veterans. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1114-FN, relative to creditable service in the retirement system for teachers in a job-sharing position. Finance Committee. Vote 6-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, this bill continues the current practice for determining creditable service of teachers in a job-sharing position. The bill specifies that job-sharing teachers will receive creditable service for the period that they are in the job-sharing position. The bill also clarifies that creditable service for medical benefits shall be calculated at one half of a year's creditable service for each year in that job-sharing position. The committee was unanimous in reporting this out as ought to pass.

Adopted.

Ordered to third reading.

HB 1126, relative to repealing the prohibition on rewards for procuring employment. Finance Committee. Vote 6-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill is a request from the Labor Department. The bill repeals a law enacted in 1911 that prohibited employees from offering gifts or bonuses for procuring employment. The law is archaic and unnecessary in today's labor market. The committee recommends this bill as ought to pass.

Adopted.

Ordered to third reading.

HB 1134, establishing a committee to study mental health care treatment under managed care plans. Finance Committee. Vote 5-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, establishing a committee relative to mental health care under managed care plans is an extremely important issue. Often discussions about medical care revolve around physical ailments, though mental health issues are equally important. A comprehensive study of mental health care will bring forth issues such as choice of care, quality of care, therapy versus drugs, care restrictions, confidentiality, and ethics. The committee was unanimous in reporting the bill ought to pass.

Adopted.

Ordered to third reading.

HB 1374, extending the reporting date for the sex offender issues study committee. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3858s

05/10

Amendment to HB 1374

Amend the bill by replacing section 2 with the following:

2 Membership. Amend RSA 1999, 89:2, I to read as follows:

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

~~(a) Four] Seven~~ members of the house of representatives, one of whom shall be from the criminal justice and public safety committee and one of whom shall be from the judiciary committee, appointed by the speaker of the house.

~~[(b) Three members of the senate, appointed by the president of the senate.]~~

SENATOR TROMBLY: This bill just simply extends the deadline from the study committee that was established last session. There was a great deal of controversy and input regarding this bill and they didn't get to finish their investigation in time. It is a very serious subject and they want to extend their deadline. That is the sole purpose of this bill.

Amendment adopted.

Ordered to third reading.

HB 1435, establishing a committee to study the immediate and long-term impact of changing methodology of communications and information technology as it applies to the right-to-know law. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-3863s

01/09

Amendment to HB 1435

Amend the bill by replacing section 4 with the following:

4 Chairperson. 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 house member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

SENATOR PIGNATELLI: House Bill 1435 establishes a committee to study electronic media and the right to know law. As technology advances

and email and the Internet become more prevalent in our society, policies need to be developed regarding the right to know law. Currently there is not a lot of information at the federal or state levels and what the standards should be. The committee amendment removes the quorum requirement. The Senate Judiciary recommends HB 1435 as ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

HB 1508-FN, establishing a study committee on antitrust laws as they apply to hospital business practices. Judiciary Committee. Vote 4-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3861s

09/01

Amendment to HB 1508-FN

Amend paragraph I of section 2 of the bill by replacing it with the following:

I. The committee shall consist of 7 members of the house of representatives, appointed by the speaker of the house.

Amend the bill by replacing section 4 with the following:

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

SENATOR GORDON: This bill would simply create a House study committee. The House felt that it was in the best interest of the legislature to study the antitrust laws and how they apply to hospital practices within the state of New Hampshire. The amendment would have eliminated the Senate members and made it a seven member House Committee.

Senator Pignatelli moved to recommit.

SENATOR GORDON: Senator Wheeler, since this is just a House committee and it wouldn't include Senate members, why is there a need to recommit it and look at it?

SENATOR WHEELER: Senator Gordon, because a lot of the members of the committee were not present. Half the committee was not present when we heard it, and had the executive session on it. Since then, I have learned about another bill that is coming over from the House that has similar topic and I am wondering how many bills that we want on these kinds of topics. I am also wondering if it is even appropriate to be talking about antitrust laws as the legislature, instead of the attorney general. In any event, recommitting it, just allows the committee to look at it more carefully, with all of the members present.

Adopted.

HB 1508 is recommitted to the Judiciary Committee.

SB 429-FN, relative to claims before the state commission for human rights. Judiciary Committee. Vote 3-0. Ought to Pass, Senator Pignatelli for the committee.

Senator Pignatelli moved to have **SB 429-FN**, relative to claims before the state commission for human rights, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 429-FN, relative to claims before the state commission for human rights.

SB 433, relative to the age at which a minor may purchase or possess handguns and ammunition. Judiciary Committee. Vote 2-1. Ought to Pass, Senator Pignatelli for the committee.

Senator Pignatelli moved to have **SB 433**, relative to the age at which a minor may purchase or possess handguns and ammunition, laid on the table.

A division vote is requested.

Yeas: 11 – Nays: 10

Adopted.

LAIID ON THE TABLE

SB 433, relative to the age at which a minor may purchase or possess handguns and ammunition.

SB 436-FN, relative to permanent revocation of driver's licenses for causing a fatality or serious injury while driving intoxicated. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-3834s

05/09

Amendment to SB 436-FN

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

AN ACT relative to permanent revocation of drivers' licenses for causing a fatality or serious bodily injury while driving intoxicated.

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Permanent Revocation of License for Motor Vehicle Fatalities Where Driver was Under the Influence of Drugs or Alcohol. Amend RSA 263:56 by inserting after paragraph V the following new paragraph:

VI.(a) Permanent revocation of a driver's license shall be mandatory and automatic where the driver, impaired by drugs or alcohol at the time of the incident, is found guilty of having caused a motor vehicle fatality or serious injury by a court of competent jurisdiction. If the driver is licensed in another state, the director shall notify the driver's home state that a notation should be made on the driver's record of permanent loss of driving privileges in New Hampshire.

(b) If a person is found guilty of driving after permanent license revocation under subparagraph (a), he or she shall be sentenced to a mandatory 3-year term of imprisonment.

(c) The driver may petition the sentencing court after 15 years from the date of the loss of license to have the license reinstated, if the driver can demonstrate good cause for the reinstatement.

2000-3834s

AMENDED ANALYSIS

This bill requires permanent revocation of an individual's driver's license when convicted of causing a motor vehicle fatality or serious bodily injury while under the influence of drugs or alcohol and requires a 3-year

mandatory prison term for driving after such a permanent license revocation. The bill also provides a mechanism for requesting reinstatement after 15 years.

SENATOR TROMBLY: Madame President and members of the Senate, I ask that you pass this bill as amended. The amendment removes the penalty for serious bodily injury, and it also provides that a person can reapply for his or her license 15 years after their end of the sentence. It keeps in the bill, the requirement for a lifetime loss of a license upon the death...an accident caused by DWI. If someone commits a murder in this state with a gun, they don't get their gun back. If somebody drives and is irresponsible enough to drive while they are drunk and causes an accident with a fatality, then they shouldn't be driving again, period. I believe that the majority of the committee thought that that might be a little bit too strict, and that people should have the opportunity, if they rehabilitate themselves, to reapply for their license, and that is why we have the amendment with 15 years. I would much rather pass this bill and send the message that accidents caused by drunks, which result in a fatality, are not going to be treated lightly, and the penalty is the loss of your driving privilege for life. Thank you, Madame President.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

HB 1110, establishing a committee to study landlord-tenant issues. Public Affairs Committee. Vote 3-0. Ought to pass with amendment, Senator Eaton for the committee.

2000-3852s

05/09

Amendment to HB 1110

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

I. The members of the committee shall be 4 members of the house of representatives, appointed by the speaker of the house.

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

Amend the bill by replacing section 4 with the following:

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

SENATOR EATON: While this is an often debated and studied issue, this committee will be investigating a means to deal with businesses as the tenant. The current statutory provisions were put into place to protect people from being evicted from their homes without due process and notice. Those provisions do not necessarily apply to a business that has been delinquent in paying its rent. The committee amendment removes the Senate appointees and makes it a House study committee. The Public Affairs Committee recommends that HB 1110 be ought to pass as amended. Thank you.

Senator McCarley moved to recommit.

Adopted.

HB 1110 is recommitted to the Public Affairs Committee.

HB 1168, establishing a committee to study the merits of limiting the use of social security numbers as identifiers. Public Affairs Committee. Vote 3-0. Inexpedient to Legislate, Senator Eaton for the committee.

SENATOR EATON: While the use of social security numbers for all sorts of databases and for tracking purposes has become more and more common, the Public Affairs Committee feels that social security is a federal identifier. It is not within the state's prerogative to decide how to limit the use of a federal entity; therefore, the Public Affairs Committee recommends that HB 1168 be inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 1196, giving the police department of Lincoln authority to respond to emergency situations and exercise police duties in the unincorporated place of Livermore. Public Affairs Committee. Vote 3-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: Livermore is an unincorporated place where there is no houses and no residents, but the fact that it has a road requires, from time to time, police respond to incidents which may occur on the road. The town of Lincoln's police chief wrote to us and said that they will gladly accept the responsibility of exercising their police powers in this place where nobody lives, and we were glad to give it to them. Thank you, Madame President.

Adopted.

Ordered to third reading.

HB 1523, relative to landlord-tenant obligations. Public Affairs Committee. Vote 3-0. Ought to Pass, Senator Disnard for the committee.

SENATOR DISNARD: House Bill 1523 extends payments on behalf of tenants to include payments by voucher from the state or county or any other organization that disperses state or federal funds. House Bill 1523 is a benefit to both landlords and tenants. It helps tenants to pay up rent that is owed. The Public Affairs Committee received no testimony in opposition to this bill; therefore, the committee recommends that HB 1523 be ought to pass.

Adopted.

Ordered to third reading.

SB 306, relative to landlord access to a tenant's premises. Public Affairs Committee. Vote 3-0. Interim Study, Senator Trombly for the committee.

SENATOR TROMBLY: This was a bill that the committee heard. It had some competing interest obviously between landlords and tenants. The situation currently exists in order for a landlord to go into an apartment at a certain time, they may have to go to court and get a court order. There was an amendment that was being drafted that would have listed specific times and reasons for an entry into an apartment, then there were questions by the landlords that if you make this bill specific as to those times, and for those reasons, and another reason comes up, which may be just as good, will the court look at this and say that it is not on the list, therefore, you can't do it. So we tried to iron out those wrinkles and study this bill and get it back for next session. Thank you, Madame President.

Committee report of interim study is adopted.

HB 1206, extending the reporting date of the committee studying alcohol and drug abuse prevention. Public Institutions, Health and Human Services Committee. Vote 3-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: I am really pleased to rise in support of HB 1206, which I honestly don't think that is controversial. This extends the reporting date of the committee studying alcohol and drug abuse prevention. This committee worked very hard throughout the summer months to raise the visibility and priority of prevention efforts in the state of New Hampshire. In fact, the members of this study committee encouraged and were successful, in convincing commissioner Shumway that the Bureau of Substance Services should be raised to the level of a division, so as of just a few months ago, DHHS has a new Division of Alcohol and Drug Abuse Prevention and Recovery. The very dedicated members of this House study committee wish to continue their work and have requested that we extend their reporting date until November 1, 2000. I would urge you to grant their request and vote HB 1206 ought to pass.

Adopted.

Ordered to third reading.

HB 1594, relative to the allocation of moneys in the tobacco use prevention fund. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill brings us to the end of a very long road, in which many of you participated in for which the citizens should be grateful. It allocates \$3 million from the tobacco settlement money. If you look on page two, line 25, you will see the breakdown of how that money is spent. Those numbers are not arbitrary. They grow out of this publication which is the comprehensive tobacco prevention and control plan for New Hampshire. You will find in here, based on the recommendations of the CDC, how this money may be spent to the best advantages. One of the things that we heard in the last committee was a remarkable group of young people from Dover who have engaged themselves in this issue. They have gone out and they made commercials, and they have prompted the wearing and use of this sweatshirt. It says, "The Dover Youth to Youth New Hampshire" and on the back it says, "Fight back - don't smoke". We heard this from juniors and seniors in high school and from a sixth grader. It was most impressive. It is that kind of program that organizations can apply for support on line 28, the \$1.25 million. This is the first time that New Hampshire has spent any of its money on this problem. Hitherto, we have had something in the neighborhood of a \$300,000 grant from the CDC. This is our money, finally going in the direction that it should. This bill was heard in committee and it remains unchanged by design. Hopefully, it will now pass and the House will agree with it and the governor will sign it, and we will be on our way.

SENATOR LARSEN: I want to quickly rise and support the passage of this bill and to point out that the student from Dover were in fact very clever; and the other sweatshirt which Senator Squires did not bring said, "Don't smoke or you will get camels breath".

SENATOR FERNALD: I just want to rise to commend Senator Squires for all the work that he did on this. He really held strong for the need to put some money out of the tobacco settlement into prevention plans, and now we are finally there. I think that it is a great thing. Thank you.

Adopted.

Ordered to third reading.

SB 311, relative to the recovery of public assistance. Public Institutions, Health and Human Services Committee. Vote 7-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3851s

05/09

Amendment to SB 311

Amend the bill by replacing sections 3 and 4 with the following:

3 Recovery for Assistance Furnished. Amend RSA 167:13 to read as follows:

167:13 Recovery for Assistance Furnished.

I. Except as provided in paragraph II, if at any time during the continuance of assistance, the recipient or the husband or wife of the recipient becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient within 10 calendar days to notify the commissioner of the department of health and human services of the receipt or possession of such property or income. On the death of a recipient of [old age] assistance or aid to the permanently and totally disabled, the total amount of assistance paid under this chapter or RSA 161 shall be allowed as a claim against the estate of such person after payment of the charges in the priority set forth in RSA 554:19. No claim shall be imposed against the real estate of a recipient of old age assistance or aid to the permanently and totally disabled while it is occupied as a home by a surviving spouse, or against any personal property of less than \$100 in value. The federal government shall be entitled, as long as required as a condition to federal financial participation, to such proportion of the net amount collected from the estate of a recipient of old age assistance or aid to the permanently and totally disabled as the federal participation bears to the total amount of assistance granted said recipient.

II. Notwithstanding paragraph I, for medical assistance, no resources of the community spouse shall be deemed available to the institutionalized spouse during the continuous period in which an institutionalized spouse is in an institution, and after the month in which an institutionalized spouse is determined to be eligible for medical assistance benefits.

III. The department may waive adjustment or recovery in cases in which:

(a) It is not cost-effective to recover from an individual's estate; or

(b) Recovery would result in an undue hardship as determined in accordance with rules adopted pursuant to RSA 541-A.

4 Claims and Liens. RSA 167:14 is repealed and reenacted to read as follows:

I. The estate of every recipient and the estate of a recipient's spouse, if any, owned severally or as joint tenants, shall be liable for all financial old age assistance or aid to the permanently disabled granted to the recipient; provided, however, that the estate of a recipient's spouse shall be liable only for such financial assistance as was granted to the recipient during the time that the recipient and the recipient's spouse were neither legally separated nor divorced. After providing all owners of the real property with prior notice and an opportunity for a hearing, the commissioner of the department of health and human services shall file with the register of deeds of the county in which the recipient, or the spouse of the recipient, if any, owns real property, notice of the lien. Such notice of lien shall contain the names

of the recipient and the recipient's spouse, if any. All such liens shall continue during the lifetime of the recipient and of the spouse of the recipient, if any; and until enforced as provided in this section, unless sooner released by the commissioner of the department of health and human services. The register of deeds shall keep a suitable record of such notices of lien without charging any fee therefore and enter on the record an acknowledgment of satisfaction or release upon written request from the commissioner of the department of health and human services.

II. Subject to RSA 167:16-a, the estate of every recipient shall be liable for all medical assistance granted to the recipient, and the commissioner of the department of health and human services shall file a claim for recovery against the recipient's estate. No notice of lien may be filed against real property with respect to medical assistance except in conformance with RSA 167:16-a.

2000-3851s

AMENDED ANALYSIS

This bill clarifies the procedure for the placement of liens and the recovery of certain categories of public assistance provided by the department of health and human services.

SENATOR GORDON: Senate Bill 311 is in response to a lawsuit which was brought against the state of New Hampshire. The Defosses versus New Hampshire case ended up in a legal settlement. The suit arose out of the fact that the state of New Hampshire was being very aggressive in seeking reimbursement for Medicaid expenses. Aggressive to the point where it was putting liens on people's houses in conflict with what was believed to be federal law. As a result, there were needed changes in statutory law in order to comply with the settlement agreement and SB 311 does that. The amendment also...with suggestions that were brought up at the hearing, also were intended to make the law comply with the new or the settlement agreement.

Amendment adopted.

Ordered to third reading.

SB 322, extending the needle exchange pilot program. Public Institutions, Health and Human Services Committee.

MINORITY REPORT: Inexpedient to Legislate, Senator Krueger for the committee. Vote 2-4

MAJORITY REPORT: Ought to Pass, Senator Wheeler for the committee. Vote 4-2

SENATOR KRUEGER: I rise in opposition to SB 322, however, I want it to be known that my opposition is basically on common sense. I would like to make it clear that I am not opposed to HIV and AIDS prevention. I am not opposed to services for the 6000 intravenous drug users in the state. By my background in healthcare, I am well aware also of some of the benefits that a needle exchange program may have in reducing the spread of HIV and other blood borne diseases. However, I do oppose the extension of a needle exchange pilot program that the New Hampshire citizens do not want. This Needle Exchange Pilot Program was originally established in **TAPE CHANGE** I do not believe that we should continue to extend this program or any program, for that matter, for which it appears, no community or local support exists. Therefore, I will vote this bill inexpedient to legislate, and I hope that if you agree with me, you will do the same. Thank you.

SENATOR WHEELER: I rise in strong support of SB 322. It is true that no community has come forward in the two years since we passed this Pilot Program. But there are many fears and misconceptions that surround this issue. They obscure the facts in many cases. I believe that we should allow communities more time to address and overcome their fears. This time extension is needed to educate individuals within New Hampshire communities about needle exchange programs. During his testimony on this legislation, Senator Trombly noted that he is aware of at least one city that has shown interest in the program. As HIV is a serious health issue, I believe that the Pilot Program should be extended. In fact, while attending a recent meeting of one of the study committees that I attend pretty regularly, the Women's Health Care Study Committee, I learned that HIV infection and AIDS is the leading cause of death for all persons 25-44 years of age. Scientific research indicated that needle exchange programs such as the one proposed by this bill, can reverse the course of an AIDS epidemic within a drug-using population. Doctor William Kassler, testified on behalf of DHHS in support of this legislation. He stated that there are an estimated 6000 injection drug users in New Hampshire. According to the doctor, these individuals are at high risk for infection with HIV and other blood borne infections such as Hepatitis B and Hepatitis C every time that they use a syringe previously used by another injection drug user. He cited that in New Hampshire, over the past five years, 24 percent of new cases of HIV have occurred among injection drug users. He explained that if this needle exchange program were implemented, there would be a one for one exchange of used for clean syringes so that the problem would not increase the number of syringes in circulation. I will just summarize why DHHS supports this bill. There are three key reasons. First, there is strong scientific evidence that syringe exchange programs will reduce the level of HIV infection and other blood borne diseases. Secondly, after thorough evaluation, there is no evidence that syringe exchange programs will increase drug use. Thirdly, SB 322 respects community values by placing the volunteer Pilot Program within the confines of local control, and will be operated without the use of any state funds. This legislation is also necessary due to the fact that by law, the state of New Hampshire currently regulates needles. However, the New Hampshire House of Representatives recently passed a needle deregulation bill that would no longer require a prescription to purchase needles. I hope that this related bill will also pass here in the Senate. It has been proven across the country that needle exchange programs are both effective and successful in preventing the further spread of AIDS and HIV, therefore, I urge you to consider voting in favor of the extension of this Pilot Program. Thank you.

SENATOR TROMBLY: I think that or to the contrary, common sense dictates that we should extend this pilot program. Part of the problem with establishing an effective needle exchange program, it is an issue that has been highly politicized by people that believe that giving or making available to IV drug users, clean needles will somehow appear to be soft on crime. What happened was, in order to get this bill passed through the House and the Senate, we had to essentially narrow the communities for which this program was available. One of the reasons that it may not have been put into place to date, because that field may be too narrow, but quite frankly, those of us who are concerned about the spread of AIDS through the IV drug using community and believe that this is the solution to slowing the spread of AIDS, aren't going to fight that battle again. We are willing to take what we have. The problem is, that

many people who make the decisions as to whether or not their community will be the one that introduces this program, continue to see this as a political problem and not a health problem. I would remind you that the largest population, the increase of AIDS in the last few years has been among women, and IV drug-using women, or women who become pregnant through an IV drug-using man, can spread the disease to their child, to the baby. The scientific evidence is overwhelming that these programs work. Scientifically this bill makes sense. There is a community that is interested in doing this, but quite frankly folks, two years was not enough time for them to resolve the issues about which I spoke earlier. It is my sense that if we extend this for six years, we will be able to do the work within those communities to overcome the fears of the elected and appointed officials to date who have disagreed with this. It is a scientific health issue, it is not a political issue. The fact that it hasn't been used doesn't speak to the reason to kill the bill, it speaks to the reason why we should extend it so that we can prevent the spread of HIV. Thank you.

SENATOR GORDON: I rise to speak in opposition to the ought to pass. I guess common sense is in the eye of the beholder. I am not going to pretend that my perception of common sense is what anyone else might want to have, but I don't disagree with anyone in regard to their concerns in regard to HIV infection or the spread of AIDS or the health concerns, but I think that there is a practical concern in regard to this bill. I think that the practical concern is that it actually does those causes a disservice to extend the date. One of the reasons...I think that Senator Trombly was very honest in his approach, when he said that the only way that we could get the needle exchange program passed was to narrow it down to one community. But we have seen over the past two years is that no one wants to be the one community with the needle exchange program. Practically. That makes a whole lot of sense, because if this is a statewide problem, why would you say that we are only going to deal with the problem in one community? So I think that by extending the pilot program and making it apply to one community, we end up in fact, doing ourselves a disservice. If in fact we are going to have a pilot program and we want it to be a meaningful pilot program, from my sense of common sense, then what we ought to do is to identify users statewide, and have a pilot program that would apply on a statewide basis. I am going to oppose the ought to pass only because I think that by having one community identified and putting ourselves in a situation where no community wants to step forward, we are actually doing...this particular program and the healthcare concerns that go along with it, a disservice.

SENATOR TROMBLY: Senator Gordon, would you believe that the extension is not for one singular community? The extension...the original legislation applied to the urban areas of this state and did not apply to the rural areas of the state, and there were reasons for that due to the concentration of the drug-using problem, the ability to get to these type of people and not seek them out. There are other healthcare facilities in those more urban areas where the IV drug users could gain access to the needle. Would you believe, Senator Gordon, that if I said that it is one community in the bill, it is not, it is extended to the communities, the urban areas that would accept it?

SENATOR GORDON: Yes, and I understand that, but basically, the pilot is to be done on a community basis as you're aware, so if I meant to say that it could only be done in one community, that wasn't my inten-

tion, but it is to be...as you indicated in your testimony, that this was to be done on a local basis, and that was the only way that we could get the bill passed. What I am saying is that I am not sure if we want to have a statewide pilot, that that is the best approach, in fact, I feel very strongly that it is not the best approach. If we wanted to have a pilot program, it should be done on a statewide basis because the problems that we are talking about don't find themselves contained in municipal bounds.

Question is on the motion of ought to pass.

A roll call was requested by Senator Trombly.

Seconded by Senator Wheeler.

The following Senators voted Yes: F. King, Below, McCarley, Trombly, Disnard, Fernald, Squires, Pignatelli, Larsen, J. King, D'Allesandro, Wheeler, Hollingworth, Cohen.

The following Senators voted No: Gordon, Johnson, Fraser, Roberge, Eaton, Francoeur, Krueger, Brown, Russman, Klemm.

Yeas: 14 - Nays: 10

Adopted.

Ordered to third reading.

SB 323, relative to certificate of need applicants. Public Institutions, Health and Human Services Committee.

MINORITY REPORT: Inexpedient to Legislate, Senator Wheeler for the committee. Vote 2-4

MAJORITY REPORT: Ought to pass with amendment, Senator Gordon for the committee. Vote 4-2

2000-3843s

01/09

Amendment to SB 323

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

AN ACT relative to ambulatory surgical facilities in service areas of rural hospitals.

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

1 New Paragraph; Definition Added. Amend RSA 151-C:2 by inserting after paragraph XXXIV the following new paragraph:

XXXIV-a. "Rural hospital" means a hospital that has less than 70 beds licensed by the department of health and human services.

2 Threshold Limits. Amend RSA 151-C:5, II (f) to read as follows:

(f)(1) *Except as provided in subparagraph (2)*, the construction, development, expansion, renovation, or alteration of any nursing home, ambulatory surgical facility, rehabilitation hospital, psychiatric hospital, specialty hospital, or other health care facility requiring a capital expenditure of more than \$1,000,000. The board shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.

(2) *The threshold amount for construction of ambulatory surgical centers within the service area of a rural hospital shall be \$500,000, unless there is an objection by the rural hospital, in*

which case the application shall be subject to review regardless of value. The board shall determine by rule the service areas of rural hospitals.

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

2000-3843s

AMENDED ANALYSIS

This bill lowers the threshold amount necessary for certificate of need review of the construction of ambulatory surgical centers within the service areas of rural hospitals.

SENATOR WHEELER: I rise in opposition to SB 323 and in support of the minority report of inexpedient to legislate by the committee. We had extensive debate on these issues last year. We made some legislative changes to the CON Board. We haven't even given those changes a year to operate, and we are still back tinkering. We had a study committee that was doomed to failure at the outset, by the way in which the members were chosen. I was one of those, so I can speak without criticism of any individual member, but there was no possibility of a real study of the issue the way that study committee was set up. We haven't begun to talk about the important issues regarding the certificate of need process. We are still stuck in this notion of is a threshold going to be a \$1 million, or \$1.2 million or \$500,000? That really should not be the question that we are discussing. Tinkering with it, the way that this amendment does, is not going to further the process, it is simply going to create a Trojan horse that any other amendment can be put on, either today, or in the House. It is the wrong message to send, that we just want to fiddle around and not let the process work the way that it should work by having a real study of what we really want to determine, need, capacity, what the costs should be. Believe me, these thresholds won't do it. Even if you accepted this amendment, it has a premise in it that says that there must be something threatening about the ambulatory surgical centers, because a hospital of 70 beds or fewer could be hurt. There is a premise in this amendment that there is a problem with ambulatory surgical centers. So if you accept that premise and adopt the amendment, if a hospital of 70 beds or fewer can be hurt by one ambulatory surgical center, couldn't two ambulatory surgical centers hurt a hospital with 140 beds or more? Do the numbers. This doesn't make sense. There are some other problems with it. What if someone other than a rural hospital objects? What if there is another group of doctors in the area that objects? Why should only a rural hospital be allowed to have an objection? Also, it says that the board is going to determine the service area of a rural hospital. In some cases, those areas are going to be very hard to determine. There are overlaps between rural hospitals and non-rural hospitals, if we are going by the bed determination that is in our statute. I think that this is a poorly conceived amendment. It is a poorly conceived piece of legislation. There is no need to pass this now. Let's do a real examination of this issue in an unbiased fashion as possible and see what legislative changes need to be made in a thoughtful way. I urge your defeat of this.

SENATOR GORDON: "Let's do a real examination of this issue". That was the way that Senator Wheeler just finished, but the way she started was to say that we did that last year, and it didn't amount to anything. This is an issue that I really don't want to be in the middle of. It is one that I have pretty successfully avoided so far, unfortunately, I have this

predisposition that no matter what the problem is, that if you have reasonable minds, that eventually those reasonable minds can come together and find a solution to a problem. Well, I am not sure that is the case here. The reason that it isn't the case here is because we don't have reasonable minds. I am frustrated as anyone over this issue. It is not an issue that I want to deal with on the floor of this Senate. I have two hospitals in my Senate District. One is the Cottage Hospital up in Haverhill and I have the Plymouth Hospital up in Plymouth. I have people in my Senate District that go to the hospital in Franklin, I have people in my district that go to the hospital in New London. I have people in my district that go to the hospital in Littleton. They are all small hospitals. Throughout this debate for the last four years, I continue hearing "Ned, if anybody should be sensitive to the CON issue, you should be, because all of those hospitals are vulnerable. Those are the most vulnerable hospitals in the state." I am a member of the Association at the Franklin Hospital. The Franklin Hospital lost \$.5 million last year. They can't afford to have a surgical center open up in its community, and I understand that. It can't siphon away any more money from that small hospital. It is a lot more vulnerable than Laconia Hospital or the Concord Hospital or Manchester Hospitals. I had a meeting two weeks ago, two weeks ago tomorrow, and I was summoned by the hospitals in my district. There were four hospitals there. Those four hospitals said, "Ned, you have to understand our problem. You have to do something to protect us, because we are on the edge. We are going to be like the Newport Hospital." Does anyone remember Newport Hospital ten years ago? Now, defunct, out of business. Now, right now, next door, you have Claremont Hospital. Claremont Hospital is probably in the worst financial shape of any hospital in the state. Now where are the people from Newport going to go next? Concord? Over to New London for as long as that stays alive? The reason that this amendment is here, is simply to protect those hospitals that are most vulnerable...and is there any one of you that can sit there in their seat and say that these aren't the most vulnerable hospitals in the state and the least able to care for themselves? What this amendment does is to lower the threshold in the rural communities. The reason that 70 beds was chosen is that is a standard that is used by the federal government. Seventy beds, describing a rural hospital. Health and Human Services already defines the service areas for rural hospitals. I can't tell you how frustrated I am right now. As I sat in that meeting two weeks ago with these hospitals, they told me that I have to do something. So we sat out and we did this very amendment, lowering the thresholds so that under \$500,000 it would go to the CON Board, no matter what. The way that this amendment says, that the hospital can object to any size, from dollar one for an ASC. They can send it to the CON Board. The small hospitals were delighted. Now I hear that they may be opposed. Now why do you think that they would be opposed? Because the issue is a political issue. Are they representing their constituents? Because if they don't have it apply to everybody in this state, the big hospitals, the middle-sized hospitals, they don't want it. What I am saying is that I am more interested in my constituents than I am in the hospital administrators. If there were ever an issue for that anti-trust bill, and maybe it was a good idea that it should be recommitted, this is it. I am disgusted with this CON process. You are absolutely right, Senator Wheeler, as this was indicated in committee, this is all about thresholds, it is no longer about need. It is all about thresholds. What I am saying is that if you are truly concerned about the hospitals in this state, if you are truly concerned about those small

hospitals in the state, then you ought to be voting for this. There are 11 small hospitals under 70 beds. Alice Peck Day in Lebanon, Woodsville, Franklin, Wolfeboro, Littleton, North Conway, Peterborough, Plymouth, Colebrook, Claremont and Lancaster. Maybe you don't care about them in Nashua, and maybe you don't care about them in Manchester or Dover or Portsmouth or even Keene, but I am telling you that it is important. I care about them. These are mostly North Country hospitals. I care about healthcare in the North Country and I want to see them protected. I am asking for your support. I know that probably most of you made commitments before you ever came here today. But I am asking you to think about those commitments. I am asking you to think about these people, and I am asking you to not think about politics or which lobbyists you talked to last, but I am talking to you about these people, the constituents that have these hospitals in their communities and would like to see them stay there. I am asking for your support and I would really appreciate it.

SENATOR SQUIRES: I rise in support of the amendment. I, too have had some difficulty in getting people together here. But I also have pursued it on my own and the issue, to me, is the small hospital. Now the issue, as always, in this sort of debate, comes down to money. We are talking about a surgery center that might have one operating room in it, at most, or two. Let me read you the revenue figures of the top seven hospitals in New Hampshire. Two hundred and ninety-two million, that is the Mary Hitchcock, \$196,000,000, \$170,000,000, \$182,000,000, \$135,000,000, \$117,000,000 and \$89,000,000. Now a surgical center going into that environment is not going to have the same impact, let's start at the bottom. Here is the hospital in Senator King's town, \$7 million. You can't tell me that a surgery center is going to have the same impact on a hospital in the top six, making \$170 million as one in the lower part making \$7 million. Of course it is going to have an impact. Now it would be nice to wait. Economics does not wait. Not for anybody. If there is money to be made out there, someone is going to make it. We could move up \$27 million, \$16 million, \$15 million...those are small revenue figures for a hospital. Those are the bottom five. Weeks, Cottage, Spears, Memorial and North Conway and upper Connecticut Valley. The amazing thing about this debate is that every time I have discussed it, these hospitals are acknowledged by their administrators and by the industry to be vulnerable. Here is a bill that tries to protect it and yes, the certificate of need is...I have come to believe, is a certificate of threshold, that is what it is all about, need is irrelevant at the moment. It is absolutely correct that the thing needs to be looked at and study the procedures as rules, basic philosophy. But today, these hospitals are in danger. It would seem to me, if I was running a \$6 million hospital, and I saw a surgery center coming along, I would be nervous, and we all should be nervous. This is a start. It is looking after those that are vulnerable. We ought to pass it.

SENATOR MCCARLEY: I rise to speak very briefly. I don't think that it is a matter of not listening to our constituents and listening to a lobbyist or an administrator. I am not going to stand up today and take exception, because I get tired of us all asking exceptions from one another. But I think that I have a reasonable mind, and I think that I can reasonably disagree on this issue. I do believe that we indeed have thrown out the concept of need, and I think that is where our first and fundamental mistake was made. I think that we have tried to start to correct that by re-balancing a board that people had a lot of issues with. As Senator

Wheeler said, it has been in place a year, I think. But I represent a community which hasn't been mentioned here today, which is slightly over 70 beds. I think that it does a lot of community service. I think that it has shown itself in the last several years to be very committed to community service, and it feels this kind of policy implications associated with passing a notion of who you protect or don't protect, indeed, could place it in a very precarious position. Now I have had people say to me, so raise it to 75 beds, raise it to 72. Those are capricious, arbitrary suggestions that I can't right now, support for any particular reason. So I would argue very much with Senator Wheeler. There is no, in my opinion, particular reason to pass this right now. If that is viewed by members of this body, that I don't care about healthcare in the North Country or the small hospitals, I do take exception to that, but I would say that this is right now, simply one more tinkering that does not need to happen now.

SENATOR FERNALD: Those of us on this committee really have gone around and around on this in the last year. It is an important issue of economics. I happen to be a supporter of the idea of free competition in the marketplace, so I listen to what people who support the ambulatory surgical centers say, and the idea that this would add competition, but on the other hand, we have hospitals that are required by law, to carry non-economic services, and most importantly, emergency rooms, which they use other parts of the basket of services that they provide to balance things out. Yes, I have heard from the administrator of my hospital. He said, that ambulatory surgical centers are a threat. It is important to note that the piece of the proposal that is in litigation is a group that feels they were below the \$1 million threshold. If I have my facts straight, there is another group of doctors in Newington, that have a similar sort of proposal which is below \$1 million, and either have gone through the process or is in the pipeline to be below the threshold. My point in that is that it is possible to build an ASC for less than \$1 million, which means that as the law stands now, a small hospital can be jeopardized. I said that I had spoken to the administrator of my hospital. I also heard from a surgeon who presumably could get together with other doctors and form an ASC and make some money. He said that an ASC in that community would kill that hospital. I think that he is putting the hospital ahead of whatever his personal gain could be to do an ASC. I think that this amendment is a good idea. I agree that the thresholds are arbitrary. I agree that 70 is arbitrary, but you have to draw a line somewhere, and right now, we have a law that draws a line. I think that this makes sense to say that any ASC that is affecting a small hospital has to show need. At least in the terms of the hospitals that are above 70, this does not change how they are affected by the ASC process, so it is not hurting the big hospitals, it is just acknowledging that the small hospitals are in a different situation.

Question is on the adoption of the amendment.

A roll call was requested by Senator Wheeler.

Seconded by Senator Gordon.

The following Senators voted Yes: F. King, Gordon, Johnson, Below, Roberge, Fernald, Squires, Francoeur, Krueger, Brown, J. King, Russman, D'Allesandro.

The following Senators voted No: Fraser, McCarley, Trombly, Disnard, Eaton, Larsen, Wheeler, Klemm, Cohen.

Yeas: 13 - Nays: 9

Amendment adopted.

Senator Fernald offered a floor amendment.

2000-3939s

01/09

Floor Amendment to SB 323

Amend RSA 151-C:5, II(f)(1) as inserted by section 2 of the bill by replacing it with the following:

(f)(1) *Except as provided in subparagraph (2)*, the construction, development, expansion, renovation, or alteration of any nursing home, ambulatory surgical facility, rehabilitation hospital, psychiatric hospital, specialty hospital, or other health care facility requiring a capital expenditure of more than \$1,000,000, *including land, but excluding medical equipment*. The board shall, by rule, adjust the capital expenditure threshold annually using an appropriate inflation index.

2000-3939s

AMENDED ANALYSIS

This bill lowers the threshold amount necessary for certificate of need review of the construction of ambulatory surgical centers within the service areas of rural hospitals. The bill also excludes medical equipment from being considered in the threshold level of certain other facilities.

SENATOR FERNALD: If you look at this amendment and put it side by side with the amendment that we just voted on in the Senate Calendar, this is replacing paragraph F-1. The difference is the highlighted words that say, "Including land but excluding medical equipment." Let me explain what this is about. We had a discussion about this in committee and we went around and around on it. In the law, as it stands now, we have this requirement of a threshold if you are going to construct, develop, expand, renovate or alter any nursing home or ambulatory surgical center and so on. I read the law as saying that we are talking about the cost of developing the building. We are talking about bricks and mortar. The question that has come up in the...before the CON Board is, does land count towards the \$1 million, what you paid for the land before you begin building? And what about equipment? The purpose of my amendment is to preserve what I believe is the intent in the statute. You can disagree with me if you wish, but I believe that when they are talking about construction and development, that land should be counted. But I don't think that equipment should be counted. The reason for that is that we have a separate threshold for equipment that is in a different paragraph, at \$400,000. There has been discussion here about, well we have changed the CON Board and we have to let the process work and so forth, but what has been happening in the CON Board is they are now taking the position that land and equipment count as to whether or not you are over or under the threshold. Making equipment count doesn't make sense to me. So I propose this amendment to clarify what the statute, in fact, means. I believe that what my amendment is doing is restating what the law has always intended, which is that land is part of the development costs, but equipment is not. That is a separate threshold and a separate question. Thank you.

SENATOR MCCARLEY: Senator Fernald, you obviously have looked into the RSAs much more recently than I have on this. You indicated that in a separate paragraph somewhere under all of this, that they address \$400,000 of equipment, and yet there is clarification in this RSA section that excludes equipment. So I am not being technical at all, I am curious. It would sound

as if we have addressed the equipment issue, currently in the RSAs. Is it the dollar amount that you don't like or is there a need for further away procedurally fix what you are suggesting or have I misunderstood you?

SENATOR FERNALD: The dollar amount is unchanged. It is still a \$1 million threshold.

SENATOR MCCARLEY: I am talking about the equipment issue, I am not talking about the...

SENATOR FERNALD: There is a separate threshold in section 5 of this statute that says that if you are going to buy more than \$400,000 worth of medical equipment, you have to go before the board to get a certificate of need. And then, separately, it says that if you are going to construct a new facility, like an ASC, and you are going to spend more than \$1 million, you have to go before the board. So the question is, when you are determining whether or not you are spending \$1 million on this new construction, do we count what goes inside the building? The CON Board has now taken the position that what goes inside counts towards whether you are over \$1 million or not. I don't think that is what was ever intended in this statute, because equipment is counted elsewhere. It has its own threshold. Here we are talking about construction and development of a facility and I don't think it should include equipment. In the past, they haven't counted equipment and now they are.

SENATOR MCCARLEY: The equipment that you are referring to in the separate RSA has to do with simply the purchase of equipment. It has nothing to do with the renovation, construction, alternation or anything else. That is simply addressing very specifically, purchases of equipment that have nothing to do with alternation, renovation or any of this, which is perhaps why it was there separately?

SENATOR FERNALD: Paragraph F, which we are talking about, is construction, development of a new facility. Paragraph D is purchased, leased, donation and so forth...of diagnostic or therapeutic equipment for which the costs or in the case of donation, the value is in excess of \$400,000.

SENATOR MCCARLEY: Thank you, you have answered my question.

SENATOR BROWN: Senator Fernald, when you are talking about an expansion, renovation or alternation, and you say including land, are you talking about only new land that might be purchased? How do you plan to include the land that is already there?

SENATOR FERNALD: In the rules that the CON Board is working on, and I don't think that they have completed the process for approval, they have provisions in there for how, if you have a piece of land that is used for doctor's offices and an operating room, how to allocate as part of the land cost to the operating room and how to allocate some to the non-operating room construction.

SENATOR FRANCOEUR: Senator Fernald, just to get back to Senator Brown's question about the \$1 million including the land. It seems that if you have land value in Nashua, New Hampshire compared to Berlin, I mean we could literally spend half a million dollars on a site where you might only spend \$50,000 up there, and the facility would have less impact. Wouldn't it be more appropriate if they just excluded the land from the cost?

SENATOR FERNALD: We discussed this in committee and your point is well taken that land costs vary, whereas construction costs would probably be pretty much constant around the state. I mean a 2 x 4 is a 2 x 4. I believe that this statute has a lot of problems and that we

probably should go back to the drawing board and start over again, but until we get a head of steam behind us to really revisit the whole thing, we have to live with what we have. My intent with this amendment, is just to confirm what I think the law has always been on how we determine the threshold. You may be right that maybe we shouldn't count land or maybe the threshold should be higher or lower, or we should go to an entirely different process. But right now, the way that the CON Board is interpreting the statute, through the regulations, is to have land and equipment counted, along with bricks and mortar. I think that is contrary to the intent of the statute.

SENATOR FRANCOEUR: Senator Fernald, if you include the land and it pushes the costs up in the higher density areas of the southern part of the state, won't that force more competition in the smaller hospitals in the northern part of the state?

SENATOR FERNALD: Well we have this other amendment that we just passed, so assuming that goes through, I would say no because the small hospitals now have a different threshold in their service area. I understand your arguments about the land alone could push someone over \$1 million, but that is the law as exists now. I am not looking to tamper with whether land is counted, because I think that is the way that it has always been done, and that is what was intended when the statute says "cost of construction and development". I think that land is part of development cost. So if we were going to take land out, which I think that you are suggesting, that would be a huge change from the way that we have done things in the past and the way that the statute is worded. I am just not looking to make a big change, I am just looking to confirm what I think is the existing law.

SENATOR D'ALLESANDRO: Senator Fernald, I want to follow up on Senator Francoeur's question, because the land issue is one that bothers me also. What do you ascertain as the land? Is that the site upon which the center is built and purely that, forgetting about amenities such as parking and things of that nature? When they make that decision, is it clearly just the land upon which the center would sit?

SENATOR FERNALD: We wrestled with this issue in committee and I completely agree that there is an issue here. How the land is going to be counted and sliced between partial uses and ASC and there are all kinds of questions here. The CON Board opposed regulations, stating that this could get into some complication as to how they would deal with this. I realize that there is a problem, but the land is counted now as it is. All I am trying to say is that equipment shouldn't be counted too. If we have an issue with counting land, I guess that I would suggest that you put in another bill and we will take it up. I am avoiding the land issue with this amendment. Land is already counted and I am not changing it.

SENATOR J. KING: Senator Fernald, now this has nothing to do with those that are under \$500,000 that hasn't changed? This just changes the ones that are \$1 million and over, the land?

SENATOR FERNALD: Right.

SENATOR J. KING: Thank you.

SENATOR SQUIRES: I rise to make two observations. I think that we are getting mixed up here. The equipment issue up until the advent of surgery centers, was due to large fixed installations in hospitals. It started with CT scanners and the 1970's and 1980's. Now the big items are MRI units and Lithotripsy units. That is what the equipment is talking about,

initially in the statute. An institution wants to acquire a very expensive piece of equipment and it has to justify it, so that the introduction, the leading of that concept, which is very understandable into the construction of surgery centers is an entirely new development and was not in the original CON statute, so far as I am aware. The second point that I would like to make is regarding to land, the majority of construction going on now, in fact, renovations, the land cost is moot, you already have the land. That is the big problem. It seems to me, that if I am renovating a building, if the Hitchcock Clinic in Manchester, which owns their facility, wants to put in an additional operating room, they have a different threshold from somebody that has to go and buy land and build exactly the same kind of unit. That is true of any fixed installation. When what is now the Southern New Hampshire Regional Medical Center, applied for its CON when it renovated itself, as it has done several times over the years, land cost was moot because it owned it all. So I think that putting the land in, is a distortion and it cannot be applied in equitable fashion to all construction projects. So to that, for those reasons, I don't support the amendment.

SENATOR WHEELER: I am increasingly beginning to feel like Cassandra, sort of doubly cursed with the ability to see the future and the fact that nobody is going to believe me. Just a few minutes ago, I stood here and said that I thought that if we passed SB 323 it would become a Trojan horse. Judging by the presentation of this amendment, my prediction is coming true, right now. It can become a Trojan horse in three different ways that I can see. The first, is that it enables further amendments, we are getting further amendments. The second is that it will enable the House to use it as a vehicle to put all of their anti-CON amendments on it. That will probably come true too, even though you won't believe me. Thirdly, it will try to enable the OPA group to change its policy. We shouldn't be mixing in to legislative policy for something that is before the courts. You aren't going to believe me in that, but that is going to be one of the effects of passing this amendment, the original amendment that we already passed. Now there is absolutely no validity in dealing with a further amendment. This is policy making by the seat of our pants at its worst. As judging by all of the questions that have been put to the sponsor of this, there is clearly not sufficient time to understand the ramifications of this, as it was described a wrestling match, discussing it in committee. My brother was a wrestler and I thought that wrestling matches took longer than a few minutes, it wasn't a wrestling match by any standards that I would apply. It has not been fully debated, it has not been fully discussed, and it is bad policy and I urge you to defeat it.

SENATOR MCCARLEY: Senator Wheeler was much more articulate than I would have been, saying the same exact things. Thank you.

SENATOR TROMBLY: I voted against the amendment that was just offered because I was reached by my local hospital this morning and asked to do that. I don't have sufficient knowledge in this subject, because quite frankly, certificates of needs (CON) and these types of things have never been my bailiwick. So when I was contacted by my hospital, the Franklin Hospital, I was concerned not having sufficient information to refute their request. I was going to vote with what I presumed to be my constituents. Arguably, I could be wrong. But, I am totally confused now. I am absolutely confused and unalterably confused, because I heard Senator Fernald, I am not going to deal with the land issue, but the amendment says, "you are excluding land". That deals with the land issue, because you exclude it. Including, excuse me. That deals with it, see what I mean. I am all con-

fused. By including it, that does deal with it. Now that could be wrong, which leads to my abject confusion. So I am not speaking to try to sway anybody, but just simply to explain to Senator Fernald, I am confused about what you are trying to do. The greatest concern that I have is by including land and excluding medical equipment, you may do to Franklin Hospital what you might not have intended to do with the prior amendment. That could be right or wrong, but because I don't know, I can't vote for it. But I surely hope that your amendment doesn't throw Franklin Hospital into the hot water the way that Senator Wheeler predicted. So, Senator Wheeler, I believed you.

SENATOR FERNALD: Senator Trombly, the current state of the law is that land and equipment are included. So when I say including land here, I am not changing what is being done now. What I am changing is the inclusion of the equipment. I don't think that is what has been done. I recognize that the House can amend any bill that we send to them, but if they do, we have the opportunity to reject those amendments when they come back to us. So I don't think that we should fear what the House might do with this vehicle or anything else that we send over to them. I was going to put this as a question to Senator Wheeler, but I think that I will just make it as a statement. I do not think in the past, that the CON Board has counted equipment, and this is something new, and I think that it is contrary to what the law says and intends, which is why I put in the amendment to restore what we have been doing in the past and what has been intended by the law.

SENATOR FRASER: Senator Fernald, would you believe that I had the privilege of serving on the study committee on CONs last summer with my colleague Senator Wheeler? And would you believe that I was compelled, based on the testimony that was offered by the CON people, that there is a new vision of doing things, some of which has already been acknowledged? My question today is, I am looking at your amendment and you are excluding medical equipment. I would like to have you explain to me, in your opinion, what the expansion means in your amendment?

SENATOR FERNALD: It means the same thing that it has always meant, which is that if you have for example, an ambulatory surgical center with one operating room, and you are going to add on and add a second operating room, then we are looking at the additional cost of that expansion.

SENATOR FRASER: Wouldn't a non-attorney, such as myself, interpret the word "expansion" to include, in this case, medical equipment as part of the expansion program?

SENATOR FERNALD: Maybe that is your interpretation, but if expansion includes medical equipment, does it include the front desk and the telephone system and everything else that you put inside the building? I don't think so, but...that is why I put in the amendment.

SENATOR FRASER: Thank you.

SENATOR LARSEN: Back in the late 70's and early 80's I served both in Wisconsin on what was the creation of a certificate of need (CON) law for Wisconsin and then, when I moved to New Hampshire, I served on Governor Gallen's Committee to look at healthcare cost containments. The CON process, and I think that we need to remember this, was to go back to looking at what is going to contain healthcare costs. One of the biggest ways to contain healthcare costs then, with the concern as Senator Squires said, for CAT scans being purchased in such a way that it drove up healthcare costs because everyone would want to own one.

Now the concern is for MRI's and Lithotripsy. Medical equipment in fact, can...is one of the issues that will help contain costs of healthcare by avoiding duplication. The reason that we have a CON Board, I will remind you, is for...and maybe they are not doing this as everyone would like them to do, but it is in fact, to have the CON board look at the request for medical equipment, surgical centers and all of the others listed here, to see if in fact, the introduction of new equipment, new buildings, does in fact, increase costs. Now maybe we have gotten away from that and we need to work on the CON process, but the core of the issue is are we driving up healthcare costs? If you exclude medical equipment, you will be driving up healthcare costs, because you will, in fact, result in highly expensive medical equipment being purchased in the same community, and it makes it very difficult to keep those costs down if that happens. I oppose this bill amendment.

Senator McCarley moved to have **SB 323**, relative to certificate of need applicants, laid on the table.

Recess.

Out of Recess.

Senator McCarley withdrew her motion of tabling.

SENATOR GORDON: I rise to speak very briefly because I didn't have the opportunity before the tabling motion was made. I am going to vote against the amendment because I feel...you obviously know from when I spoke before that I feel very strongly about this. I just want to assure Senator Wheeler that I would like to keep this bill clean and I would like it to be a small hospital bill. I know your concerns about it being amended and it becoming something other than that, but if it does become amended to become something other than that, then I certainly wouldn't support it. What I am looking for is something to protect the small hospitals. I would ask you to vote down this amendment and let's send this to the House.

Question is on the adoption of the floor amendment.

Floor amendment failed.

Ordered to third reading.

SB 324, relative to personal care services and providers. Public Institutions, Health and Human Services Committee. Vote 7-0. Ought to pass with amendment, Senator Squires for the committee.

2000-3826s

08/09

Amendment to SB 324

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

1 New Chapter; Personal Care Services. Amend RSA by inserting after Chapter 161-H the following new chapter:

CHAPTER 161-I

PERSONAL CARE SERVICES

161-I:1 Purpose.

I. Many individuals require assistance with eating, bathing, dressing, personal hygiene, and activities of daily living to maintain their independence and dignity. Personal care services are non-medical, hands-on supports that substitute for the loss of an individual's physical or cognitive functioning.

II. Many individuals requiring personal care services and families who have children with special health care needs want to choose who delivers personal care services and how and when these services are delivered.

III. This chapter provides individuals and families with the option of receiving personal care services from a home health agency or other qualified agency or a consumer-directed services program.

161-I:2 Definitions. In this chapter:

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

II. "Consumer-directed services" means personal care services under which the eligible consumer or his or her representative is responsible for:

(a) Participating in the development of the eligible consumer's service plan;

(b) Selecting the eligible consumer's personal care service provider;

(c) Setting the terms and conditions of work;

(d) Training, supervising, and evaluating the personal care services provider; and

(e) Terminating his or her relationship with the personal care services provider.

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

IV. "Eligible consumer" means a person eligible for department programs.

V. "Eligible setting" means a home, apartment, residential facility, day program, or other community setting, but does not include a hospital, nursing facility or other institutional setting.

VI. "Home health agency" means a home health care provider licensed under RSA 151.

VII. "Intermediary services" means an array of fiscal and supportive services to facilitate the delivery of consumer-directed services. Such services shall include:

(a) Fiscal intermediary services, including but not limited to:

(1) Computing of tax withholdings.

(2) Filing and depositing employment taxes.

(3) Preparing and disbursing payroll checks.

(4) Collecting and verifying worker timesheets.

(5) Processing and paying non-labor related invoices.

(6) Processing criminal background checks on prospective workers.

(7) Overseeing the verification of workers' citizenship/legal alien

status.

(8) Generating standardized reports depending on program design.

(b) Supportive services, including but not limited to:

(1) Skills and advocacy training for the eligible consumer or representative.

(2) Assistance with recruiting, screening, hiring, and training personal care service providers.

(3) Creating and maintaining work registries.

(4) Assessing and reassessing service needs.

(5) Counseling and support.

(6) Monitoring consumer satisfaction.

VIII. "Legally responsible relative" means a parent of a minor child or a spouse.

IX. "Other qualified agency" means those entities authorized to offer personal care services and/or intermediary services by the department in accordance with rules adopted pursuant to RSA 541-A.

X. "Plan of care" means a state-authorized guide to the provision of services to an eligible consumer.

XI. "Personal care services" means services furnished by a personal care services provider that assist an eligible consumer in maintaining himself or herself in an eligible setting. Such services may include, but are not limited to, basic personal care and grooming, assistance with basic toileting and toileting hygiene measures, assistance with oral and topical medications, assistance with nutrition, including meal preparation, and essential household services.

XII. "Personal care services provider" means a person who is not a legally responsible relative, selected by the eligible consumer or the consumer's legal guardian or representative, and employed by a home health agency or other qualified agency to provide personal care services.

XIII. "Representative" means a person chosen by the eligible consumer and deemed appropriate by the department to act on behalf of the eligible consumer and who:

(a) Is not the personal care services provider; and

(b) Does not have a financial relationship with a home health agency or other qualified agency providing intermediary services to the eligible consumer.

161-I:3 Consumer Choice. An eligible consumer in need of personal care services shall have the option to receive personal care services through a home health agency or other qualified agency and/or a consumer-directed services program. Such choice shall be subject to those limitations imposed by federal and state laws, rules, and regulations.

161-I:4 Department Responsibilities.

I. The department may develop personal care services for department programs. Eligible consumers shall be afforded the option to receive their personal care services through a home health agency or other qualified agency and/or a consumer-directed services program.

II. The department may develop a process for allowing a representative to act on the behalf of an eligible consumer.

III. The department may develop intermediary services for eligible consumers using consumer-directed services.

IV. Coverage of personal care services under department programs shall be subject to the availability of appropriated funds.

161-I:5 Personal Care Services Provider Training. Any personal care services provider serving an eligible consumer shall be required to undergo training as required by rule, pursuant to RSA 541-A.

161-I:6 Plans of Care and Service Delivery Oversight. All eligible consumers shall have a plan of care that details the provision of personal care services. The delivery of personal care services, as outlined in the plan of care, to an eligible consumer shall be monitored by a case manager either employed or contracted by the department. Should the delivery of personal care services to an eligible consumer necessitate specialized oversight, this shall be outlined in the plan of care and such oversight of the personal care services provider shall be arranged by the case manager.

161-I:7 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. Criteria for approving home health or other qualified agencies to offer personal care services, including but not limited to:

(a) Qualifications and training of providers.

(b) Oversight of providers.

- (c) Service definition.
- (d) Reporting requirements.
- (e) Record-keeping.
- (f) Personnel requirements.
- (g) Care planning.
- (h) Service delivery oversight.
- (i) Scope of service.
- (j) Quality assurance measures.
- (k) Structure of the business entity.

II. The provision of personal care services by personal care services providers, including the provision of consumer-directed personal care services.

III. The provision of intermediary services by a home health agency or other qualified agency to facilitate the delivery of consumer-directed personal care services.

IV. The use of a representative in consumer-directed services.

V. Guidelines for state-authorized plans of care.

VI. Additional requirements to enable the department to implement this chapter for persons eligible under department programs.

VII. Any other matters necessary for the administration of this chapter.

2 Continued Authorization; Rules. Notwithstanding the repeal by section 3 of this act, the authority for home health care providers to provide personal care services under rules adopted pursuant to RSA 326-B:17, X shall continue until the effective date of rules adopted pursuant to RSA 161-I: 7, I.

3 Repeal. RSA 326-B:17, X, relative to personal care services is repealed.

4 Residential Care and Health Facility Licensing; Home Health Care Provider. Amend RSA 151:2-b, III to read as follows:

III. "Home health care provider" does not include any organization or agency providing only services pursuant to the provisions of Title III, Part C, of the Older Americans Act; **authorized by the department of health and human services pursuant to RSA 161-I**; operating only a nutrition program under a federal social services block grant, or under the auspices of a private charity; or volunteer hospices that do not provide, directly or through contract arrangements, home health care services as defined in RSA 151:2-b, I.

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

2000-3826s

AMENDED ANALYSIS

This bill allows certain individuals and families of these individuals the option of receiving personal care services from a home health agency or other qualified agency or a consumer-directed services program. This bill also gives the commissioner of health and human services rulemaking authority relative to requirements for the use of consumer-directed services for department programs and the provision of personal care services.

This bill is a request of the department of health and human services.

SENATOR SQUIRES: I ask you to turn to page 12 in the calendar. We are actually dealing here with the amendment, which is three times as long as the original bill. The reason for that is as follows: The bill, itself, is an outgrowth of SB 409 from two years ago. Wherein there is an effort to move people out of nursing home beds and into residential care, and at the same time, keep people at home as long as possible. It is the

latter two points that the bill talks about. That process is slowly taking place. The number of skilled nursing home beds in New Hampshire are diminishing, but not by much. The number of people, patients, who want to stay at home with care and the number of those that are going into residential care are slowly increasing. The issue at hand is, who is going to take care of all of these people that are coming out, or who are not going to go into the nursing homes? And who is going to decide the nature and type of care to be given and who gives it? This bill started out as an attempt to address by being a consumer directed bill. In brief, it says that if I am a consumer, I need certain types of care at home, why can't I just in effect, hire someone that I know that is good to me and have them come and take care of me? The polls of this bill were as follows: Initially, one might even think of it as a voucher system, and in fact, there was a voucher system in New Hampshire at one point, in which dollars would flow out to a patient, they would select whomever they want, and the fees are paid. The other poll that it is not permissible, the only agencies that can do that, that can provide the services, the training, the financial support, were home healthcare agencies. After weeks, possibly months of effort, all of the parties got together. The parties in this case are the Department of Health and Human Services, the Home Health Agency, Advocates for the disability community and the elderly. The amendment is an outcome of that effort to which all parties agreed. It gives a high degree of consumer input, consumer selection. It sets up a variety of organizations that could manage this, that can deal with the training. It is a good bill. It is finally a solution achieved without any great acrimony or contention, thank goodness. I urge you to pass it. Thank you.

SENATOR F. KING: Senator Squires, the way that the bill was originally perceived, you mentioned everybody that participated in the discussion, and there was one group that was missing. Counties. When the counties are missing, now the county taxpayers are missing. My question is, the way that the bill was originally developed, it appeared that there would be no increased cost through the 25 percent contribution of counties for these types of services in the bill. My question is, can you assure me that the bill, as it is now been amended, can make that same claim? Or in fact, do we have a newer expanded program under the...for the counties or can somebody address that?

SENATOR SQUIRES: No. In essence, the first question, the bill was originally authored by the Department of Health and Human Services.

SENATOR F. KING: I introduced it.

SENATOR SQUIRES: By Senator King.

SENATOR F. KING: And I had that discussion before I put my name on the bill.

SENATOR SQUIRES: I couldn't stand and say that there won't be an increase. I think not. It says, available funds and one would hope that that is a sufficient break or restraint on future expenditures. But as we all know, this is an area, healthcare expenditures...force increase.

SENATOR F. KING: In the original bill there was a specific exemption that said that "nothing in this section shall be construed to change the personal care program for severely physically disabled as set forth in RSA 161-E" and that is a constituency that the counties do not now contribute to as part of their obligation. My question is, are they now going to be contributing to it, with the amendment that we have?

SENATOR SQUIRES: That is not my understanding, but I certainly will look into it.

SENATOR MCCARLEY: Senator King, my understanding when the compromise was reached, what it all turned down to was the employer record issue, which as long as there is an employer of records that that would satisfy the issue of overlooking that we had and therefore, I don't think that any of that change should have an implication for county cost, as I understood, because the question did come up during some of the debate about how to shift any of this and requiring the commissioner; therefore, hand down to the counties to develop new agencies and programs. If a new agency comes in as the employer of record, they are on their own in terms of that. I don't think that there should be any issue for the counties.

SENATOR F. KING: I just want to thank the committee for taking this very contentious issue that I got a lot of letters for in reaching a compromise. I think that they did very well.

SENATOR LARSEN: **TAPE CHANGE** of a very difficult vote that we just had, but I think that people ought to really focus on this. In the city of Concord, just two days ago, I went to one of our housing units for the elderly. They were receiving a healthcare transition grant, which in essence, provided the personal care that we are talking about here today. That grant is expiring, and we spent about two hours trying to figure out how we could put all of those pieces back together again. These kinds of issues will continue to surface as more elderly become of age in our state, certainly we are all on our way. It is incredibly important that we address them now. I am sure that this is a non-controversial bill and I compliment the committee on their hard work, but I didn't want it to go by without recognizing how great the need is.

Amendment adopted.

Ordered to third reading.

SUSPENSION OF THE RULES

Senator McCarley moved that the Rules of the Senate be so far suspended as to the holding of a public hearing, a committee report, advertising in the calendar and that **SB 462** be before the Senate at the present time.

Adopted by the necessary 2/3 vote.

SB 462, establishing a reformed public school financing system for ensuring educational adequacy for all children and establishing a state public education assistance system funded solely with state tax revenues, and making an appropriation therefore.

SENATOR F. KING: I will speak briefly about this bill. Clearly everyone understands the intent of this legislation is to pass it, table it and send it, along with a resolution, to the Supreme Court to get a question of the constitutionality of it answered. I just want to say in the essence of the bill, that this bill is a bill that we had originally back early in the year. The bill has been changed somewhat, but fundamentally the bill merely provides for the state in addition to funding adequacy, it also provides the ability of the state to provide, through state funds, money to towns with a demonstrated greater need based on a criteria that would be established in the bill. I think that we all know that at this late date, that we will probably not get an answer to this question. This bill will be on the table and chances are that this bill will go the way of all bills that are on the

table at the end of the session, but we need to have the question answered. The real meat of the issue today is in the resolution. If per chance the bill comes back before we go home and we wish to debate the merits of the legislation, we will be able to do that, but I suspect that is not going to happen. I want to thank the Senate for taking this unusual step for taking this bill on such an important subject and allowing it to pass without a committee hearing, be tabled and sent to the court. After the action is taken on the bill, then we will speak about the content of the resolution. Thank you.

SENATOR MCCARLEY: I rise to say that I can assure Senator King, that if we get back a decision from the court, the Senate Education Committee will certainly take this bill up, because as you said, there are multiple issues in it, for which Senate Education would have loved to have had an opportunity to discuss again, so we will certainly do that based on the decision.

Senator McCarley moved to have **SB 462**, establishing a reformed public school financing system for ensuring educational adequacy for all children and establishing a state public education assistance system funded solely with state tax revenues, and making an appropriation therefore, laid on the table.

Adopted.

LAID ON THE TABLE

SB 462, establishing a reformed public school financing system for ensuring educational adequacy for all children and establishing a state public education assistance system funded solely with state tax revenues, and making an appropriation therefore.

Senator F. King offered the following Resolution.

2000-3940s
04/10

SENATE RESOLUTION 13

A RESOLUTION requesting an opinion of the justices on the constitutionality of SB 462-FN-A-LOCAL, "An act establishing a reformed public school financing system for ensuring educational adequacy for all children; establishing a state public education assistance system funded solely with the state tax revenues, and making an appropriation therefor."

Amend the resolution by replacing all after the title with the following:

Whereas, there is presently pending before the senate SB 462-FN-A-LOCAL, "An act establishing a reformed public school financing system for ensuring educational adequacy for all children; establishing a state public education assistance system funded solely with state tax revenues, and making an appropriation therefor"; and

Whereas, SB 462-FN-A-LOCAL would establish a comprehensive system for financing public schools within the state, including state aid through "baseline adequacy assistance" and through "adequacy guarantee aid," along with local resources raised through property taxes administered through local democratic decision-making (hereinafter, the "financing program"); and

Whereas, SB 462-FN-A-LOCAL would distribute \$750 million of state financial aid to school districts in the first fiscal year ending July 31, 2001,

with \$550 million distributed through the "baseline assistance" method on a weighted per pupil basis and \$200 million distributed through the "adequacy guarantee assistance" method based on a foundation aid formula that assesses the relative financial needs of each community using several factors including per capita income, local property valuations, and measures of local tax "effort"; and

Whereas, SB 462-FN-A-LOCAL's total appropriation of \$750 million of state financial aid would be funded by the following state-imposed taxes and revenues: (i) \$409 million of revenues raised by a state property tax imposed at a uniform rate of \$6.10 per \$1,000 of equalized valuation of non-public utility real property throughout the state, and (ii) \$341 million of revenues raised by other state taxes and general fund sources; and

Whereas, the balance of the public education costs throughout the state over the state assistance of \$750 million would be funded with revenues raised by local real property taxes that would be established in each community through local democratic processes; and

Whereas, under this integrated financing program, direct state appropriations would account for approximately half of the total dollars spent on public elementary and secondary education, ranking New Hampshire much higher than the following states (based on U.S. Department of Education data for School Year 1996-1997):

State	Local	State	Federal
Connecticut	59.4%	37.1%	3.5%
Massachusetts	55.3%	39.9%	4.8%
New York	54.8%	39.8%	5.4%
Pennsylvania	55.2%	39.3%	5.5%
Rhode Island	54.0%	40.6%	5.4%

Whereas, SB 462-FN-A-LOCAL would reflect a legislative determination that the provision of an adequate education is not a static concept, but is best accomplished through the establishment of a process that encourages local communities to evaluate on an annual basis the costs and structure of local public education; and

Whereas, SB 462-FN-A-LOCAL would further reflect a legislative determination that incorporation of significant local resources in such a manner that vests local parental and academic resources in the local public school system is the best means of providing an adequate public education for all children throughout the state; and

Whereas, SB 462-FN-A-LOCAL would further reflect a legislative determination that such reliance on local resources, while producing vibrant and excellent education systems in most communities throughout the state, would present the possibility in certain needy communities that local resources could be insufficient to ensure the provision of an adequate public education; and

Whereas, to address directly this possibility, SB 462-FN-A-LOCAL would implement a state financial assistance program that would substantially increase state aid to public education over the level that was in place prior to 1999; and

Whereas, SB 462-FN-A-LOCAL would distribute such state aid among communities based on the foundation aid formula in accordance with legislative determinations assessing the relative needs of various recipient communities, based on several factors including per capita income, local property valuations, and measures of local tax "effort"; and

Whereas, as a result of these determinations of need, the level of state aid distributed among communities would differ greatly, with no community receiving the same amount of state aid per pupil as any other

community; rather such state aid would be distributed in a manner intended to satisfy the state's obligation to guarantee funding to ensure that all children are provided with an adequate education; and

Whereas, all of such state aid would be funded with state revenues that are administered in a manner that is proportional and reasonable throughout the state; and

Whereas, a question has been raised whether SB 462-FN-A-LOCAL satisfies the New Hampshire constitution; and

Whereas, some believe that this court's decision in *Claremont School District v. Governor*, 142 N.H. 462 (1997) ("*Claremont II*") mandates that the general court must, first establish and define "adequate education" on a dollar cost basis throughout the state, and, second, pay for all of the resulting adequate education dollar costs using a common formula throughout the state, regardless of the relative needs of various communities; and

Whereas, such a construction of the court's *Claremont II* decision has led to the enactment of Chapter 17 and Chapter 65 of 1999 New Hampshire Laws, which distribute state financial assistance among every community throughout the state on a strict weighted per pupil basis, regardless of the quality of the local public school system or the capacity of the local community to provide funds through local resources; and

Whereas, in contrast, SB 462-FN-A-LOCAL treats "adequate education" as a quality that is not definable by any common formula applied throughout the state on a dollar cost basis, provides for an adequate education throughout the state through a comprehensive mix of local and state funding similar to that reflected in other New England states, and incorporates within the funding mix a state aid distribution formula that is designed to allocate limited state aid to communities that are most in need in a manner that guarantees funding to ensure that all children receive an adequate education throughout the state; and

Whereas, the approach in SB 462-FN-A-LOCAL appears consistent with the ultimate constitutional requirement that it is "the State's duty to provide a constitutionally adequate education and to guarantee adequate funding" (emphasis added); and

Whereas, the senate respectfully requests expeditious review of this resolution by the court because SB 462-FN-A-LOCAL is intended to become effective on July 1, 2000, and because enactment of public school financing legislation that fails to satisfy the constitutional requirements of the *Claremont II* decision could present the risk that local and state governments might be required to refund substantial amounts of local property tax revenues; now therefore be it

Resolved by the Senate:

That the Justices of the Supreme Court be respectfully requested to give their opinion upon the following important questions of law:

(a) Would the enactment of SB 462-FN-A-LOCAL satisfy the requirements of part II, articles 5, 6, and 83 of the New Hampshire constitution?

(b) Would the enactment of SB 462-FN-A-LOCAL violate any other provisions of the New Hampshire constitution?

That the senate clerk transmit copies of this resolution and SB 462-FN-A-LOCAL to the justices of the supreme court.

SENATOR F. KING: I would like to offer Senate Resolution 13. This is by Senator Below. There have been three small revisions on the floor amendment as we discussed it in caucus earlier today. The first change deals with the issue...the one that we used earlier in the day, it spoke about it on page one of the amendment. It used the figure of 60 percent as the contribution that the state is making to the...the same dollars that are

going to education. It really is closer to 50 percent, seven fifty in this bill divided by \$1.5 billion, which everyone assumes is probably a dollar to education cost and it is 50 percent and not 60 percent. So there is that small change. May I rephrase that? That large sum of money is not as great as we thought that it was. There is a paragraph that overemphasized the intent of the legislation that has been deleted. That is paragraph two on page three. Then there has been an additional question to the court that has been included. The real essence of this resolution is found now on page three of this resolution. The questions that we now have are two in number. The first one is found on line 23 of the resolution. It simply says, "Would the enactment of SB 462-FN-A-LOCAL satisfy the requirements of part II, articles 5, 6, and 83 of the New Hampshire constitution?" The other question that has been added, "Would the enactment of SB 462-FN-A-LOCAL violate any other provisions of the New Hampshire constitution?" So, a vote, as I understand it, an affirmative vote on this resolution will send this to the court for an opinion.

Adopted.

SB 326, eliminating the joint health council. Public Institutions, Health and Human Services Committee. Vote 7-0. Ought to pass with amendment, Senator Krueger for the committee.

2000-3829s

08/09

Amendment to SB 326

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

AN ACT relative to the joint health council.

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

1 Registered Nurses and Practical Nurses; Joint Health Council. Amend RSA 326-B:10-a, I-III to read as follows:

326-B:10-a Joint Health Council.

I.(a) The joint health council shall consist of the following members: ~~[the chair of the board of nursing, or designee who shall be a member of the board of nursing, one]~~ 5 advanced registered nurse ~~[practitioner]~~ **practitioners** who ~~[is a member of the board of nursing]~~ **are** currently licensed to practice nursing under RSA 326-B, appointed by the ~~[chair of that]~~ board **of nursing**; ~~[the chair of the board of medicine, or designee who shall be a member of the board of medicine, 2]~~ 5 physicians currently licensed to practice medicine under RSA 329 and who ~~[have worked]~~ **work** collaboratively with advanced registered nurse practitioners, appointed by the ~~[chair of that]~~ board **of medicine** ~~[, provided that one of the physicians is a member of the board of medicine, the chair of the board of pharmacy, or designee who shall be a member of the board of pharmacy]; and [one member of the board of pharmacy currently licensed to practice as a]~~ **4 pharmacists, 3 of whom shall be clinical [pharmacist under RSA 318] pharmacists prepared at the doctorate level**, appointed by the ~~[chair of that]~~ board **of pharmacy**. **In no case shall a member of the joint health council be a member of the member's respective board.**

(b) The chairmanship of the council shall rotate annually among the representatives of the ~~[respective boards]~~ **nursing profession, medical profession, and pharmacist profession.**

(c) Members of the council shall be appointed for 3-year terms and shall serve no more than 2 terms.

II. The council shall meet [~~not less than~~] *a minimum* of once every [3] 2 months to discuss matters pertinent to the A.R.N.P. formulary and matters of mutual concern to the board of medicine, the board of nursing and the board of pharmacy. *The chair of the council may call for additional meetings of the council if deemed necessary.* Each of the 3 boards may submit items to be assigned to the agenda for every meeting of the council. Any items on the agenda not addressed at a particular council meeting shall be decided at the next meeting of the council.

III. The duties of the joint health council shall include, but not be limited to, adding or altering the list of controlled and noncontrolled molecular entities on the A.R.N.P. formulary. Decisions on such additions or alterations shall be rendered within [3] 2 months of initial consideration by the council. [~~Any new controlled or noncontrolled molecular entities, in accordance with federal Food and Drug Administration provisions in 21 C.F.R. part 312, that are available after September 1, 1994, shall be considered for approval by the board upon petition by advanced registered nurse practitioners and approved for use by advanced registered nurse practitioners only after an affirmative vote of the joint health council.~~] *The council shall consult with sub-specialty professionals when considering any new controlled or noncontrolled molecular entities for the formulary by which the council members lack specific expertise. All recommendations by consulting sub-specialty professionals shall be made either in writing or in person before the council. The council shall establish written guidelines, based on current published scientific data, for the review of issues before the council.*

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

2000-3829s

AMENDED ANALYSIS

This bill:

I. Alters the composition of the joint health council to consist of 5 advanced registered nurse practitioners, 5 physicians, and 4 pharmacists.

II. Requires the council to meet a minimum of once every 2 months.

III. Requires that decisions on altering the list of controlled or noncontrolled drugs on the A.R.N.P. formulary be rendered within 2 months of initial consideration by the council.

IV. Requires the council to consult with experts when considering new controlled or noncontrolled drugs outside its expertise.

V. Removes the requirement that new controlled or noncontrolled drugs be considered for approval upon petition by advanced nurse practitioners and approved for use only after an affirmative vote of the council.

SENATOR KRUEGER: First of all, before I start my testimony, I want to make a point first of all, appreciating so much, the hundreds and hundreds of letters that I got from doctors, patients and nurses. An enormous applause of the work that nurse practitioners do. Secondly, I want to make sure that Senator Wheeler knows, because this hasn't been exactly a great day for our own Cassandra over there, that no way could this have ever happened without the extraordinary diligent work, and I hope that that doesn't put a curse on this, Senator Wheeler, but we will proceed now. You have been terrific. I rise in support of SB 326 as amended. It has been recommended by a study committee. The amendment is in the Senate Calendar on page 15. This bill as originally drafted actually proposed to eliminate the joint health council. However, as with all other bills that you have heard in about the last hour, there was an enormous amount of com-

promising and so the amendment that you are looking at here, basically changes the membership of the Joint Health Council to include, five advanced registered nurse practitioners appointed by the board of nursing. Five doctors, physicians who work collaboratively with advanced registered nurse practitioners appointed by the Board of Medicine and four pharmacists, three of whom shall be clinical pharmacists prepared at the doctoral level appointed by the Board of Pharmacy. This bill also provides that the chairmanship of the council rotate annually among the representatives of the nursing profession, medical profession and pharmacists profession. In addition, members of the council shall be appointed for three-year terms with no member serving more than two terms. Senate Bill 326 as amended, also requires that the board meet every two months as opposed to every three months as done previously, and the chair may call for an additional meeting of the council if necessary. The council's duties will consist of adding or altering the list of controlled and noncontrolled molecular entities on the ARNP formulary, and decisions on such additions and alternations will be rendered within two months of initial consideration by the council. Finally, Madame President, the Joint Health Council is to consult with specialty professionals when considering any new controlled or noncontrolled molecular entities for the formulary by which the council members lack specific expertise. All of these recommendations by specialty professionals are to be made in writing, or in person before the council. Most importantly, the council itself, will be responsible for establishing guidelines based on current published, scientific data for the review of issues before the council. This legislation provides real solutions to many of the concerns that I had about the Joint Health Council. This legislation will eliminate process delays and improve access to new and in some cases, safer FDA approved drugs for patients of advanced registered nurse practitioners. It will also help to ensure public safety by requiring the council to establish written guidelines based on current scientific data for the review of issues. These guidelines will provide for consistency and accountable decision making by members of the council. I firmly believe that this bill is a good compromise between both the interest of the nurse practitioners and the concerns presented by the medical society and the New Hampshire Board of Medicine. I urge you to please vote SB 326 as ought to pass as amended. I thank you.

SENATOR DISNARD: Senator Krueger, was there a particular reason why the number 14 could be an even vote, 5-5&4 membership?

SENATOR KRUEGER: Because probably, every other number that this group came up with, wasn't approved by the powers that be, so I think that you are probably looking at the only number that everyone could comfortably live with on all sides, so that is why. I think actually, there was a movement to have one more nurse practitioner, but that didn't work.

SENATOR SQUIRES: Senator Krueger, would you believe that this really is a very good bill and that I urge all to support it? My question is in the amended analysis, under V, and that, I think, refers to the strike out in section 3, does that mean that a drug moves onto the formulary or into general use before the council approves it?

SENATOR KRUEGER: I believe that not to be true.

SENATOR SQUIRES: Ok. My follow up question is, if that is the case, and I believe that is the case, what is gained by striking out above this, any new controlled or non controlled molecular entity etc?

SENATOR KRUEGER: Senator Squires, I do not know the answer to your question, but I wish I did.

SENATOR SQUIRES: Ok.

SENATOR WHEELER: Thank you for your kind words, Senator Krueger. Senator Krueger and I served on the study committee that dealt with this issue and this is an example of how we all hope that study committees will work. We heard a lot of good testimony, did a lot of good work and came up with a proposal. Then after that proposal was drafted, and concerns were raised at the hearing, there is a bill that is going through the House that is very similar to this, and it is my understanding that the House ED & A committee has amended their bill in a very similar fashion to this bill, so it is quite possible that we will be able to pass something without having to go to a Committee of Conference and without having to have further debate. I want to pay my tribute to the hard work of the nurses in putting their issues forward and helping us to understand them, and the hard work and cooperation from the psychiatrist and from the other members of the medical profession who worked very closely to make a lot of compromises to get this to pass. In answer to Senator Squire's question, those strikeouts in the statute, that any new controlled or uncontrolled molecular entities, that also has been done by the House ED & A Committee, and that eliminates the requirement that all drugs after 1994 must be approved first by petition, and it gives the Joint Health Council...it is my understanding, the Joint Health Council now will be able to set up how they want their formulary to operate, without having it required to be a certain way in statute.

Amendment adopted.

Ordered to third reading.

SB 383, requiring managed care organizations and the department of health and human services to pay health care providers in a timely manner. Public Institutions, Health and Human Services Committee. Vote 7-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-3865s

01/10

Amendment to SB 383

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

AN ACT requiring the department of health and human services and insurers to make prompt payments.

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

1 New Section; Prompt Payment Required. Amend RSA 126-A by inserting after section 12 the following new section:

126-A:12-a Prompt Payment Required. The department shall pay health care providers, including dental providers, within 45 days of receipt of a claim or bill for services rendered to medicaid recipients.

2 New Section; Prompt Payment Required. Amend RSA 415 by inserting after section 8 the following new section:

415:8-a Prompt Payment Required.

I. Each insurer that issues or renews any individual policy of accident or health insurance providing benefits for medical or hospital expenses shall pay health care providers or certificate holders within 45 calendar days upon receipt of a clean written claim or 15 calendar days

upon receipt of a clean electronic claim or as otherwise stipulated in the provider and insurer contract. If the insurer is denying or pending the claim, the insurer shall have 15 calendar days upon receipt of the claim to notify the health care provider or certificate holder of the reason for denying or pending the claim and what, if any, additional information is required to process the claim; provided, however, that the insurer's failure to comply with the time limits in this section shall not have the effect of requiring coverage for an otherwise non-covered claim.

II. In this section:

(a) "Clean claim" means a claim for payment of covered health care expenses that is submitted to an insurer on the insurer's standard claim form using the most current published procedural codes, with all the required fields completed with correct and complete information in accordance with the insurer's published filing requirements.

(b) "Electronic claim" means the transmission of data for purposes of payment of covered health care services in an electronic data format specified by the insurer.

III. Notwithstanding any provision of law to the contrary, no penalties shall apply until the health care provider has notified the insurer in writing of the insurer's noncompliance with this section and the carrier fails to pay the claim within 10 days thereafter. Any claim not paid within the above time periods or in accordance with contract provisions shall be deemed overdue. When the insurer fails to pay a claim when due or according to contract provisions, the amount of the overdue claim shall include an interest payment of 1.5 percent per month beginning from the date the payment was due. Reasonable attorneys' fees for advising and representing a health care provider in a successful action against an insurer for payment of the claim shall be recoverable by the provider from the insurer upon a judicial finding of bad faith. The commissioner may assess a fine to any insurer after determining that the insurer has established a pattern of overdue payments; provided, that such fine shall be up to \$5,000 per violation and shall not exceed \$100,000.

IV. Notwithstanding the provisions of this section:

(a) No insurer shall be in violation of this section for a claim submitted by a health care provider if failure to comply is caused by a directive from a court or a federal or state agency or if the insurer's compliance is rendered impossible due to matters beyond the insurer's control which are not caused by such insurer.

(b) No insurer shall be in violation of this section for any claim submitted 90 days after the service was rendered.

(c) No insurer shall be in violation of this section while the claim is pending due to a fraud investigation that has been reported to a state or federal agency, or an internal or external review process.

3 New Section; Prompt Payment Required. Amend RSA 415 by inserting after section 18-b the following new section:

415:18-bb Prompt Payment Required.

I. Each insurer that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses shall pay health care providers or certificate holders within 45 calendar days upon receipt of a clean written claim or 15 calendar days upon receipt of a clean electronic claim or as otherwise stipulated in the provider and insurer contract. If the insurer is denying or pending the claim, the insurer shall have 15 calendar days upon receipt of the claim to notify the health care provider or certificate holder of the reason for denying or pending the claim and what, if any, additional information

is required to process the claim; provided, however, that the insurer's failure to comply with the time limits in this section shall not have the effect of requiring coverage for an otherwise non-covered claim.

II. In this section:

(a) "Clean claim" means a claim for payment of covered health care expenses that is submitted to an insurer on the insurer's standard claim form using the most current published procedural codes, with all the required fields completed with correct and complete information in accordance with the insurer's published filing requirements.

(b) "Electronic claim" means the transmission of data for purposes of payment of covered health care services in an electronic data format specified by the insurer.

III. Notwithstanding any provision of law to the contrary, no penalties shall apply until the health care provider has notified the insurer in writing of the insurer's noncompliance with this section and the insurer fails to pay the claim within 10 days thereafter. Any claim not paid within the above time periods or in accordance with contract provisions shall be deemed overdue. When the insurer fails to pay a claim when due or according to contract provisions, the amount of the overdue claim shall include an interest payment of 1.5 percent per month beginning from the date the payment was due. Reasonable attorneys' fees for advising and representing a health care provider in a successful action against an insurer for payment of the claim shall be recoverable by the provider from the insurer upon a judicial finding of bad faith. The commissioner may assess a fine to any insurer after determining that the insurer has established a pattern of overdue payments; provided, that such fine shall be up to \$5,000 per violation and shall not exceed \$100,000.

IV. Notwithstanding the provisions of this section:

(a) No insurer shall be in violation of this section for a claim submitted by a health care provider if failure to comply is caused by a directive from a court or a federal or state agency or if the insurer's compliance is rendered impossible due to matters beyond the insurer's control which are not caused by such insurer.

(b) No insurer shall be in violation of this section for any claim submitted 90 days after the service was rendered.

(c) No insurer shall be in violation of this section while the claim is pending due to a fraud investigation that has been reported to a state or federal agency, or an internal or external review process.

4 New Section; Prompt Payment Required. Amend RSA 420-A by inserting after section 9 the following new section:

420-A:9-a Prompt Payment Required.

I. Every health service corporation, and every other similar corporation licensed under the laws of another state that issues or renews any policy of individual or group blanket accident or health insurance providing benefits for medical or hospital expenses shall pay health care providers or subscribers within 45 calendar days upon receipt of a clean written claim or 15 calendar days upon receipt of a clean electronic claim or as otherwise stipulated in the provider and corporation contract. If the health service corporation is denying or pending the claim, the corporation shall have 15 calendar days upon receipt of the claim to notify the health care provider or subscriber of the reason for denying or pending the claim and what, if any, additional information is required to process the claim; provided, however, that the corporation's failure to comply with the time limits in this section shall not have the effect of requiring coverage for an otherwise non-covered claim.

II. In this section:

(a) "Clean claim" means a claim for payment of covered health care expenses that is submitted to a health service corporation on the corporation's standard claim form using the most current published procedural codes, with all the required fields completed with correct and complete information in accordance with the corporation's published filing requirements.

(b) "Electronic claim" means the transmission of data for purposes of payment of covered health care services in an electronic data format specified by the corporation.

III. Notwithstanding any provision of law to the contrary, no penalties shall apply until the health care provider has notified the health service corporation in writing of the corporation's noncompliance with this section and the corporation fails to pay the claim within 10 days thereafter. Any claim not paid within the above time periods or in accordance with contract provisions shall be deemed overdue. When the health service corporation fails to pay a claim when due or according to contract provisions, the amount of the overdue claim shall include an interest payment of 1.5 percent per month beginning from the date the payment was due. Reasonable attorneys' fees for advising and representing a health care provider in a successful action against a corporation for payment of the claim shall be recoverable by the provider from the corporation upon a judicial finding of bad faith. The commissioner may assess a fine to any health service corporation after determining that the corporation has established a pattern of overdue payments; provided, that such fine shall be up to \$5,000 per violation and shall not exceed \$100,000.

IV. Notwithstanding the provisions of this section:

(a) No health service corporation shall be in violation of this section for a claim submitted by a health care provider if failure to comply is caused by a directive from a court or a federal or state agency or if the corporation's compliance is rendered impossible due to matters beyond the corporation's control which are not caused by such corporation.

(b) No health service corporation shall be in violation of this section for any claim submitted 90 days after the service was rendered.

(c) No corporation shall be in violation of this section while the claim is pending due to a fraud investigation that has been reported to a state or federal agency, or an internal or external review process.

5 New Section; Prompt Payment Required. Amend RSA 420-J by inserting after section 8 the following new section:

420-J:8-a Prompt Payment Required.

I. Health carriers issuing health benefit plans subject to this chapter shall pay claims submitted by health care providers for services rendered in New Hampshire to covered persons within 45 calendar days upon receipt of a clean written claim or 15 calendar days upon receipt of a clean electronic claim or as otherwise stipulated in the provider and health carrier contract. If the health carrier is denying or pending the claim, the carrier shall have 15 calendar days upon receipt of the claim to notify the health care provider or covered person of the reason for denying or pending the claim and what, if any, additional information is required to process the claim; provided, however, that the health carrier's failure to comply with the time limits in this section shall not have the effect of requiring coverage for an otherwise non-covered claim.

II. In this section:

(a) "Clean claim" means a claim for payment of covered health care expenses that is submitted to a health carrier on the carrier's standard

claim form using the most current published procedural codes, with all the required fields completed with correct and complete information in accordance with the carrier's published filing requirements.

(b) "Electronic claim" means the transmission of data for purposes of payment of covered health care services in an electronic data format specified by the health carrier.

III. Notwithstanding RSA 420-J:14, no penalties shall apply until the health care provider has notified the health carrier in writing of the carrier's noncompliance with this section and the carrier fails to pay the claim within 10 days thereafter. Any claim not paid within the above time periods or in accordance with contract provisions shall be deemed overdue. When the health carrier fails to pay a claim when due or according to contract provisions, the amount of the overdue claim shall include an interest payment of 1.5 percent per month beginning from the date the payment was due. Reasonable attorneys' fees for advising and representing a health care provider in a successful action against a health carrier for payment of the claim shall be recoverable by the provider from the health carrier upon a judicial finding of bad faith. The commissioner may assess a fine to any health carrier after determining that the carrier has established a pattern of overdue payments; provided, that such fine shall be up to \$5,000 per violation and shall not exceed \$100,000.

IV. Notwithstanding the provisions of this section:

(a) No health carrier shall be in violation of this section for a claim submitted by a health care provider if failure to comply is caused by a directive from a court or a federal or state agency or if the carrier's compliance is rendered impossible due to matters beyond the carrier's control which are not caused by such carrier.

(b) No health carrier shall be in violation of this section for any claim submitted 90 days after the service was rendered.

(c) No health carrier shall be in violation of this section while the claim is pending due to a fraud investigation that has been reported to a state or federal agency, or an internal or external review determination pursuant to RSA 420-J:5, or RSA 420-J:5-a-e.

6 Effective Date. This act shall take effect January 1, 2001.

2000-3865s

AMENDED ANALYSIS

This bill requires the department of health and human services to pay its dental and other health care providers for services rendered to medicaid recipients promptly.

This bill also requires insurers offering health benefit plans to pay health care providers or the insured person in a timely manner.

SENATOR PIGNATELLI: First of all, I want to thank the other 15 Senate sponsors on this bill. Obviously, the Senate recognizes that this was a major problem for doctors and other medical personnel who are billing HMOs and insurance companies and not being paid in a timely manner. The amendment is an agreed upon amendment by all sides. It is a good bill. It satisfied the needs for this concern and I urge the Senate to pass this bill. Thank you.

Amendment adopted.

Ordered to third reading.

SB 391, relative to criminal background checks for health care workers. Public Institutions, Health and Human Services Committee. Vote 6-0. Inexpedient to Legislate, Senator Krueger for the committee.

SENATOR KRUEGER: I rise in support of the committee recommendation of inexpedient to legislate. During the committee hearing on SB 391, we heard testimony that many home health associations support criminal background checks, and they presently conduct checks on job applicants. Many of them have been doing so for many years. While some agencies limit the practice to staff who are applying to caregiver roles, others follow this practice for all of their employees. While there was a general feeling of support for this bill, numerous concerns were raised about its exact content. For example, since the purpose of this bill is consumer protection, then using background checks as a screening tool for workers, should be applied to all caregivers, not just those employed by licensed healthcare facilities. Also, the New Hampshire Board of Nursing raised several concerns about SB 391, including the fact that the proposed criminal check would only represent information from New Hampshire. I am afraid that this legislation would give New Hampshire citizens a false sense of security, as this background check would not show offense or a criminal history from other states. There are also great cost considerations associated with this bill for agencies to have background checks. DOS indicated that the criminal record bureau charges \$10 for an in-state criminal history check; however, if a nationwide check is necessary, it will be a additional \$24 fee, to the FBI for a fingerprint based criminal record check, which would be accompanied by a \$10 processing fee, making it a total of \$44 per request for a criminal background check. In addition, DOS noted that if this bill passes, the Department would need to hire additional clerks to handle the additional workload. As stated previously, many healthcare facilities already conduct background checks. It is my belief that these checks, along with the current practices of intensive interviewing, checking references, checking prior job experiences, is an adequate means of ensuring the safety of healthcare for the citizens of New Hampshire. I urge you to support the committee report of inexpedient to legislate. Thank you very much.

Committee report of inexpedient to legislate is adopted.

SB 400-L, relative to access to emergency medical and trauma services. Public Institutions, Health and Human Services Committee. Vote 5-1. Ought to pass with amendment, Senator Wheeler for the committee.

2000-3842s

01/09

Amendment to SB 400-LOCAL

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

AN ACT relative to emergency medical and trauma services.

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

1 New Paragraph; Definition Added; Quality Assurance. Amend RSA 153-A:2 by inserting after paragraph XVIII the following new paragraph:

XVIII-a. "Quality assurance" means an organized method of auditing and evaluating care provided within the emergency medical service unit.

2 Revocation of License; Clarification. Amend the introductory paragraph of RSA 153-A:13, I to read as follows:

1. The commissioner [~~shall~~] *may* deny an application for issuance or renewal of a license, or suspend or revoke a license, *or, after a hearing and a recommendation by the emergency medical services medical control board, suspend or revoke a person's authority to operate under any state or local protocol*, when the commissioner finds that the applicant is guilty of any of the following acts or offenses:

3 Rulemaking; Clarification. Amend RSA 153-A:20, V to read as follows:

V. Length of licensure and procedures for issuance, renewal, limitation, suspension, and revocation of licensure *and, pursuant to RSA 153-A:13, I, procedures, including hearing procedures, for the suspension and revocation of authority to operate under local protocols* authorized under this chapter.

4 Effective Date. This act shall take effect January 1, 2001.

2000-3842s

AMENDED ANALYSIS

This bill authorizes the commissioner of health and human services to suspend or revoke a person's authority to operate under state or local protocols, after a hearing and a recommendation by the emergency medical services medical control board.

SENATOR WHEELER: I rise in support of the committee recommendation of ought to pass with amendment. Currently, emergency medical technicians, otherwise I will refer to them as EMT's, and paramedics are licensed under the Division of Emergency Medical Services within the Department of Safety. State protocols for state patient care are approved and issued by the Emergency Medical Control Board; however, local communities also have established protocols for patient care. Thus, a gray area exists in regard to disciplinary action if an EMT or a paramedic violates a local protocol, but not a state protocol. Senate Bill 400 seeks to clarify this issue. The bill, as amended, states that the commissioner of DOS may deny an application for issuance or renewal of a license or suspend or revoke a license or after a hearing, and a recommendation by the Emergency Medical Services Medical Control Board, suspend or revoke a person's authority to operate under any state or local protocol when the commissioner finds that the applicant is guilty of any of the offenses outlined in RSA 153-A. This way, an EMT or a paramedic accused of violating either state or local protocols, would be allowed a hearing or some form of due process before disciplinary action is taken. It is important to have a uniform appeals process to provide oversight and to allow a form of redress for EMT's and paramedics who are facing a suspension or revocation of their license. I urge you to vote in favor of SB 400 with its amendment. Thank you.

Amendment adopted.

Ordered to third reading.

SB 456, relative to testing newborns for deafness. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: I rise in support of this bill. I offer three bits of information. For every thousand births, one child is born with total deafness. One child is born with unilateral deafness and two children are born with hearing impairments. Number two, there is no question that the acquisition of language skill begins very early, and the longer one waits, the more difficult it becomes to correct this. Number three, in New Hampshire, there are about 12,000 births every year, so we have anywhere from 30-50 children every year that are born with a significant hearing defect. The way to address that problem is to have newborn testing, the same as we test for other diseases. The problem is, that there is no general agreement on the types of equipment to be employed

and on who is going to do it on the kind of follow up and so on and so forth. What the bill does is require the Department of Health and Human Services to develop these standards and develop these guidelines, and then I hope, in the next session of the legislature, or whenever this comes back, the legislature will confront this and enact this. It is done in two hospitals in New Hampshire. Part of the problem is, that sometime it is done only for so-called high risk babies, very premature babies, family histories and so forth. But enormous numbers and enormous percentages of these children are born with no family history at all. So the current screening is inadequate. This is a very important bill for people that are born with a terrible handicap. I hope that you will pass it and then come back in the future to start this program. The average cost of these tests are between \$25 and \$40, so if you want to take that number times 12000, then you have the cost.

Adopted.

Ordered to third reading.

SB 405-FN-A-L, relative to greyhound racing. Ways and Means Committee.

MINORITY: Ought to pass with amendment, Senator Below for the committee. Vote 1-5

MAJORITY: Inexpedient to Legislate, Senator D'Allesandro for the committee. Vote 5-1

2000-3895s

08/10

Amendment to SB 405-FN-A-LOCAL

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

AN ACT removing the authority of the sweepstakes commission to use sweepstakes revenue as purses for horse or dog races and reducing the number of live races a racetrack is required to schedule in order to simulcast races.

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

1 Sweepstakes Commission; Authorization to Conduct Sweepstakes Races Removed. Amend RSA 284:21-h, I to read as follows:

I. The sweepstakes commission is hereby authorized:

(a) To conduct public drawings at such intervals and in such places within the state as the commission may determine. If governor and council grant approval, such drawings may be in the form of pure lotteries and if so, shall not be associated in any way with a sporting event. ~~[Such drawings may also be associated with horse or dog races or both as hereinafter provided. At least one such drawing each year shall be based on a sweepstakes horse or dog race or both held within the state.~~

~~(b) To contract with any licensee to conduct sweepstakes races within the enclosure of any racetrack in the state where races or race meets are held under this chapter, or in the alternative, or in addition thereto, to affiliate the public drawings herein authorized with such thoroughbred races or race meets held within or without the state, either before or after the public drawings, as the commission may determine.~~

~~(c) (b) To conduct [both] pure lotteries [and horse or dog race or both sweepstakes] if the commission, with the approval of governor and council, shall determine that such program will best accomplish the purposes of this subdivision.~~

~~(d)~~ (c) To participate in any national or multistate pure lotteries conducted in the United States.

2 Sweepstakes Commission; Authorization to Conduct Sweepstakes Races Removed. Amend the introductory paragraph of RSA 284:21-h, II to read as follows:

II. Tickets for such pure lotteries ~~[and sweepstakes races]:~~

3 Sweepstakes Commission; Authority to Adopt Rules Regarding Sweepstakes Races and Purses for Sweepstakes Races Removed. Amend RSA 284:21-i, II and III to read as follows:

II. The sweepstakes commission shall adopt rules under RSA 541-A after public hearing relative to:

(a) Holding and conducting drawings ~~[and sweepstakes races]~~ and the sale of tickets for such drawings ~~[and races];~~

(b) ~~[Establishing and fixing the purses, not to exceed an aggregate sum of \$ 325,000 for a single calendar year, to be awarded horses, or dogs, or both in sweepstakes races;~~

(c) Establishing:

(1) The price for which tickets for drawings ~~[and sweepstakes races]~~ shall be sold; not to exceed \$5 per ticket.

(2) The method by which tickets sold for drawings ~~[and sweepstakes races]~~ shall be determined to be winning tickets.

(3) The money or prizes to be awarded holders of winning tickets.

(4) The assignment ability of winning tickets, including appropriate consumer protection provisions.

III. In establishing the money or prizes to be awarded the holders of winning tickets ~~[and the purses for the horses or dogs or both]~~, the sweepstakes commission shall be governed by the primary purpose of the sweepstakes, to raise revenue for the benefit of public education. They shall conduct such studies and make such investigations, either directly or through their agents, as will apprise them of prizes and money awarded to the holders of winning tickets in similar drawings wherever held. ~~[They shall consider the size of purses for the horses or dogs or both as bearing on the question of gaining public confidence in the sweepstakes races.]~~ They shall fix the prizes and amounts of money to be awarded winners ~~[as well as the purses for the horses or dogs or both]~~ in such a manner as will yield the largest net revenue for the benefit of public education, bearing in mind the expenses to be incurred, and all other factors which tend to influence net revenue.

4 Horse and Dog Racing; Simulcast Racing; Live Racing Requirement Reduced. Amend RSA 284:22-a, II(a)(3) to read as follows:

(3) The licensee has scheduled at least ~~[100]~~ 50 days of live racing in the calendar year in which the licensee simulcasts, or if the licensee does not have scheduled at least ~~[100]~~ 50 days of live racing in such calendar year, the licensee conducts live racing on the day on which the licensee simulcasts; and

5 Horse and Dog Racing; Simulcast Racing; Live Racing Requirement Reduced. Amend RSA 284:22-a, IV to read as follows:

IV. A licensee which has scheduled less than ~~[100]~~ 50 days of live racing in a calendar year may simulcast on a day on which live racing is scheduled at the licensee's race track, without conducting live racing, provided that the live racing program is cancelled due to weather or other conditions which produce unsafe conditions at the racetrack of the licensee. The determination to cancel a live program based upon weather or the condition of the racetrack shall be made by the licensee, and notice shall be provided to the commission. Notwithstanding the

foregoing, a licensee which has scheduled less than [~~100~~] 50 days of live racing shall be limited to no more than [~~10~~] 5 such cancellations in a calendar year.

6 Effective Date.

I. Sections 4 and 5 of this act shall take effect 60 days after its passage.

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

2000-3895s

AMENDED ANALYSIS

This bill removes the authority of the sweepstakes commission to use sweepstakes revenue as purses for horse or dog races or conduct sweepstakes drawings in association with horse or dog races. This bill also reduces from 100 to 50 the number of live races a racetrack is required to schedule per year in order to simulcast races.

SENATOR D'ALLESANDRO: The Ways and Means Committee felt that because of the commitment to the tracks was made in good faith many years ago, live greyhound racing has been legalized since 1971, it should continue to support an obligation to live up to its agreement. The greyhound tracks employ approximately 400 workers with good jobs, benefits and working conditions. RSA 284:3 requires that 85 percent of all race track employees must reside in New Hampshire. The Senate Ways and Means Committee recommends SB 405 as inexpedient to legislate.

SENATOR BELOW: I rise on behalf of the minority of one, of the committee, to urge defeat of the majority report of inexpedient to legislate and adoption of ought to pass with amendment. The bill, originally, as introduced and heard by the committee, simply banned live greyhound racing in the state. The amendment, which is the minority report, is a complete substitution of the original bill and it does two things. The amendment is found on page 20 of today's calendar. It does two things. The first couple sections of the bill, it eliminates the use of sweepstakes revenue, money from the sweepstake fund, for the purpose of paying purses or prizes for horse and dog races. The second part of the bill, starting down on section four, reduces the requirement for the number of days of live racing, from 100 to 50. The two are offered hand-in-hand for a couple of reasons. With regard to eliminating the use of lottery revenue for purses, I think that it goes directly to the constitutional question, article 6-b, which was adopted in 1990, which speaks about the use of lottery revenues restricted for educational purposes. It specifies that all money received by the state from that lottery, after deducting the necessary costs of administration, be appropriated and used exclusively for the school districts of the state. Such monies shall be used exclusively for the purpose of state aid to education and shall not be transferred or diverted to any other purpose. I fail to see how paying **TAPE CHANGE** nor is it a necessary cost of administration, particularly when it is questionable whether the total value of revenue, a net revenue brought in from lottery sales at all of the race tracks, doesn't even equal the amount of purse money that is given out. Just roughly speaking, in the last year, the tracks sold less than one half of one percent of all lottery ticket sales throughout the entire year. Less than \$900,000 of sales. The roughly 32 percent of net revenue of that after the cost of lottery prizes and cost of administration, would only be about \$285,000 a year. Yet, we are spending over \$300,000 on purses. The second part of the bill is there to compensate or acknowledge the fact that if these purses are repealed and are no longer avail-

able in the races, that it may not be as economically feasible to offer as many days of live racing and it allows the tracks to reduce that if they want to, they don't have to, and maintain their simulcasting, which is apparently, with telephone sales, probably going to be their predominant source of revenue. Thank you.

SENATOR ROBERGE: I rise in support of the minority report which would stop the use of sweepstakes revenue for dog and horse races. The tracks have come up with a number of reasons why we should keep giving them this money. First they said that it helps them sell lottery tickets. It hasn't worked out that way in the past. Sweepstakes Commission figures show that the tracks are only one out of every 200 tickets that are sold in the state. It is a losing proposition all around for us. Let me give you an example. Last year the track in Belmont, sold only \$4,350 worth of tickets all year. That is about \$12 a day. The state's revenue is about a third of this or \$4 a day. From out of these sales the track at Belmont got \$10,000 in sweepstakes money last summer. People betting on the races there got more money back then we did. We don't do any better at the other tracks. Last year we spent a total of \$310,000 to sponsor races and got back less than \$10,000 in revenue from the sweepstakes. In pari mutual tickets sold at these races, so we lost \$300,000. With the new way that education is funded, the school districts get the same amount of money no matter how much the sweepstakes program brings in. So the loss of \$300,000 in sweepstakes revenue meant that we had to put \$300,000 more into the education trust fund from the general fund. Then the track said that the idea was to advertise the sweepstakes program. But what sense does that make to spend so much money to advertise at events that nobody goes to anymore? I am concerned too, that when people hear about this, it will undermine their confidence in the entire sweepstakes program. As you know, this has become one of our biggest revenue producers, generating over \$60 million a year. We can't afford to put that program in jeopardy. Money aside, I support this amendment because we voted in 1990 to amend the constitution so that the sweepstakes money would be sure to go to our schools. I served in the Senate then and I remember our commitment. So it is a matter of principle for me, as a matter of law. There was a discussion in the committee that the agreement to give the track some of the sweepstakes money happened long before the constitutional amendment, so it was grandfathered. I have been advised that something that is made illegal under the constitution can't be grandfathered, but if we have any questions about the legality of the spending of sweepstakes revenue on the races, it would make sense to send the opinion to the attorney general before voting to do anything that is against the law. For all of those reasons, I ask you to support the minority report of ought to pass with amendment. Thank you.

SENATOR WHEELER: I can count and I can count the number of lobbyists that have appeared anytime anything to do with the tracks is ever brought up. So I know what the fate of this is going to be without having to be a Cassandra, but I am not sure that you all know what the ramifications are going to be. We are in clear violation of our constitution right now. There is no point in saying, 'well it was an agreement that we all made in the beginning so that the sweeps and the tracks would work together', surely the constitutional amendment that we passed in 1990 dedicating all revenues, interest received on such monies, after deducting the necessary cost of administration be appropriated and used exclusively for the school districts of the state. That supercedes any previous "gentlemen's agreement". So we are going to go to court if

we don't change this. It is in violation of the constitution. It doesn't make good economic sense. We had testimony from, a Representative who gave us a whole lot of facts, and it bears out my bumper sticker that I think that I will get created at some point, that live racing is dead. It really is going down. It is not bringing in revenues. Since the late 1980's, the interest in pari-mutual racing has gone down. The National Expansion of other more player, friendly, gaming opportunities it is highly doubtful that horse and dog racing will ever recover any degree of its former prosperity. "You must remember that currently one single Sunday Winston Cup Race in July at NHIS generates far more revenue to the state's economy than all four pari mutual tracks contribute to the state for the entire year. Since Nascar racing is currently the fastest growing, most family oriented, cleanest run sport in the entire country", these are Representative Varrell's words, "there is no reason to believe that this trend will not continue indefinitely." These tracks are on their way out guys, let's see the handwriting on the wall and let's not violate our constitution at the same time. We also are not getting accurate figures about live versus simulcast attendance from the tracks. This is from testimony from Michael Trombly who is a CPA who used to work for the pari-mutual commission, this is his testimony that he submitted. "That the pari mutual commission is stating that 300 customers per program will be lost in Belmont, but the Lakes Region has not had an average live attendance of 300 since 1995, that the real average is closer to 100 than it is to 300. Fewer than 10 customers account for a huge portion of Lakes Region simulcast handle, and they are not there for the live racing, they are there for the customer service they receive while betting on the simulcast. So I know what is going to happen, I know that this is a late and I know that no one wants to think about this, but I think that it is roomful of people who really want to support the constitution, so I urge you to vote in favor of this amendment. Thank you.

SENATOR F. KING: In 1997, I had the privilege of chairing a committee and the task of the committee was to look at all of the race tracks in the state of New Hampshire and take a look at their projected future. I visited all four tracks at that time and spent a lot of time on this issue. I found out that there are 2000 employees working at those tracks, and the industries that support the tracks in this state. It is a substantial amount of jobs, a large industry for the state and those jobs are still there. The tracks are having difficulty, there is no question about that. At one time tracks generated 30 percent of the revenue in this state for the state economy. This is not a bill about dollars, this is a bill from people who don't want greyhounds to race, and that is an entirely different issue. The issue of the constitution, I think, if you carefully read the testimony, the Senate testimony at the time the constitutional amendment was adopted, you will see that it was very clear that at that time, the administrative services, the administrative costs of the tracks included the sweeps race, and it was recognized at that time, and Dave Currier, former Senator David Currier, recognized that in his testimony. So that was and still is an administrative cost to the sweepstakes commission; therefore, I agree that if we kill this bill we may be sued. If we pass this bill that we will also be sued, because clearly the intent of the legislature when it developed the...when the constitution on sending the sweeps money to the educational trust fund passed, it was a recognition that that sweeps money that supported the tracks would remain in the administrative costs of the sweepstake commission. So I think that those who predict or demise the tracks may be right, but I think that if there ever was a

partnership between a unit of government and a business that kept this state in business for years, it was the partnership between the race tracks and the state government. I think that we should support the tracks and allow them to continue to do their business, and if we really want to have a bill about not having greyhounds run, then we ought to have a bill about not having greyhounds run and not about money.

SENATOR FERNALD: Senator King, is it true that we are putting more money into the sweeps races than we get back?

SENATOR F. KING: It was reported to me that there was \$900,000 worth of scratch tickets and lottery tickets sold to the four tracks last year. That is the number that I have. If that is true, then the net from the sweeps is 30 percent, then there was a net to the state of \$270,000 from the tickets that were sold at the track, so I believe that it is essentially wrong.

SENATOR FERNALD: But we are putting in a little over \$300,000 and getting back \$270,000?

SENATOR F. KING: It is essentially wrong.

SENATOR FERNALD: When we seem to be scratching for every penny does it make sense to be putting in more money than we get back?

SENATOR F. KING: It makes sense to me for the state of New Hampshire who had a partner... understand that the tracks were our partner, that the state used to grab 5 percent of the gross from the tracks. Now if any of you have ever been in business, you understand that taking 5 percent of the gross from a business... this is not net, this is gross... the tracks paid the state treasury 5 percent of their gross receipts. There was an amendment put in that gave us a \$1,700,000 relief and that was the amount of money that was **TAPE INAUDIBLE** in the letter that you received. That passed in 1998 when there was a recognition that the partner, these racetracks, went into business in another form of gambling, and you have one partner taking money away from the other partner, so there was a recognition and there should be some relief. The track still paid the state some percentage of receipts on their gross receipts. No other business does that. No other business has a tax like that in New Hampshire. I just think that we have an obligation to let these tracks die a natural death if that is what is going to happen, and not euthanasia.

SENATOR ROBERGE: Senator King, would you believe that I believe that this is a money issue because it was sent to Ways and Means?

SENATOR F. KING: Do you believe that when it came to Ways and Means two years ago that I said that the bill should never come to Ways and Means again, so I agree with you?

SENATOR ROBERGE: Also, would you believe that this is the only business that I believe in New Hampshire that the state subsidizes?

SENATOR F. KING: I don't believe that it subsidizes it. So I don't believe that.

SENATOR LARSEN: I am concerned that we are somehow put in a position of voting in support of our constitution and weighing that against support for jobs in the state of New Hampshire. I would like very much to support whatever constitutes jobs for the state of New Hampshire, but as I say, I have concerns about are we in fact, is there some violation of the constitution in providing these monies? Under RSA 7:7 the legislature has the option of asking an opinion of the attorney general and under the statute it says, that he "shall when required by either

branch of the general court, give his opinion upon a question of law submitted to him therefore." So I suggest that it may make sense to ask the attorney general this question and relieve us of the duty of trying to decide between jobs and matching what may be a constitutional question.

SENATOR WHEELER: Senator Larsen, the issue of jobs came up at the initial hearing when the bill as presented would have banned live greyhound racing in New Hampshire and a lot of people did indeed come in at that point and testify about jobs, but I want to make sure that you understand now, that the amendment isn't really affecting jobs, it is just saying that we don't want to keep violating our constitution? It enables the tracks to reduce the mandated number of live races from 100 to 50, but it does not require them to do so; therefore, would you believe that I agree with you that perhaps we should ask this question of the attorney general about the constitutionality, but I don't think that it is a question of jobs versus the constitution?

SENATOR LARSEN: I believe that you believe that, but I also believe the other statements from people who believe that if we change the laws relating to this industry that we will in fact, put them out of business and lose jobs. So I think that it is worth asking the attorney general for an opinion on the constitutionality of this issue.

SENATOR SQUIRES: As I understand it, this law has been in effect for ten years. It would seem to me that a constitutional question would have been brought by somebody, either the executive branch or some party that was aggrieved. At least that is the way that my comprehension of it is. The only body that can truly say that something is truly constitutional is the court. The attorney general, at best, can give us an opinion. Their record, as we come to see, is not all just right. So, I think that we don't get very much by getting another opinion. If it is a true constitutional issue, somebody needs to go to court, either the executive branch or aggrieved parties in the citizenry, and put the question to them.

Senator Pignatelli moved to have **SB 405-FN-A-L**, relative to greyhound racing, laid on the table.

Motion failed.

SENATOR D'ALLESANDRO: I want to speak very, very briefly. I concur with many of the things that Senator King said, but I think that we ought to take into consideration a couple of things. You reduce the option of running from 100 days to 50 days and what do you do to the employees who are working there? You tell them that they are going to take 50 days off? Well I don't want to tell anyone that they have to take 50 days off because we don't have functions there. The state made a commitment a long time ago. It was as Senator King very clearly points out. It was a partnership and the state has been the beneficiary of that partnership. The enhancement of racing by using the money to embellish certain purses makes good business sense. People hear more about the sweepstakes because of this, and maybe they don't buy direct tickets at that venue, but certainly if we talk about sales of sweepstakes year after year after year, they have increased, they haven't gone down. So to isolate one little area and say well they didn't sell that well at this store, but they sold this well at another store, that is hypocrisy. The generation of those sales has increased dramatically and we know that. Live racing, racing at the tracks has been a benefit for New Hampshire since day one. The inception of the sweepstakes program was built around a race and it was a handicapped race, and that race was to bring people to New Hamp-

shire. Not only to go to the racetrack and to see that race, but to spend their dollars, as many people do, when they come to New Hampshire as tourists. The racing industry has been good for New Hampshire and it has been good to New Hampshire. I think that it is about time that we recognize that that partnership does exist and we support it. Thank you.

SENATOR WHEELER: I was going to ask Senator Squires a question, but I will just make a real quick statement. I think the reason that people haven't talked about this since 1990 is that a lot of people didn't realize that this money was still being diverted to the tracks. Dennis Murphy, in the hall, when he saw the amendment in the calendar, he said, "oh my gosh, are we still doing that? I didn't realize that we were still doing that". So a lot of people don't realize that we are still spending the money inappropriately. Thank you.

SENATOR JOHNSON: I rise to make a brief comment. The Lakes Region Greyhound Park is not in my district, but this is my personal observation, and it is only about the Lakes Region Greyhound Park. I think that the bill that we passed in 1998, which allowed more money to go back to the tracks, I just don't want to leave the impression that the people at the Lakes Region Greyhound Park are putting that in their pocket. If you go up there today, you will see a very aggressive remodeling program going on. I think that they probably have spent up to \$1 million on that remodeling. They have a new sports bar there, which I haven't seen in its entirety, but I think that it is almost completed. I just want to comment that I think that they are being aggressive in trying to increase their revenue. I think that they have already done that and I think that they will be more successful at it once the whole remodeling program is finished.

Question is on the adoption of the committee amendment.

A roll call was requested by Senator Roberge.

Seconded by Senator Disnard.

The following Senators voted Yes: Below, Roberge, Fernald, Wheeler.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, McCarley, Trombly, Disnard, Eaton, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm, Hollingworth.

Yeas: 4 - Nays: 19

Amendment failed.

Question is on the motion of ought to pass.

Motion failed.

Question is on the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 1225, relative to the name of the department of fish and game. Wildlife and Recreation Committee. Vote 3-0. Ought to Pass, Senator Eaton for the committee.

SENATOR EATON: This bill simply reaffirms the name of the department. Recently there has been discussion of changing the name of the department. House Bill 1225 expressed the findings of the legislature that there is no need to change the name of the department. This finding is based on the fact that the name has served the state well since

1935, and reflects the fact that the department is funded by the licensing fees of sportsmen, hunters, anglers and trappers. The committee recommends, overwhelmingly, ought to pass.

SENATOR WHEELER: I have to speak. I feel obligated to speak because it was just incorrect what was said at the hearing, that 98 people in the general public did tell Fish and Game that they favored a name change and only 49 said that they wanted to keep the name the same. No point in beating the poor old dead horse, but a lot more people wanted to change the name to reflect the current mission than wanted to keep the name the same. So those are the facts.

Adopted.

Ordered to third reading.

SB 398, relative to public boat access on Lake Sunapee. Wildlife and Recreation Committee. Vote 3-0. Inexpedient to Legislate, Senator Disnard for the committee.

SENATOR DISNARD: The Wildlife and Recreation Committee requests inexpedient to legislate. I have passed out a correspondence to each one of you that is self explanatory. This is what I mentioned to the Wildlife Committee. "I do not believe that legislation on this bill is now necessary because the department has agreed to what the material would cover." I will answer any questions.

Committee report of inexpedient to legislate is adopted.

SB 455, relative to campgrounds. Wildlife and Recreation Committee. Vote 2-0. Ought to pass with amendment, Senator Eaton for the committee.

2000-3817s

08/09

Amendment to SB 455

Amend the bill by replacing section 6 with the following:

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

SENATOR EATON: It is my privilege to speak on the last bill of the docket today. This bill changes the definition of a campsite in RSA 216-I to include a recreational camping cabin. A recreational camping cabin is a structure of 400 square feet or less, designed for temporary, not permanent use. The bill requires that at 1000 square feet must be provided for each recreational camping cabin, the same as for recreational vehicles. The current statute refers to tents and recreational vehicles. The bill also changes the definition of a recreational campground or camping park or any parcel on which two or more campsites are located. The current statute refers to five campsites. The committee recommends ought to pass.

Amendment adopted.

Ordered to third reading.

MOTION TO VACATE

Senator D'Allesandro moved to vacate **HB 1404** from the Internal Affairs Committee to the Executive Departments and Administration Committee.

HB 1404, creating a study committee to address mechanisms for the preservation or disposal of state records.

Adopted.

HB 1404 is vacated to the Executive Departments and Administration Committee.

MOTION TO VACATE

Senator Russman moved to vacate **HB 1390** from the Environment Committee to the Public Institutions, Health and Human Services Committee.

HB 1390, establishing a commission to study the relationship between public health and the environment.

Adopted.

HB 1390 is vacated to the Public Institutions, Health and Human Services Committee.

Senator Trombly offered the following resolution:

2000 SESSION

00-2829
03/09

SENATE RESOLUTION 14

A RESOLUTION relative to heating oil prices and the state match requirement for the federal Weatherization Program.

SPONSORS: Sen. Trombly, Dist 7; Sen. Pignatelli, Dist. 13; Sen. McCarley, Dist. 6; Sen. Wheeler, Dist. 21; Sen. D'Allesandro, Dist 20; Sen. Johnson, Dist 3; Sen. Roberge, Dist 9; Sen. Cohen, Dist 24; Sen. Eaton, Dist 10; Sen. Gordon, Dist 2; Sen. Disnard, Dist 8; Sen. Francoeur, Dist 14; Sen. Brown, Dist 17; Sen. Klemm, Dist 22; Sen. J. King, Dist 18; Sen. F. King, Dist 1; Sen. Squires, Dist 12

COMMITTEE: [committee]

ANALYSIS

This senate resolution urges the United States Department of Energy, Congress, and the White House to address escalating heating oil prices by assuring adequate inventory levels in the Northeast, repealing the state match requirement for the federal Weatherization Program, maintaining pressure on OPEC to increase production, and increasing funding for certain federal assistance programs.

00-2829
03/09

In the Year of Our Lord Two Thousand

A RESOLUTION relative to heating oil prices and the state match requirement for the federal Weatherization Program.

Whereas, prices for home heating oil, kerosene, and diesel fuel spiked dramatically this winter in New Hampshire and reached record highs in our state and throughout the Northeast; and

Whereas, heating oil prices in the state rose to prices which were well over \$1 per gallon higher than last winter's fuel prices; and

Whereas, kerosene prices in the state rose to well over \$2 per gallon; and

Whereas, gasoline prices have skyrocketed, and threaten to reach or exceed \$2 per gallon in the coming season; and

Whereas, households across the state struggle to pay their necessary heating and transportation fuel costs; and

Whereas, New Hampshire citizens remain vulnerable to future fuel price volatility; and

Whereas, tight fuel supplies and very low supplier inventories exacerbated the price volatility problem; and

Whereas, sustained below freezing temperatures this past winter and during typical New Hampshire winters make this situation of particular concern as a health and safety issue for our citizens; and

Whereas, 75 percent of all home heating oil used in the United States is used in New England during 12 weeks of winter; and

Whereas, the federally-funded Low Income Weatherization Program last year provided approximately \$870,000 to New Hampshire to enable cost-effective energy conservation investments for the neediest households to reduce their energy consumption and heating bills; and

Whereas, the Weatherization Program is one of the most effective means of reducing low income homeowners' reliance on imported heating fuels, and resultant energy cost burdens, while also advancing health and safety goals; and

Whereas, the federal State Energy Program enables states like New Hampshire to target all sectors of the economy – including schools, municipalities, business, industry, state facilities, non-profits, and the residential sector – with energy saving and renewable energy initiatives, education, and creative solutions to energy problems, and further permits the state to monitor and track key trends in fuel prices and supplies so as to foster emergency preparedness; and

Whereas, the federal Low Income Home Energy Assistance Program (LIHEAP) afforded New Hampshire over \$17 million this year (\$8.5 million base grant plus \$9.1 million in emergency funds) for income eligible households to pay essential heating costs, thereby averting hardship and crisis for thousands of elderly, disabled, and families with young children; now, therefore, be it

Resolved by the Senate:

That the senate hereby urges the United States Department of Energy to take all available measures to assure adequate inventory levels in the Northeast, including re-examination of regional heating oil reserve options, as well as minimum wholesale inventory requirements; and

That the senate hereby urges Congress to repeal the new 25 percent Weatherization Program match requirement scheduled to go into effect in 2001, which would place states like New Hampshire at potential risk of loss of all federal funding for this valuable program; and

That the senate hereby urges the White House to maintain pressure on OPEC to agree to increase production levels when they meet on March 27, 2000, to increase petroleum product supplies available throughout the region in order to reduce prices; and

That the senate hereby urges Congress to support increase funding for much-needed federal programs, at proposed national levels of \$1.4 billion for LIHEAP, \$175 million for the Weatherization Program, and \$44 million for the State Energy Program, so that states can best assist residents and businesses to decrease their fuel consumption and afford essential heating costs; and

That the senate clerk transmit copies of this resolution to the President of the United States, the Vice-President of the United States, the Secretary of the Department of Energy, the Speaker of the U.S. House of Representatives, and the members of the New Hampshire congressional delegation.

SENATOR TROMBLY: I rise to offer Senate Resolution 14 which is the resolution that was supplied and generated by the special oil committee. The contents of the resolution were passed out already and I believe that you have read it already, and many of you have signed onto it. This is the extent that we can do relative to the federal issues around the recent oil crisis. I think the most important point and the one that we have the most direct impact immediately is, unless Congress changes the law, in order to get the weatherization funds for New Hampshire...last year they totaled \$870,000 for weatherization of New Hampshire homes. The testimony was that current state of the law is that if we don't match that by 25 percent, then we lose all that money. So I think that the resolution is crucial to the extent that it would be sent to our Congress people and to the President, because the most direct impact on the recent oil problem, is that we are about to lose \$870,000 on weatherization funds. As the CAP people testified in front of the committee, over half of their constituents who receive this were senior citizens. If the law is not changed, we lose the money unless we come up with \$200,000. I don't know where we are going to come up with that money next year, given the affairs of this state. So I think that it is very important that we pass this resolution now and if at all possible, if we could as individual Senators, write letters to our congressional delegation and ask them to remove this 25 percent match. The administration is in favor of the removal already. I think that it is absolutely crucial **TAPE CHANGE**

Question is on the adoption of the resolution.

A roll call was requested by Senator Trombly.

Seconded by Senator Larsen.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth.

The following Senators voted No:

Yeas: 23 - Nays: 0

Adopted unanimously.

RESOLUTION

Senator McCarley moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

SENATOR FRASER (RULE #44): I missed an opportunity last week, Madame President, to thank the members of the Banks Committee for their help in passing some very important legislation that is now over in the House. There are some bills that we passed that were extremely important to the future financial well being of this state and members of the Banks Committee were superb in helping me get that material passed and over to the House. Thank you again.

ANNOUNCEMENTS**RESOLUTION**

Senator McCarley moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings, enrolled bills and amendments and that when we adjourn we adjourn to Thursday, March 30, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

HB 246, relative to personnel transfers at the department of safety.

SB 307, relative to biosolids and short paper fiber.

SB 311, relative to the recovery of public assistance.

SB 322, extending the needle exchange pilot program.

SB 323, relative to ambulatory surgical facilities in service areas of rural hospitals.

SB 324, relative to personal care services and providers.

SB 326, relative to the joint health council.

SB 383, requiring the department of health and human services and insurers to make prompt payments.

SB 387-FN-L, relative to proposed toll booths in the city of Nashua and relative to alternatives to the state-wide toll booth system.

SB 397-FN-A-L, making an appropriation from the education trust fund for public kindergarten programs and relative to the adequate education grant amount and property tax warrant for the town of Orange.

SB 400-L, relative to emergency medical and trauma services.

SB 455, relative to campgrounds.

SB 456, relative to testing newborns for deafness.

HB 569, relative to the tax credit for service-connected total disability.

HB 1114-FN, relative to creditable service in the retirement system for teachers in a job-sharing position.

HB 1126, relative to repealing the prohibition on rewards for procuring employment.

HB 1134, establishing a committee to study mental health care treatment under managed care plans.

HB 1196, giving the police department of Lincoln authority to respond to emergency situations and exercise police duties in the unincorporated place of Livermore.

HB 1206, extending the reporting date of the committee studying alcohol and drug abuse prevention.

HB 1225, relative to the name of the department of fish and game.

HB 1283, establishing a commission on the education of the deaf and hard of hearing in New Hampshire.

HB 1374, extending the reporting date for the sex offender issues study committee.

HB 1435, establishing a committee to study the immediate and long-term impact of changing methodology of communications and information technology as it applies to the right-to-know law.

HB 1523, relative to landlord-tenant obligations.

HB 1594, relative to the allocation of moneys in the tobacco use prevention fund.

In recess.

LAIID ON THE TABLE

HB 542-FN-A, (2nd New Title) repealing the legacies and succession tax.

HB 723-FN, relative to standby and emergency guardianship proxies.

SB 132, requiring the removal of the telecommunications tower on Mount Kearsarge.

SB 203, authorizing electronic games of chance at racetracks.

SB 218-FN-L, regulating the land application of sewage sludge.

SB 329, relative to the display of tobacco products.

SB 365-L, [New Title] relative to the adoption of bonds or notes in school districts and municipalities.

SB 379-FN, relative to lottery scratch tickets.

Out of Recess.

INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered SB 463-SCR 6 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

SB 463, revising the uniform partnership act. (Sen. Larsen, Dist. 15: Judiciary)

SB 464, relative to the use of municipal and school district facilities for stunt biking and relative to the sale of bicycles at public auction. (Sen. Larsen, Dist. 15; Sen. Fraser, Dist. 4; Sen. Gordon, Dist. 2; Rep. Bradley, Carr 8; Rep. Fraser, Merr 21; Rep. Calawa, Hills 17; Public Affairs)

SB 465-FN-LOCAL, relative to the definition of "sugar orchard" for purposes of the timber yield tax. (Sen. Below, Dist. 5; Sen. F. King, Dist. 1; Rep. Dickinson, Carr 2; Rep. Babson, Carr 5; Rep. Virtue, Merr 9: Ways and Means)

SB 466, relative to lot rent increases at manufactured housing parks. (Sen. Hollingworth, Dist. 23; Sen. Brown, Dist. 17; Sen. J. King, Dist. 18; Sen. Disnard, Dist. 8; Sen. Larsen, Dist. 15; Rep. O'Keefe, Rock 21; Rep. Henderson, Rock 20; Rep. Weatherspoon, Rock 20: Public Affairs)

SB 467, relative to the exemption from regulation of certain elevating devices. (Sen. Johnson, Dist. 3; Sen. Francoeur, Dist. 14; Rep. Clegg, Hills 23: Executive Departments and Administration)

SB 468, relative to the family division of the courts. (Sen. Pignatelli, Dist. 13; Sen. Gordon, Dist. 2; Sen. F. King, Dist. 1; Sen. Squires, Dist. 12; Sen. Larsen, Dist. 15; Sen. Fraser, Dist. 4; Sen. Francoeur, Dist. 14; Sen. Fernald, Dist. 11; Rep. Hager, Merr 18; Rep. Gilmore, Straf 11; Rep. Bickford, Straf 1: Judiciary)

SCR 5, a resolution urging the New England states and New York to consider cooperative strategies to address the challenge of the high cost of prescription medicines. (Sen. Hollingworth, Dist. 23; Sen. McCarley, Dist. 6; Sen. D'Allesandro, Dist. 20; Sen. Klemm, Dist. 22; Sen. Trombly, Dist. 7; Sen. J. King, Dist. 18; Sen. Cohen, Dist. 24; Sen. Wheeler, Dist. 21; Sen. F. King, Dist. 1; Sen. Larsen, Dist. 15; Rep. Emerton, Hills 7; Rep. S. Holley, Hills 28; Rep. Copenhagen, Graf 10; Rep. Nordgren, Graf 10: Interstate Cooperation)

SCR 6, a resolution urging the President and Congress to address the challenge of high prescription medication prices. (Sen. Hollingworth, Dist. 23; Sen. McCarley, Dist. 6; Sen. D'Allesandro, Dist. 20; Sen. Klemm, Dist. 22; Sen. Trombly, Dist. 7; Sen. J. King, Dist. 18; Sen. Cohen, Dist. 24; Sen. Wheeler, Dist. 21; Sen. F. King, Dist. 1; Sen. Larsen, Dist. 15; Rep. Emerton, Hills 7; Rep. S. Holley, Hills 28; Rep. Copenhagen, Graf 10; Rep. Nordgren, Graf 10: Insurance)

HOUSE MESSAGE

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

HB 449-FN, requiring boating safety education.

HB 1287, relative to the membership of the water council.

HB 1378, establishing a task force to conduct an ongoing study of the feasibility of reestablishing passenger rail service on the Eastern Line from Newburyport, Massachusetts to Kittery, Maine.

HB 1409, establishing a committee to study the feasibility of reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire rail service line and the Concord to Lebanon Northern passenger rail service line.

HB 1455, relative to the authority of the fish and game department for the electronic issuance of licenses, permits, stamps and tags.

HCR 21, urging the federal government to increase the pay to military personnel.

HOUSE MESSAGE

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

SB 185, relative to the partition of real or personal property.

SB 314, establishing a committee to study the feasibility of driver education programs by correspondence schools.

SB 342, extending the reporting date of the committee studying the impact of federal welfare reform on the cities and towns of New Hampshire.

HOUSE MESSAGE

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

SB 341, extending the reporting date and changing the name of the committee to study the licensure of radiologic technologies.

SB 355, relative to name changes for criminal offenders.

SB 382, relative to appeals of release or detention orders.

2000-3951-EBA

08/01

Enrolled Bill Amendment to HB 1134

The Committee on Enrolled Bills to which was referred HB 1134

AN ACT establishing a committee to study mental health care treatment under managed care plans.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1134

This enrolled bill amendment makes a technical correction in section 3 of the bill.

Enrolled Bill Amendment to HB 1134

Amend section 3 of the bill by replacing line 10 with the following:

VIII. Private practice market.

Senator Trombly moved adoption.

Adopted.

2000-3967-EBA

03/09

Enrolled Bill Amendment to HB 569

The Committee on Enrolled Bills to which was referred HB 569

AN ACT relative to the tax credit for service-connected total disability.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 569

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to HB 569

Amend RSA 72:35, IV(a) as inserted by section 1 of the bill by replacing line 4 with the following:

amputee or paraplegic because of [a] service-connected injury, or the surviving spouse of such a

Senator Trombly moved adoption.

Adopted.

2000-3969-EBA

04/10

Enrolled Bill Amendment to HB 1594-FN

The Committee on Enrolled Bills to which was referred HB 1594-FN

AN ACT relative to the allocation of moneys in the tobacco use prevention fund.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1594-FN

This enrolled bill amendment makes a technical correction to amending language and corrects a typographical error.

Enrolled Bill Amendment to HB 1594-FN

Amend section 2 of the bill by replacing line 1 with the following:
2 Funding Evaluation. RSA 126-K:15, VI is repealed and reenacted to read as follows:

Amend RSA 126-K:17, II as inserted by section 3 of the bill by replacing line 1 with the following:

II. The commissioner shall review all requests and recommend awards, including amounts

Senator Trombly moved adoption.

Adopted.

2000-3970-EBA

08/10

Enrolled Bill Amendment to HB 449-FN

The Committee on Enrolled Bills to which was referred HB 449-FN
AN ACT requiring boating safety education.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 449-FN

This enrolled bill amendment corrects amending language in section 2 of the bill.

Enrolled Bill Amendment to HB 449-FN

Amend section 2 of the bill by replacing lines 1 and 2 with the following:
2 Boat Safety Course. The introductory paragraph of RSA 270:46-a, III is repealed and reenacted to read as follows:

Senator Trombly moved adoption.

Adopted.

HOUSE MESSAGE

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

HB 1102, relative to accessibility of veterans' disability payments in divorce cases.

HB 1131-FN, relative to license revocations and suspensions.

HB 1146-L, relative to tax increment financing.

HB 1163, relative to the date of decision for appeals of zoning matters.

HB 1189-FN, relative to benefit amounts, fees assessed and the application of the state unemployment compensation law.

HB 1202-L, making technical corrections to 1999, 17 as amended and relative to fixing and mailing procedures in the administration and appeal of state and local taxes.

HB 1210-L, relative to capital reserve funds.

HB 1216, relative to petitions for warrant articles.

HB 1240, requiring insurers to make prompt payments.

HB 1241, relative to third person liability under the workers' compensation law.

HB 1244, relative to the use of certain needle technology.

HB 1250, allowing an advanced registered nurse practitioner to declare a personal safety emergency and to transfer an inmate for a psychiatric inpatient emergency.

HB 1251, relative to driver education training reimbursement.

HB 1253, establishing a 4-year term for the commissioner of the department of corrections.

HB 1265-FN, relative to registration of certain antique OHRVs.

HB 1316-L, prohibits school districts from using disbursements from the education trust fund as unanticipated revenue.

HB 1343-FN-A, appropriating available funds for fiscal year 2000 to provide funding to support research monitoring groundwater at reclamation sites that have had sludge applied.

HB 1344-FN, expanding the used oil program.

HB 1349-L, authorizing the department of environmental services to collect the costs of administering air pollution control from polluters at different rates for different pollutants, and relative to the mercury emissions reduction program and ash landfill study.

HB 1373, relative to payments of first and second mortgage home loans.

HB 1377, prohibiting managed care organizations from excluding certain physicians as providers and establishing a committee to study contracting methods.

HB 1406, relative to transition service.

HB 1422, relative to the composition of and procedures for the appellate board of the department of employment security.

HB 1424, relative to reevaluation of a person's competency to stand trial.

HB 1438, relative to transportation of children for involuntary emergency admissions.

HB 1457, establishing a committee to study all aspects of the condominium act established under RSA 356-B.

HB 1463, making technical corrections related to the mental health system and guardianship hearings.

HB 1465, extending the reporting date of the committee to study the non-group health insurance market.

HB 1483, establishing a committee to study the application of non-conventional veterinary procedures for domestic animals.

HB 1492-FN, relative to clarifying the state's stalking statute.

HB 1560-FN, relative to the purchase of certain prior service by county corrections officers in the New Hampshire retirement system.

HB 1562-FN, establishing criminal penalties for violations of orders of protection under the child protection act.

HB 1569-FN, requiring the department of environmental services to propose a voluntary testing program of public water supplies for methyl tertiary butyl ether (MTBE), and to study the amount of MTBE in gasoline in the state.

HCR 30, urging the United States Environmental Protection Agency to adopt recently proposed new emission standards for heavy-duty vehicles, at least as stringent as originally proposed, and to adopt a second phase of emission standards for heavy-duty vehicles and reductions in the sulfur content of highway diesel fuel.

HCR 33, establishing a joint New Hampshire-Vermont legislative cooperative effort regarding the Connecticut river.

HJR 21, calling for changes in the federal Clean Air Act regarding best available control technology and lowest achievable emission rate.

HJR 24, urging the United States Environmental Protection Agency and Congress to work with the northeastern states and gasoline refiners to authorize the use of a regional gasoline containing less or no MTBE additive and to promptly eliminate Clean Air Act requirements for oxygenates in gasoline.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 1102 - HJR 24 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 1102, relative to accessibility of veterans' disability payments in divorce cases. **Judiciary**

HB 1131-FN, relative to license revocations and suspensions. **Transportation**

HB 1146-L, relative to tax increment financing. **Energy and Economic Development**

HB 1163, relative to the date of decision for appeals of zoning matters. **Public Affairs**

HB 1189-FN, relative to benefit amounts, fees assessed and the application of the state unemployment compensation law. **Insurance**

HB 1202-L, making technical corrections to 1999, 17 as amended and relative to fixing and mailing procedures in the administration and appeal of state and local taxes. **Ways and Means**

HB 1210-L, relative to capital reserve funds. **Capital Budget**

HB 1216, relative to petitions for warrant articles. **Public Affairs**

HB 1240, requiring insurers to make prompt payments. **Insurance**

HB 1241, relative to third person liability under the workers' compensation law. **Insurance**

HB 1244, relative to the use of certain needle technology. **Public Institutions, Health and Human Services**

HB 1250, allowing an advanced registered nurse practitioner to declare a personal safety emergency and to transfer an inmate for a psychiatric inpatient emergency. **Public Institutions, Health and Human Services**

HB 1251, relative to driver education training reimbursement. **Transportation**

HB 1253, establishing a 4-year term for the commissioner of the department of corrections. **Executive Departments and Administration**

HB 1265-FN, relative to registration of certain antique OHRVs. **Transportation**

HB 1316-L, prohibits school districts from using disbursements from the education trust fund as unanticipated revenue. **Education**

HB 1343-FN-A, appropriating available funds for fiscal year 2000 to provide funding to support research monitoring groundwater at reclamation sites that have had sludge applied. **Environment**

HB 1344-FN, expanding the used oil program. **Environment**

HB 1349-L, authorizing the department of environmental services to collect the costs of administering air pollution control from polluters at different rates for different pollutants, and relative to the mercury emissions reduction program and ash landfill study. **Energy and Economic Development**

HB 1373, relative to payments of first and second mortgage home loans. **Banks**

HB 1377, prohibiting managed care organizations from excluding certain physicians as providers and establishing a committee to study contracting methods. **Public Institutions, Health and Human Services**

HB 1406, relative to transition service. **Executive Departments and Administration**

HB 1422, relative to the composition of and procedures for the appellate board of the department of employment security. **Executive Departments and Administration**

HB 1424, relative to reevaluation of a person's competency to stand trial. **Judiciary**

HB 1438, relative to transportation of children for involuntary emergency admissions. **Public Institutions, Health and Human Services**

HB 1457, establishing a committee to study all aspects of the condominium act established under RSA 356-B. **Public Affairs**

HB 1463, making technical corrections related to the mental health system and guardianship hearings. **Public Institutions, Health and Human Services**

HB 1465, extending the reporting date of the committee to study the non-group health insurance market. **Insurance**

HB 1483, establishing a committee to study the application of non-conventional veterinary procedures for domestic animals. **Executive Departments and Administration**

HB 1492-FN, relative to clarifying the state's stalking statute. **Judiciary**

HB 1560-FN, relative to the purchase of certain prior service by county corrections officers in the New Hampshire retirement system. **Insurance**

HB 1562-FN, establishing criminal penalties for violations of orders of protection under the child protection act. **Judiciary**

HB 1569-FN, requiring the department of environmental services to propose a voluntary testing program of public water supplies for methyl tertiary butyl ether (MTBE), and to study the amount of MTBE in gasoline in the state. **Environment**

HCR 30, urging the United States Environmental Protection Agency to adopt recently proposed new emission standards for heavy-duty vehicles, at least as stringent as originally proposed, and to adopt a second phase of emission standards for heavy-duty vehicles and reductions in the sulfur content of highway diesel fuel. **Environment**

HCR 33, establishing a joint New Hampshire-Vermont legislative cooperative effort regarding the Connecticut river. **Interstate Cooperation**

HJR 21, calling for changes in the federal Clean Air Act regarding best available control technology and lowest achievable emission rate. **Environment**

HJR 24, urging the United States Environmental Protection Agency and Congress to work with the northeastern states and gasoline refiners to authorize the use of a regional gasoline containing less or no MTBE additive and to promptly eliminate Clean Air Act requirements for oxygenates in gasoline. **Environment**

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 246, relative to personnel transfers at the department of safety.

HB 1114, relative to creditable service in the retirement system for teachers in a job-sharing position.

HB 1126, relative to repealing the prohibition on rewards for procuring employment.

HB 1134, establishing a committee to study mental health care treatment under managed care plans.

HB 1225, relative to the name of the department of fish and game.

HB 1287, relative to the membership of the water council.

HB 1409, establishing a committee to study the feasibility of reestablishing the Lawrence, Massachusetts to Manchester, New Hampshire rail service line and the Concord to Lebanon Northern passenger rail service line.

HB 1455, relative to the authority of the fish and game department for the electronic issuance of licenses, permits, stamps and tags.

HB 1523, relative to landlord-tenant obligations.

SB 355, relative to name changes for criminal offenders.

SB 382, relative of appeals of release or detention orders.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 1196, giving the police department of Lincoln authority to respond to emergency situations and exercise police duties in the unincorporated place of Livermore.

HB 1206, extending the reporting date of the committee studying alcohol and drug abuse prevention.

HB 1283, establishing a commission on the education of the deaf and hard of hearing in New Hampshire.

HB 1378, establishing a task force to conduct an ongoing study of the feasibility of reestablishing passenger rail service on the Eastern Line from Newburyport, Massachusetts to Kittery, Maine.

SB 341, extending the reporting date and changing the name of the committee to study the licensure of radiologic technologists.

Senator D'Allesandro moved adoption.

Adopted.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, March 30, 2000 at 10:00 a.m.

Adopted.

Adjournment.

March 30, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by the Reverend Hays M. Junkin, Senate Guest Chaplain.

Compassionate Creator, we pause to thank You for the blessings of this day before resuming the responsibilities of government in our beloved New Hampshire. Both March and its madness are almost at an end, but before the clock runs out, we wish to remember David and Paula Bonner, the faithful and dedicated parents of our native son, Matt, whose basketball dream of final four competition continues this weekend. Bless all parents whose work, dedication and love encompass the children who grace their lives, and may all of us draw strength and wisdom from the examples set by David and Paula who serve their family and our community in countless ways. And Lord, a few more points for Matt this weekend would be a real slam-dunk! Amen.

Senator Brown led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

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

HB 1374, extending the reporting date for the sex offender issues study committee.

HB 1435, establishing a committee to study the immediate and long-term impact of changing methodology of communications and information technology as it applies to the right-to-know law.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled Bill sent down from the Senate:

HB 1198, establishing a procedure for the 2001 voter checklist verification.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Robert Clegg
Lynn Horton
Donald Stritch
Ray Buckley

SENATE ACCEDES TO HOUSE REQUEST

HB 1198, establishing a procedure for the 2001 voter checklist verification.

Senator Trombly moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Trombly, Disnard, Eaton

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled Bill sent down from the Senate:

HB 1200-FN, relative to the application of education property tax hardship relief to estate planning trusts.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Norman Major
Eric Anderson
Avis Nichols
Jean Wallin

SENATE ACCEDES TO HOUSE REQUEST

HB 1200-FN, relative to the application of education property tax hardship relief to estate planning trusts.

Senator F. King moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: McCarley, Gordon, Larsen

HOUSE MESSAGE

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

SB 357, extending the reporting date of the study committee reviewing field activities conducted by the department of health and human services in investigating reports of abuse and neglect.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 357, extending the reporting date of the study committee reviewing field activities conducted by the department of health and human services in investigating reports of abuse and neglect.

Senator Squires moved to concur.

Adopted.

COMMITTEE REPORTS

HB 273, establishing a school building aid oversight committee. Education Committee. Vote 6-0. Inexpedient to Legislate, Senator Eaton for the committee.

SENATOR EATON: The Education Committee realizes that state building aid is an issue that merits review. At this time, the adequate education and education financing commission is charged with looking into the state building aid process and distribution. The statewide school facilities survey is also underway. Once completed, that survey will give us a good indication of the current status of our school buildings. Given the work currently being done on the issue, the Education Committee believes that there is a timeliness factor to consider. A separate study may be in order once these other activities are complete and there is additional data to analyze. Therefore, the committee recommends this bill as inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 514-L, relative to change of school assignment and transfers of public school pupils. Education Committee. Vote 6-0. Inexpedient to Legislate, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: House Bill 514 would authorize superintendents of school districts to approve requests for changes in school assignment when such changes are in the best interest of the pupil. It would also allow superintendents to negotiate the apportionment of tuition cost associated with the pupil's change of school assignment. The Education Committee has two reservations with this bill. First, superintendents regularly work with each other to coordinate moving a pupil to a school in another district when it makes the most sense for that child. In that process, the superintendent works out an appropriate tuition arrangement. Second, this bill states that a change of school assignment shall be based on the best interest of the pupil, but the term "best interest of the pupil" is not defined. It could be argued that this is in the best interest of a talented athlete to change that student's school assignment to a school in a neighboring district with a more extensive athletic program. Without a definition of "best interest," each school district will create its own definition. The State Board of Education's role and appeals of school assignments changes may be complicated by the various definitions of "best interest." Since these types of school assignment transfers are already taking place, the Senate Education Committee recommends that this bill is inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 699-FN-A, establishing the granite state scholars program and making an appropriation therefor. Education Committee. Vote 6-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: This program will designate those New Hampshire high school students that graduate in the top 10 percent of their class and receive a score of at least 1200 on the SATs, or an equivalent score on the ACTs as granite state scholars. These granite state scholars will be eligible for scholarships to public institutions of higher education within New Hampshire. The granite state scholars program provides for the scholarships with matching state grants for private gifts and contributions received by the public colleges and universities. Offering this scholarship may help keep more New Hampshire's brightest and highest achieving students in New Hampshire for their post secondary education. The matching state grant may also encourage more people to donate funds to the scholarship programs. Although this bill only includes a \$1 appropriation, the university system is supportive of the bill because they feel that it is incredibly important that they start this process in terms of their ability to raise money as well. The Education Committee believes that the granite state scholars program represents a promising public/private partnership and unanimously recommends ought to pass.

Adopted.

Ordered to third reading.

HB 1362-L, relative to the reconsideration of cost apportionment within a cooperative school district. Education Committee. Vote 6-0. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: House Bill 1362 clarifies the dates for reconsideration of cost apportionment formulas within cooperative school districts. This bill clarifies that the apportionment formula may be reconsidered at any point after five years from the first annual school district meeting or at any point after five years from the last change to the cost apportionment formula. The new language is intended to insure that the statute is not misinterpreted, in fact, it clarifies it as it has been occasionally misunderstood in the past. The Education Committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 360, adopting a pupil safety and violence prevention act. Education Committee. Vote 7-0. Ought to pass with amendment, Senator Larsen for the committee.

2000-3917s

04/10

Amendment to SB 360

Amend RSA 193-F:2 as inserted by section 1 of the bill by replacing it with the following:

193-F:2 Purpose and Intent. The general court hereby finds that:

I. All pupils have the inalienable right to attend public schools that are safe, secure, and peaceful. Violence is the number one cause of death for young people and has become a public health problem of epidemic proportion. One of the legislature's highest priorities must be to protect our children from the plague of violence.

II. The fastest growing violent crime is hate crime, and it is incumbent upon us to ensure that all pupils attending public school are protected from potentially violent discrimination. Educators see how violence affects youth every day; they know first hand that youth cannot learn if they are concerned about their safety. This chapter is designed to protect the institution of learning as well as our pupils.

III. Not only do we need to address the issue of school violence but we also must strive to reverse the increase in teen suicide. The number of teens who attempt suicide, as well as the number who actually kill themselves, has risen substantially in recent years. Teen suicides in the United States have doubled in number since 1960 and every year over a quarter of a million adolescents in the United States attempt suicide. Approximately 4,000 of these attempts every year are completed. Suicide is the third leading cause of death for youths 15 through 24 years of age. To combat this problem we must seriously examine these grim statistics and take immediate action to ensure all pupils are offered equal protection from discrimination under New Hampshire law.

Amend RSA 193-F:4 as inserted by section 1 of the bill by replacing it with the following:

193-F:4 Discrimination Prohibited.

I. No person shall be subjected to discrimination, including harassment, on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, or sexual orientation in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state pupil financial aid.

II. Each local school board shall adopt policies relative to non-discrimination and harassment which are consistent with the provisions of this chapter and with the rules adopted by the state board of education.

III. Any school employee who has witnessed or knows of an incident involving any of the activities prohibited under this chapter shall report the incident to a person with authority to remedy the incident, who shall in turn report the incident to the superintendent.

IV. The remedy required in paragraph III shall be defined by the local school board. The local school board shall provide opportunities for educators to have sufficient knowledge and skills to be effective in preventing or responding to acts prohibited under this chapter.

V. A school employee who has reported violations under this chapter to the person with authority, or who has intervened under paragraph III, shall be immune from any cause of action which may arise from the failure to remedy the reported incident.

VI. For purposes of this section, "person with authority" means the principal.

VII. Any school employee acting under the provisions of this chapter shall be immune from any cause of action for any act taken pursuant to this chapter.

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

2 New Subparagraph; State Board of Education; Rulemaking; Pupil Safety and Violence Prevention Rules Added. Amend RSA 21-N:9, II by inserting after subparagraph (bb) the following new subparagraph:

(cc) Procedures for local school boards and persons with authority to respond to, and provide relief and remedy for, reported incidents of pupil discrimination and harassment prohibited by RSA 193-F, which shall include due process procedures at the local school board level.

3 Effective Date. This act shall take effect January 1, 2001.

SENATOR LARSEN: Senate Bill 360 creates the pupil safety and violence prevention act of 2000. This important bill is an effort to ensure that our public schools are safe, secure and peaceful for the students attending those schools. The bill provides that no persons shall be subjected to discrimination, including harassment on the basis of sex, ethnicity, race, national origin, religion, color, mental or physical disability, or sexual orientation in any program or activity within the school. The Education Committee amendment clarifies the procedure for dealing with incidents of harassment and discrimination. It requires the local school district to adopt policies on nondiscrimination and harassment. Most school districts already have those policies. It then provides that any school employee who was witness or knows of an incident of harassment or discrimination to report it to the person with authority, usually the principal, to remedy the situation. The principal then reports the incident to the superintendent, and the remedy or the intervention taken by that authority figure is defined by the local school board policy. In addition to establishing a process for dealing with incidents of harassment and discrimination, SB 360 contains a clause to protect school employees, acting in accordance with this chapter. The Senate Education Committee believes that SB 360 provides an important locally controlled framework for dealing with these potentially violent and inflammatory incidents. We ask for your support as the committee recommends ought to pass with amendment.

Amendment adopted.

Ordered to third reading.

HB 1179, relative to final orders of the public utilities commission. Energy and Economic Development Committee. Vote 5-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, this bill clarifies what constitutes the final order of the PUC. It specifies that transcripts of minutes of oral deliberation is not a final order. It further specifies that a final order shall include the identity of all of the parties, the positions of each party on each issue, a decision on each issue, and the reasoning supporting each decision, and the concurrence or dissent of each commissioner participating in the decision. The committee was unanimous in reporting this bill out as ought to pass.

Adopted.

Ordered to third reading.

HB 1318, establishing a committee to study the instability of kerosene, gasoline, diesel fuel, and home heating fuel prices. Energy and Economic Development Committee. Vote 4-0. Ought to Pass, Senator Disnard for the committee.

SENATOR DISNARD: This bill, as we are all aware, is the response to the recent spike in fuel prices. This bill charges the committee with the recommending ways of protecting consumers against sudden changes in prices as an example, possible oil reserve programs. This is a recurrent problem in New England. Testimony indicated that 75 percent of the fuel oil used in this country, in the winter months, is consumed in our New England states. The committee unanimously recommends ought to pass.

Adopted.

Ordered to third reading.

HB 1462, extending the report date and changing the membership and duties of the committee to study methods to promote the use of renewable energy sources. Energy and Economic Development Committee. Vote 4-0. Ought to Pass, Senator Below for the committee.

SENATOR BELOW: The study committee which was created last year, originally had a reporting deadline of last fall. The committee and the House recommend the passage of this which extends the reporting date to the end of this year and allows the Senate President to reduce the Senate membership from 5 to 3 if so desired.

Adopted.

Ordered to third reading.

HB 1175, relative to license renewal for dental hygienists. Executive Departments and Administration Committee. Vote 6-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill changes the year in which dental hygienists need to apply for a license renewal. Currently, dentists and dental hygienists renew licenses in the same year. This bill will have dentists renew their licenses in even-numbered years, and dental hygienists renew in odd-numbered years. This will allow the board to renew licenses in a more timely manner. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1301, relative to regional appointments to the state committee on aging. Executive Departments and Administration Committee. Vote 6-0. Ought to pass with amendment, Senator D'Allesandro for the committee.

2000-3905s

05/09

Amendment to HB 1301

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

1 Committee Established; Organization; Meetings; Expenses; Membership. Amend RSA 161-F:7 to read as follows:

161-F:7 Committee Established; Organization; Meetings; Expenses.

I. There shall be a state committee on aging which shall consist of 18 members. ~~[Three]~~ ***The governor shall appoint 15*** members ~~[shall be appointed by the governor]~~ with the approval of the council ~~[from each of the 5 councilor districts established under RSA 662:2]~~. ***Those appointed by the governor shall include at least one member from each county.*** The committee shall also include the chairman of the joint legislative committee on elderly affairs, one representative appointed by the speaker of the house, and one senator appointed by the president of the senate. Each of the members shall serve for a term of 3 years except the legislative members' terms shall be co-terminous with their 2-year legislative terms. At least 8 members shall be 60 years of age or older at the time of their appointment, and not more than 8 members shall be of the same political party. Nine members shall constitute a quorum. No member shall serve more than 2 consecutive terms, and no member shall have a material financial interest in any agency receiving federal or other funds administered by the ~~[committee]~~ ***division of elderly and adult services.***

II. The governor shall name one member of the committee to act as chairman. [His] *The* term of office as chairman shall be for 2 years. The chairman shall call the first meeting of the [council] *committee*. The committee shall elect a vice-chairman and a clerk.

III. The committee shall meet no less than once in each 3-month period.

IV. All members of the committee shall be reimbursed for actual expenses, including any necessary in-state travel connected with committee business at the mileage rate established for state employees, within the limits of the appropriation made therefor.

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

SENATOR D'ALLESANDRO: The state Committee on Aging has been addressing issues regarding New Hampshire's aging population more and more locally and countywide instead of statewide. This bill changes the way the membership of the committee is appointed to reflect a local and county orientation. The 15 members appointed by the governor, would have to represent all of New Hampshire's counties to better enable work with the aging in this county orientation. The committee recommends ought to pass as amended.

Amendment adopted.

Ordered to third reading.

HB 312, relative to the carrying of firearms in courthouses. Judiciary Committee. Vote 5-0. Ought to Pass, Senator Trombly for the committee.

Senator Trombly moved to have **HB 312**, relative to the carrying of firearms in courthouses, laid on the table.

Adopted.

LAID ON THE TABLE

HB 312, relative to the carrying of firearms in courthouses.

HB 568, establishing a program for performance evaluations of judges. Judiciary Committee. Vote 6-0. Ought to Pass, Senator Brown for the committee.

SENATOR BROWN: House Bill 568 requires the Supreme Court to design and implement a program for performance evaluation of judges. This legislation was filed as a result of the House Judiciary Committee's work on judicial reform. House Bill 568 would require that every judge be evaluated a minimum of once every three years. These performance evaluations would be a mechanism to deal with situations when a judge has been rude, arrogant, or acted inappropriately. The level of issues dealt with in the performance evaluations would not rise to the standards handled by the Judicial Conduct Committee. All branches of government must remember that they are accountable to the people of this state. Performance evaluations for judges would put judges more in touch with the people they have been chosen to serve. The Judiciary Committee recommends that HB 568 be ought to pass. Thank you for your support of this important step in judicial reform.

Adopted.

Ordered to third reading.

HB 1264-FN, relative to the unlawful use of theft detection shielding devices. Public Affairs Committee. Vote 5-0. Ought to pass with amendment, Senator Disnard for the committee.

2000-3953s**05/10****Amendment to HB 1264-FN**

Amend the bill by replacing section 2 with the following:

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

SENATOR DISNARD: House Bill 1264 makes the use or possession of theft detection shielding devices or theft detection device removers a misdemeanor. Shoplifting is a \$30 million problem all over the country. Last year, CVS pharmacies alone, lost over \$3 million in stolen merchandise in our stores in New Hampshire. In many areas, organized rings of professional shoplifters come into mall stores and steal thousands of dollars of merchandise. We were shown at the hearing special shopping bags and boxes which are lined with duct tape, the stolen merchandise is hidden in the bags. The duct tape prevents the magnetic detection equipment from functioning when the thief exits the store. This legislation is one of the top priorities for the NH Retail Merchants Association. The committee amendment makes the legislation effective upon passage. The Public Affairs Committee recommends that HB 1264 be ought to pass as amended and strongly urges your support. Thank you.

Amendment adopted.

Ordered to third reading.

HB 1413, relative to the rights of ownership of cemetery plots or burial spaces. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator Roberge for the committee.

2000-3927s**09/01****Amendment to HB 1413**

Amend the bill by replacing section 4 with the following:

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

SENATOR ROBERGE: House Bill 1413 establishes criteria for determining ownership of cemetery plots or burial spaces for purposes of probate of estates. Currently, there is no mechanism for dealing with cemetery plots or burial rights which are in dispute. Too often, people involved in divorces do not think to include the cemetery plots as part of the property to be divided. Later, the family finds themselves in dispute over burial rights and ownership, and no one has the authority to intervene or rule. House Bill 1413 establishes that the Probate Court has this right. House Bill 1413 was filed as the result of a study committee established in 1999, Chapter 262. The committee amendment merely makes the legislation effective upon passage. The Public Affairs Committee recommends that HB 1413 be ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

HB 279-FN-A, relative to refinancing the cost and rehabilitation of the Cheshire Bridge. Transportation Committee. Vote 4-0. Ought to Pass, Senator Below for the committee.

SENATOR BELOW: House Bill 279 refinances the cost and rehabilitation of the Cheshire Bridge by abolishing the toll and authorizing

bond payments from a special account in the highway fund starting July 1, 2001. Currently, the Cheshire Bridge is the only toll bridge in the entire state of New Hampshire. The bridge connects rural parts of New Hampshire to Vermont. It is at least a 20 mile detour to bypass this toll bridge. Paying this toll is of significant financial impact to the residents and workers in this region. Consistent with the action taken by the Senate in eliminating the proposed toll booths in Nashua, the Transportation Committee recommends that HB 279 be ought to pass. Thank you.

Adopted.

Referred to the Finance Committee (Rule #24).

HB 630-FN-L, relative to the Skyhaven airport transfer plan. Transportation Committee. Vote 3-1. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: House Bill 630 extends the reporting date for the Skyhaven transfer plan from November 1, 1998 to November 1, 2002 and requires that a transfer of the airport be completed by July 1, 2003. The bill also allows the State Treasurer to re-allocate existing debts in the Skyhaven hanger sinking fund account, and requires that certain revenues from the airport be deposited in the Skyhaven Airport Maintenance and Operations Fund. It is anticipated that either the city of Rochester or the county would be possible entities to accept the airport by 2003. The Senate Transportation Committee recommends that HB 630 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1161, making technical changes to the New Hampshire Aeronautics Act and establishing a committee to study revisions to the state aeronautics laws. Transportation Committee. Vote 4-0. Ought to pass with amendment, Senator Roberge for the committee.

2000-3956s

09/04

Amendment to HB 1161

Amend paragraph I of section 4 of the bill by replacing it with the following:

I. The voting members of the committee shall be 7 members of the house of representatives, appointed by the speaker of the house.

Amend the bill by replacing section 6 with the following:

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

SENATOR ROBERGE: The committee would study whether further changes need to be made to state statutes based upon changes in federal law. The technical changes contained in this legislation are as simple as removing "civil" aeronautics regulations and replacing it with "federal" aeronautics regulations, in order to keep terminologies consistent. House Bill 1611 was submitted at the request of the Department of

Transportation's Division of Aeronautics and received no opposition. The Committee amendment removes Senate members from the study committee and increases the House members from four to seven. The Transportation Committee recommends that HB 1161 be ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

HB 1588, relative to the authority of the department of transportation regarding rail safety inspections. Transportation Committee. Vote 4-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-3950s

04/09

Amendment to HB 1588

Amend RSA 367:55, III as inserted by section 2 of the bill by replacing it with the following:

III. The commissioner shall employ such expert, professional, or other assistance as is necessary to carry out the activities of this section, provided that a former railroad employee shall not perform inspections within the same railroad division in which he or she formerly worked for a period of one year from the date the person terminated his or her railroad employment.

SENATOR GORDON: House Bill 1588 clarifies the authority of the Commissioner of the Department of Transportation regarding railroad safety and inspection programs. The legislation separates federal regulations from non-federal regulations. Consistent with federal regulations and other state practices, the committee amendment adopts a one-year moratorium on former railroad employees working as inspectors within the same division in which he or she formerly worked. The Transportation Committee recommends that HB 1588 be ought to pass as amended. Thank you.

Amendment adopted.

Senator Gordon offered a floor amendment.

2000-3988s

05/10

Floor Amendment to HB 1588

Amend RSA 367:55, II as inserted by section 2 of the bill by replacing it with the following:

II. For railroad properties within the state that are not subject to federal regulation, the commissioner shall carry out such inspections as are necessary to maintain railroad safety within the state. If the commissioner finds any equipment or facilities to be unsafe, a proceeding shall be commenced as provided by law to develop an order for corrective action.

SENATOR GORDON: This is a very simple amendment which was intended when the committee acted, and we believed at that time that it was going to be incorporated in the committee amendment; however, it was apparently, an oversight, and was not included. What this does is to indicate that we will continue to have an inspection program on those railroad lines which exist in the state which are not subject to federal

inspection. A railroad line of that type would be the Cog Railway Line. It makes clear that the fact that the Cog Railway is not subject to federal regulation, but still would be subject to inspection.

Floor Amendment adopted.

Ordered to third reading.

HB 1613, exempting police officers on bicycles from certain motor vehicle laws and rules. Transportation Committee. Vote 3-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: House Bill 1613 would enable a police officer on a bicycle to turn off their light, ride on the sidewalk, or go down a one-way street the opposite way when in pursuit or responding to an emergency situation. No one testified in opposition to this legislation. The Transportation Committee recommends that HB 1613 be ought to pass. Thank you.

SENATOR FERNALD: Are wheelies and jumps allowed under this bill?

Adopted.

Ordered to third reading.

Recess.

Out of Recess.

TAKEN OFF THE TABLE

Senator Klemm moved to have **SB 379-FN**, relative to lottery scratch tickets, taken off the table.

Adopted.

SB 379-FN, relative to lottery scratch tickets.

Senator Klemm moved ought to pass.

SENATOR KLEMM: I submitted this bill at the request of the Sweepstakes Commission. What this bill would do is allow the sweepstakes to sell tickets in denominations up to \$10. They currently have authorization to sell them up to \$5. The states of Massachusetts and Vermont have had this ability for a while now. In the state of Vermont, they sold their allocation within the first three months that their tickets were available for sale. Massachusetts could not keep the ticket in the stores. The retailers along our southern border, and also with the border in Vermont, have had a number of requests from their customers for this \$10 ticket. I would like the Senate to pass this. Thank you.

SENATOR SQUIRES: I rise to offer a different point of view, Madame President. I think that this bill represents an extension and expansion of gambling. It also points out the major difficulty in gambling, which is competition. After a \$10, then a \$15, and then a \$20, and then up we go. It is in a sense, a commodity, it is a low margin economic producer, aside from its societal ills. So I stand simply to say that I can't vote for this because I believe that it expands gambling, which is not the direction in which we ought to go, and there is no end to the track that the bill sets us down. Thank you.

Question is on the motion of ought to pass.

A roll call was requested by Senator Wheeler.

Seconded by Senator Trombly.

The following Senators voted Yes: Johnson, Fraser, McCarley, Trombly, Disnard, Eaton, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Klemm, Cohen.

The following Senators voted No: F. King, Gordon, Below, Roberge, Fernald, Squires, Pignatelli, Wheeler.

Yeas: 15 - Nays: 8

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Roberge moved to have **SB 337-FN**, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations, taken off the table.

Adopted.

SB 337-FN, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations.

Senator Roberge moved ought to pass.

SENATOR ROBERGE: The current amendment has to do with...it is restricted to those people coming into the state from other states. Currently, when someone comes in from another state, they surrender their driver's license from the old state, and they get a temporary driver's license, which is good for six months. During that six month period, safety checks to find out if they have any court defaults, traffic violation court defaults. What this bill would do is, they would not only check for traffic violations defaults, but they would check for any kind of court default that this person may have in the past. There is no additional personnel. Safety would have six months to do it. We probably would find some serious offenders, rapists or murderers, or something like that as the result of this. We are doing it anyway, it would just expand the check on court defaults that they are already checking on. I recommend ought to pass. Thank you.

SENATOR JOHNSON: Senator Roberge, did you say that there would be no additional personnel needed, and in the amended analysis that we have in front of us under II, it said that there are two to five police officers to serve the criminal processes and so forth?

SENATOR ROBERGE: That is the old bill. I don't think that the new bill has been passed out yet.

Adopted.

Senator Roberge offered a floor amendment.

2000-3964s

05/09

Amendment to SB 337-FN

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

AN ACT requiring any new resident applying for a temporary or permanent driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations.

Amend the bill by replacing all after section 2 with the following:

3 NCIC Record Checks Required Prior to Issuance of Permanent Driver's License. Amend RSA 263:5-a to read as follows:

III. The director may issue a temporary driver's license to a person who applies for a license under paragraph I until he receives the record and determines whether the person should be granted a driver's license. The director may refuse to issue a temporary driver's license to a person who is under suspension or revocation in another jurisdiction or who would present a hazard to the safety of others. ***After issuance of the temporary license and prior to issuance of a permanent license the applicant's record for outstanding warrants or defaults shall be checked again through the NCIC, in the manner prescribed in paragraph I(c).***

4 New Paragraph; Nonrefundable Fee. Amend RSA 263:5-a by inserting after paragraph VI the following new paragraph:

VII. Any person who provides false information as provided in paragraph VI shall forfeit any fee paid.

5 New Paragraph; Interest after Suspension. Amend RSA 263:56-a by inserting after paragraph II the following new paragraph:

II-a. After suspension as provided in paragraph II, interest on amounts not paid when due shall be computed at the rate of 1 percent per month from the date of suspension to the date payment is actually made. Interest shall be collected by the department or the court and deposited in the default bench warrant fund established in RSA 263:56-d to pay for costs associated with employing law enforcement official and other related expenses necessary to the enforcement of this section. No interest shall be computed on fines assessed before January 1, 2001. The commissioner shall have the discretion, as justice may require, to waive the payment of interest computed under this paragraph.

6 Notice of Interest on Unpaid Fines. Amend RSA 262:44, I to read as follows:

I. Such defendant shall receive, in addition to ~~[his]~~ ***the*** summons, a uniform fine schedule entitled "Notice of Fine, Division of Motor Vehicles" ~~[which]~~; ***the fine schedule*** shall contain the normal fines for violations of the provisions of title XXI on vehicles for which a plea may be entered by mail ***and notification that unpaid fines may be subject to interest pursuant to RSA 263:56-a, II-a.*** The defendant shall be given a notice of fine indicating the amount of the fine plus penalty assessment at the time the summons is issued; except if, for cause, the summoning authority wishes the defendant to appear personally. Defendants summoned to appear personally shall do so on the arraignment date specified in the summons, unless otherwise ordered by the court. Defendants who are issued a summons and notice of fine and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the fine plus penalty assessment to the director of motor vehicles within 30 days of the date of the summons. The director of motor vehicles shall remit the penalty assessments collected to the police standards and training council for deposit in the police standards and training council training fund and to the state treasurer to be credited and continually appropriated to the victims' assistance fund in the percentages and manner prescribed in RSA 188-F:31. Fines shall be paid over to the commissioner of administrative services, or to such department or agency of the state as the law provides, within 14 days of their receipt.

7 Default of Personal Recognizance. Amend RSA 597:38-b, I to read as follows:

I. Whenever a party recognized to appear for any offense [involving driving] makes default and the recognizance is declared forfeited, the court shall send a notice of default to the division of motor vehicles. The division shall send a notice to the person owing the recognizance, demanding payment within 30 days and stating that failure to make payment within the 30-day period shall result in suspension of such person's driver's license or driving privilege until such time as the person provides proof to the department of safety that he has paid the amount of the forfeited recognizance to the court.

8 Effective Date. This act shall take effect January 1, 2001.

2000-3964s

AMENDED ANALYSIS

This bill:

I. Requires any new resident applying for a temporary or permanent driver's license to be checked through the National Crime Information Center (NCIC).

II. Authorizes the director of state police, department of safety, to establish a new unit of the state police and assign 2 to 5 police officers to serve criminal processes, warrants, and notices of court defaults, and to arrest persons wanted for outstanding warrants and court defaults.

III. Authorizes the collection of interest on outstanding unpaid fines, with proceeds dedicated to the default bench warrant fund, to pay the costs associated with enforcement of the bill's provisions.

IV. Broadens the scope of personal recognizance defaults subject to interest penalties.

V. Requires that any person who provides false information when applying for a license forfeit any fee paid.

SENATOR RUSSMAN: Senator Roberge, has the Department of Safety been able to take a look at this amendment to see...any input...

SENATOR ROBERGE: I don't know the answer to that.

SENATOR FERNALD: I would like to relate to my fellow Senators, conversation that I had with John Stephen when we had passed this bill originally. We had passed SB 337 several weeks ago and then it went to Finance, and came out with an inexpedient to legislate motion, and then it went onto the table. I had talked with John Stephen and one concern that he had, the department had had, was people come from out of state and they want to apply for a driver's license. They go to one of the local offices to do that. If you do a background check, and this really is some sort of criminal...and you say, you don't get a license and by the way, we want to arrest you. We are going to have to have police officers at all of these places to apprehend these people. That was one of their concerns because they thought that we are really going to need troopers in all of these places while we are doing these background checks and rejecting license request. Senator Roberge, another criticism was, gee we are doing, I don't know how many licenses a year, but let's say it is a 150,000, between renewals and new licenses, this is a huge burden to do background checks on that many people. One thing Senator Roberge had said when we started with this bill was "we are going to catch all of those people who aren't paying their fines." The Department of Safety said that they already check for fines and parking tickets, so this doesn't really add anything. I think that Senator Roberge had addressed all of these concerns with her amendment. We won't be doing 150,000 back-

ground checks because this amendment limits the background checks, to people who are looking for licenses as new residents. So renewals don't trigger a background check. We are only looking for people moving into the state. So it is a much smaller scope. The objection that we would need to have troopers at all of the licensing offices does not apply under this amendment, because the rejection is not going to be face to face on the spot. People go, and they say, here I am from Massachusetts, here is my Massachusetts license, and they get a temporary New Hampshire license, and then there is a time period after the fact where the department can do a background check. It doesn't happen on the spot. I think that this is a good amendment I will support it.

SENATOR MCCARLEY: Senator Fernald, right now, if somebody comes to New Hampshire and buys a house or rents an apartment, what is the obligation for them to change their other state license? I mean how long could someone from Massachusetts keep their old license before they have to apply for a New Hampshire license? What is the timeframe for this? How long can you drive on another state license?

SENATOR FERNALD: I believe that it is 20 days, but I am not positive. Does anyone here have better knowledge of this subject than I?

SENATOR RUSSMAN: **TAPE INAUDIBLE** always been when are you considering yourself that you are going to stay there to be a resident, so it is arguable. But the law says 30 days.

SENATOR TROMBLY: I think that you all remember that I spoke on the bill as it was originally introduced. I didn't believe at that time, that the delay caused by residents of the state versus the benefit that we were going to gain was that big of a deal for the people of this state. You remember that the genesis of this bill was to catch those people who have outstanding arrest warrants, and the other was people that didn't pay their fines. Neither of whom should get the benefit of the doubt, as far as I am concerned. You will remember that Senator Roberge spoke, I think, eloquently, about the death of that young boy in the southern part of the state who was killed, murdered by someone who moved to New Hampshire and applied for a New Hampshire license, and if that had been in effect, that person could have been saved. Now I think that that young boy who was killed would probably have gladly waited, had he reached the age of 18 or 20, to get his driver's license, but he is not going to have that chance because the guy who would have been caught up in this bill got away. I think that Senator Fernald is entirely accurate in what he said. I think that one additional benefit is, most people when they are fleeing a crime scene, go to another state. So the likelihood of someone committing a murder or a ghastly crime and having the warrant outstanding in other states, what if they are going to come here? So we will catch them. I think that it is aimed directly at the audience where it needs to be aimed. Those people who are fleeing arrest warrants, and those people who don't pay fines. I think that Senator Roberge has been entirely gracious in an effort to salvage something to protect the children and the people of this state, to bringing it down to this level. I think that those who oppose this on purely technical grounds, need to move their bar up a little bit higher and meet her coming down. I think that we should have passed this bill the way that we did the first time, but out of deference to Senator Roberge, I will vote for the watered down version and make one final point. If the process as Senator Fernald says is true, we will have the address so that the police can then go to the home and arrest those people. Thank you.

SENATOR LARSEN: I just wanted to remind the Senate and Finance members of some of the details that we learned in the Finance Committee, which resulted in our recommending the original bill inexpedient to legislate. There was in fact, an NCIC system check in 1995, a pilot project, to look at names through the check-in. There were 1600 possible hits and 33 cases were identified to be looked at. Of those 33 hits, as they call it...seven were...of the 33 hits, I am sorry...three of the seven were no longer listed on NCIC; thus, there were 16,000 names run, and there turned out to be four correct NCIC hits. The two troopers then went to the last known addresses of the four persons, and none of those four persons could be located. So while I think that this is a good-hearted effort to identify, I think that it may not result in the kind of locations of criminals that we are hoping. I did want to remind the Senate that this may in fact, not result in as many apprehensions as one might hope.

SENATOR TROMBLY: Senator Larsen, on those hits, were those hits for people who were current residents or people who had moved in? My thought is that people that just moved into the state would be more likely to give an accurate address for a license as they come in, and they would be the people caught up in the bill?

SENATOR LARSEN: It was a single month worth of license applications and renewals that were 16,000 names. Out of 16,000 there was 1600 questionable names. So, yes, in fact, it was every applicant.

SENATOR TROMBLY: Thank you.

SENATOR RUSSMAN: Part of the reason that we run a pilot program is to see if it works. So we run a pilot project of 16,000 names, which happens to be about the number that we would actually do in this case of people moving into the state, and it really didn't pan out at all. I think that...for those of you that deal essentially with what we consider a criminal element, these people are highly transient, they don't stay in one place. They might have a winter rental for a bit at the beach and then maybe they bounce around from apartment to apartment in Manchester and Nashua or wherever, and the idea that you think that they are going to...you would be amazed at the number of people that move, especially younger people, they're moving all of the time in terms of trying to find them, and trying to apprehend them and sending state troopers to see if they can locate them or arrest them. It is...maybe it is worth- while. I know that you can point out to one case and say, well if you saved one person, well it was worth all of that, sure. But we could do a lot of things that would save one person. We could probably put crosswalks and stop lights at every intersection in the state, and no doubt, we are going to save some lives here for doing that, but at what point do you draw the line? I think that the Department of Safety, they are already talking in terms that they need additional people power to actually do what they are doing. I think that...I can't imagine that you are going to have a real good amount of success with this thing because of the elements that you are dealing with. These are not people that move in and get a good job, and a good location, and move to a decent home in a decent neighborhood, and stay there for people to come and apprehend them. You have to understand that they are criminals to begin with, the few that are coming here and doing that. A good many of these people don't ever actually apply for a license. They will drive just without one because they have a fear that they don't want their name out there, or they use an alias or what have you in terms of trying...the other thing is, you must understand that when you apply for a license you have to put on there that you are sign-

ing it under the penalty of perjury, that the information that you are giving is true and accurate. Well the people or the elements that we are talking about here, they are not worried about signing accurately or correctly, or giving the proper address, or anything else as far as the information is appropriate, even if they do get a license, which many of them don't.

SENATOR BROWN: I rise to support Senator Roberge's amendment. I think that when someone moves to the state and applies for a license, they are likely to be there at least for that six months while they are waiting to get their permanent license. I think that she has made a very reasonable compromise. She has moved quite a ways from where she first came with her bill. I also think that the department has six months to do this. It sounds like it doesn't take more than a couple of minutes. I think that it is reasonable to support this, so I am going to support Senator Roberge.

SENATOR GORDON: I just wanted to say that in hearing the testimony before the Transportation Committee, there wasn't a single person who testified who didn't say that this wasn't a good idea. Everybody indicated that it was a good idea. The question was, is the expense the state would incur in order to carry out the program worthwhile? I think that certainly was a judgement call. In the last session, you may recall the Senate passed this bill and it passed the way that it was originally proposed. The House didn't go along with it. With this amendment, I think that it makes it a far more practical bill, and the reason that I support the amendment is because I have seen what the Department of Safety has done in terms of people on the roads. It has a concern about who we put on the roads. Over the last couple of sessions, the last three sessions, we have seen the Department of Safety come again, and again, and again, and say, we have to do something about new drivers on the road of the state of New Hampshire. We have addressed those new drivers. In most cases, those who are just getting their licenses. Kids. Because what we want to do, is we want to make sure that the people that we are putting on these roads are **TAPE CHANGE** and responsibly look at them and say, are these the people that we ought to be sharing our roads with? For us to make the same type of check on a new driver that a police officer makes when they stop someone from speeding, to me, does not appear to be too onerous. I would support the amendment. I think that it is reasonable and a good compromise.

SENATOR MCCARLEY: Senator Trombly, I am just curious. It is my understanding, and this is slightly different from the way that we check speeding...when a patrol officer is sitting in his or her car checking someone, but I am curious, when I come in from out-of-state to get a new license, Senator Trombly, and I go to file for that, on the form that I am filling out, is it going to say, by the way, this will be sent to NCIC for a background check?

SENATOR TROMBLY: I don't know.

SENATOR MCCARLEY: I guess that I would say that that raises some concerns, in addition to the fact that while we have used an absolutely horrific case to prove the reason for voting for this, I am not sure if the person who applied was told, "by the way we are sending this in for a background check" we might have further prevented the horrific thing that occurred. The bill is, I think, somewhat troubling.

SENATOR FRASER: Senator Roberge, I am still confused. The fiscal note that is the original bill as amended by the Senate...

SENATOR ROBERGE: It has not been changed, I am sorry to say, which so often happens. We don't need any troopers for this and we don't need any of the page three. Also, if I may address Senator McCarley's concern...

SENATOR FRASER: Senator Roberge, on the analysis on page three, it says, "authorizes the director of state police department of safety to establish a new unit, state police assign two to five state police officers."

SENATOR ROBERGE: I see that and I realize that it is a mistake, because we don't need any more police officers to do what this bill calls for. That was the original bill and it doesn't apply anymore to this bill. If they have six months to check, they certainly don't need anymore personnel. It could be done during the day or night or any other time when they have the time. That is why they don't need any more personnel.

SENATOR FRASER: Senator Roberge, I guess my other question would be, there is going to have to be additional computer services, I would assume, in order to embrace what is being explained in this amendment.

SENATOR ROBERGE: Oh, thank you for asking. It gives me an opportunity to explain. We are already checking people coming into the state for traffic violation warrants. This would expand the check to other kinds of defaults. So we are already putting people through. They are getting this temporary license that gives them six months before they get a permanent license. So those issues have already been addressed. Both issues have already been addressed.

SENATOR BELOW: Senator Roberge, I think that you are saying that the original section one of the bill would no longer be needed if we adopt this amendment?

SENATOR ROBERGE: I don't have the original one in front of me.

SENATOR BELOW: Section one of the original bill is the section that established a new unit of the state police with two to five officers, to serve criminal processes, warrants and notices of court defaults...

SENATOR ROBERGE: It replaces all after section two.

SENATOR BELOW: My question is, if we adopted your amendment, is it your intent that we would no longer need the original section one of the bill?

SENATOR ROBERGE: Yes.

SENATOR BELOW: But apparently, your new amendment doesn't do that, so would you be willing to either recess or put this back on the table so that a further amendment could be prepared to delete section one of the original bill?

SENATOR ROBERGE: I believe that the new amendment addresses that. It may be a drafting error. I was under the impression that it was taken care of in my floor amendment.

SENATOR FERNALD: I rise to make several points. One criticism of the Department of Safety originally was, this was going to be too onerous, too much work. I am interested to find today that they did a pilot program and that they checked 16,000 records and apparently that wasn't too big of a burden. I suspect under this amendment, when we are only checking newcomers to the state, will be less than 16,000 a year. The pilot program showed that a relatively small number of hits came up. That is entirely what I would expect. Fortunately, the people of this state are by and large, law abiding people, and people from other states who come here are by and large law abiding people. The problem that we

have in this state and elsewhere, is there is that very small minority that creates a lot of havoc. If we can find one fugitive, rapist or murderer a year who is coming to this state, it will be worth it. I am not sure we will, but I think that it is worth doing the search, since they are already doing computer searches for other things on new licensees from out-of-state, why not just broaden the search a little bit? There was the suggestion that criminals hide and they are good at hiding and you will never find them. I read a lot of stories about criminals get caught because they are stupid and they getting caught. I mean the guys who blew up the World Trade Center, after the they blew up their van, they went to go get their deposit back and that is how they got caught. So I think that we will catch people through this. Then finally, to speak to the issue of the moment, and that is, do we need section one or not? The pilot program showed that they did 16,000 checks and they had 1600 hits, if I heard it right. And somebody has to check those hits. So I suspect that we will want to keep section one so that we have two officers who can chase down and check out whatever comes up from this search, because something will come up, and there will be some work to be done, it will be more than we are doing now, but it will be worth the money if we are really finding people who are coming here because they are fugitives and this seems like a good place to hide. So I would say that we should leave the amendment the way that it is and section one in there.

SENATOR PIGNATELLI: Madame President and members of the Senate, I am going to support this floor amendment. I supported the original bill because I saw some merit in that and understood that it was quite expensive for the state. I think that Senator Roberge has gone a long way in compromising to get a bill passed, which I think will have significant effect on whether we catch people who are trying to obtain their license illegally or who have committed a crime in another state. I also... it is not often that we know the result of the laws that we pass, but I would also like to encourage Senator Roberge when this bill gets to the House, to require that the commissioner of safety let the legislature know how many people have been stopped from committing any further crimes or how many people that we have caught under this bill. Thank you.

SENATOR F. KING: We had a discussion about this earlier in the day and it was my understanding at the time, that there would be no requirement for additional personnel. That what I understood happens, is that the amendment that we have before us on line 12 says, "the director may issue", what I am assuming is that the director does right now, as a practice, issue a temporary six month license. What I understand the intent of this legislation to be, is that during that six month's period of time, there will be an opportunity to run the NCIC check on this individual. If a hit comes back and it is verified and it would appear to be time to verify, because I think that there are errors that happen, and people have been detained and perhaps locked up because they had the wrong information. The person that they had was not the person that they thought that they had. That seems to allow that timeframe. I think that the amendment is flawed because what it says is, "amend the bill by replacing all after section two" as Senator Below pointed out. Since we don't need section one, I think that we had better have the amendment make it clear, somehow, that what we really are doing is amending all after the title of the bill and replacing it with this. Then I would believe that if there is a hit and someone is in fact, driving around with a temporary license who has committed a serious felony somewhere,

then there will be a time for the police departments of the towns of the state to accost that person without any additional people being necessary. That, I believe, is the intent of the legislation.

Recess.

Senator Cohen in the chair.

SENATOR TROMBLY: Senator F. King, I agree with what you said, I just wish to point out, that section one does not require that there be new hires. Correct? It simply says that a new unit would be created and that would allow the flexibility of the commissioner to take them from wherever he wanted?

SENATOR F. KING: I believe that that may be so, but the fact is, that we have also heard that there is other work for these officers to do. Now coming down here this morning, there happened to be three on highway 93 stopping speeders, but I will tell you that when I travel north, most of the time, I never see a trooper.

SENATOR TROMBLY: I tried to correct that, Senator King, but that bill was killed, remember?

SENATOR F. KING: I am glad that you didn't, as a matter of fact. So I think that I would be opposed to the bill if it meant diverting...creating a new unit to do something that I don't think is necessary. That is my point.

SENATOR FERNALD: Senator King, would you believe that this is just a question, I am not trying to make a point?

SENATOR F. KING: Would you believe, that I am surprised?

SENATOR FERNALD: I would. The question is this, I would expect that doing these checks is going to generate some results that require further investigation. My question is, aren't we going to need to assign an officer or two or whose job it is, to chase this stuff down, or do we not really need to separate people into a unit to be doing follow-up on background checks from driver's licenses?

SENATOR F. KING: I would say that based on the information that we have relative to the pilot project, and the number of hits that it generated, that that doesn't require **TAPE INAUDIBLE**.

SENATOR FERNALD: Okay. Thank you.

SENATOR SQUIRES: Senator Roberge, my question is to the preservation of section one and the new unit. In the original bill, which had a fiscal note, am I correct in assuming that that note came in fact, from section one, and thus, if section one is preserved in the amendment, is it a fair question to say that there will be, in fact, should be a fiscal note attached to the amendment?

SENATOR ROBERGE: No. It is my intention to table this and take section one out.

Senator Russman moved to have **SB 337-FN**, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 337-FN, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations.

TAKEN OFF THE TABLE

Senator Larsen moved to have **SB 399-FN-A**, making an appropriation to the fish and game department for the purposes of the wildlife damage control program, taken off the table.

Adopted.

SB 399-FN-A, making an appropriation to the fish and game department for the purposes of the wildlife damage control program.

Question is on the committee report of interim study.

SENATOR LARSEN: Senate Bill 399 was the bill which would...well in essence, the floor amendment authorizes \$1 for game damage control. I think that the Finance Committee and all of the committees that addressed this, recognize the need for some assistance to our agricultural producers of this state for game damage, wildlife damage control. Yet, because of the state's financial situation, the most that we could appropriate at this time was a \$1. We did feel, however, that it was important to have a line item for the department and for future budgeting purposes that we would in fact, continue to address this need on behalf of our agricultural producers of this state. I urge you to vote ought to pass as amended.

SENATOR FERNALD: Senator Larsen, maybe I didn't hear what you said but, I did hear you say that the amendment would be just a \$1. What are we looking to accomplish with this \$1 if we pass this bill?

SENATOR LARSEN: It establishes a PAU for future budgeting purposes so that the need for assigning some further monies are obvious and it is addressed in future budgeting.

SENATOR LARSEN: I move that we vote no on the interim study recommendation.

SENATOR FERNALD: I happen to think that this is something that should be studied further rather than throwing in a \$1 and see what happens next year. The thing that has bothered me about this whole wildlife damage thing, is we had some discussions before about who is going to be on the Fish and Game Commission and is it non-hunters? Basically, the argument that I have heard is, look, the licensing fees pay for the department, so the people who pay the licensing fee should be the people that sit on the commission. Which seems to me, people saying, we pay the licenses, so we own the animals, and we are going to decide what to do with them, but then when the animals do damage, they don't want that to come out of that same fund, they want it to come out of the general fund. There is a disconnect there that I don't understand. I would rather send this to study, and that is what I will vote to do.

SENATOR TROMBLY: I rise to speak against sending the bill to study. The reason why is, if we don't put \$1 in this fund, nothing is preserved. The program is gone. I think that in part, what we did last year relative to eliminating this program and substituting it with fencing, under promise that I would put this bill in. I think that there are some members of this body that voted to go along with elimination of the game

damage statute and go along with the fencing in response to the fact that this was going to be coming along. The practical reality is, Senator Fernald, that if we studied this thing and we don't put something in, its line in the budget is gone, and this program doesn't exist. I do not even begin to suspect that this bill is to be compared to Lazarus, it isn't going to rise from the dead if you eliminate the line. So the study that you want, about who is going to sit on the Fish and Game Commission or whatever is an interesting argument, but in fact, preserving the line in the budget is something that is supported by the Fish and Game Commission. They spoke in favor of this and they have been working towards that. We eliminated it and I think that we need to preserve it so that the debate on the nature and type of reimbursement can go forward next budget. But if we don't pass this amendment, it is gone. I think that we will have lost an opportunity to preserve this program. So we might be studying something that ain't ever going to happen.

SENATOR FERNALD: Senator Trombly, could you remind me and perhaps others in the Senate where we ended up on the fencing?

SENATOR TROMBLY: What we did last year is we eliminated the game damage reimbursement from the Fish and Game Fund and we established a Fencing Program for the limited duration. It requires a contribution from the landowners. But that was the quid pro quo, there would be fencing to prevent damage, but outright damage payments were eliminated. So if you don't participate in the fencing program, then presumably the damage will continue. At that time, if you remember, I spoke saying that we could examine the issue of the game damage this session with the legislation. You will also remember, Senator Fernald, that there were some questions about a significant loss of funds from the Fish and Game Commission budget if we didn't proceed with a fencing program, or a similar nature, we would have lost those funds if we kept in place an outright game damage compensation.

SENATOR FERNALD: Senator Trombly, and so did that become law, the fencing?

SENATOR TROMBLY: Yes.

SENATOR FERNALD: And the old damage bill law that was replaced, was that money out of the general fund or out of the Fish and Game?

SENATOR TROMBLY: That was a match, but it was Fish and Game. The fencing is a match, but the match comes from the Fish and Game. The old game damage came out of Fish and Game. This bill puts it as an obligation of the general fund.

SENATOR GORDON: I rise to speak just briefly. I think that we studied this enough and we all understand the issue, and we ought to defeat the interim study and go forward. I do oppose the amendment of one dollar. I think that we ought to go forward with the funding. We had the discussion last year, and I think that many people felt that if we were going to appropriate money for the management and for game mitigation, that it should be done in the form of a bill, and this bill, in particular. Senator Trombly was forthright in putting the bill forward. The one thing that I have to admit though is that Senator Trombly, again, as he is apt to do, always wants to prove me wrong, because I remember standing here last year and he said, "I am going to put a bill in next year for the money" and I stood here and I said, "Senator Trombly, you won't get a dollar." And I was wrong.

SENATOR F. KING: I just wanted to make a comment about the fencing bill, not to count on that because we are putting in a bill to fence Coos county to keep all the moose in Coos County.

Motion failed.

Senator Larsen moved ought to pass.

Adopted.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Trombly, Dist. 7

2000-3962s

10/09

Floor Amendment to SB 399-FN-A

Amend paragraph I of section 1 of the bill by replacing it with the following:

I. In addition to any other sums previously appropriated, there is hereby appropriated the sum of \$1 for the biennium ending June 30, 2001 to the fish and game department for the purpose of funding the wildlife damage control program. The governor is authorized to draw a warrant for such sum out of any money in the treasury not otherwise appropriated.

SENATOR LARSEN: I urge to vote in favor of this floor amendment. You will see that like Senator Trombly, I am a cosponsor of SB 399, and if I thought that there was a way that we could appropriate the \$.5 million that we believe is necessary this year, I would have been there supporting it as well. I think that the floor amendment is realistic. It leaves open the discussion to make sure that in fact this need that goes from Coos County moose nibbling on pine trees to Merrimack's concerns of apple growers and strawberry farmers, to all of the counties in this state. I think that this is a way to keep the issue under discussion, and hopefully, we will be able to resolve it.

Floor Amendment adopted.

Question is on ordering to third reading.

A roll call was requested by Senator Trombly.

Seconded by Senator Wheeler.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No:

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

Recess.

Senator Hollingworth in the chair.

TAKEN OFF THE TABLE

Senator Gordon moved to have **HB 542-FN-A**, repealing the legacies and succession tax, taken off the table.

Adopted.

HB 542-FN-A, repealing the legacies and succession tax.

SENATOR GORDON: I will be very brief because I think that most people are familiar with the issue. This is a bill that has been waiting to be acted upon for some time. It does in fact, repeal the legacies and succession tax. As most of you know, we had relied upon this tax, the state has for some period of time now. The tax as it is currently written in the tax code, applies to everyone. It is 18 percent. It is a substantial tax. It taxes the transfer of property upon death. That transfer takes place in many forms. It transfers under wills and other testamentary documents, and property that transfer under trusts, and property that transfers by virtue of the fact that you may have held property in joint accounts. For all practical considerations and because of other matters, I guess, what we have done is we have exempted certain categories of people from the tax. The primary exemption that we have is the exempting direct lineal descendants or ascendants. What we have said is that if you are a person and you have children or grandchildren, you don't have to pay the tax or your estate doesn't have to pay the tax. But if you should be in such circumstance where you don't have children, and for whatever reason, whether that is because of choice or because God decided that you shouldn't, that all of a sudden, you find yourself in the situation where you have to pay 18 percent tax. Clearly the tax is unfair. I think that everybody recognizes the unfairness. The only real argument that I have heard against repealing the tax, I have only heard one argument against repealing the tax and that is, we can't afford to do it right now. As I understand it, there was a proposed amendment and the amendment was attached to the bill, which would say that it wouldn't go into effect this biennium, that in fact, it would go into effect in the next biennial cycle. That would address the immediate impact and that we could plan for it in the next biennium. But still, people say how in the current financial dilemma that we find ourselves in, could we ever possibly repeal this tax right now? I will tell you why that I think that we should and can, it is because I think that we have a responsibility to do what is right. The one thing that we have heard over and over and over again, until I think, all of our faces have been rubbed into it, is if only we would have funded the Augenblick Formula a few years ago when we knew that it was the right thing to do; but we wouldn't step up and take the responsibility, if only we would have funded that Augenblick Formula, then we wouldn't find ourselves in the situation that we are today with education funding. We knew that it was the right thing at the time, but everybody always had the same argument, "we just can't afford to do it this year because of our financial circumstances." We are seeming to hear that on every bill these days. But the fact is, that it is fair to repeal the tax, it is the right thing to do. You should either do one thing or the other. You should either repeal the tax, or you should make it apply to everybody. You should make it apply to people's children, which is the way the bill originally came into the House. The fact is, that it is an unfair tax, unless you are willing to make it apply to everyone, including your own children, then I think that you ought to be consistent, be logical, be fair and repeal the legacies and succession tax. I would ask that this body do what is right and do what is fair and pass this legislation.

SENATOR F. KING: Senator Gordon said that he recognized that this legislature, which is still in session and will be in session for some time to come, has not responsibly acted on the issue of funding education. I think that the courageous thing to do, perhaps not the political thing to do, but the courageous thing to do, is for this legislature to do the right

thing, deal with the education issue, get this state out of the serious deficit position that it is in, and it is going to be in going forward. This legislature now should do that, we should not defer these problems to the next legislature. We should have the courage to do it and do it now. When we are doing that, then we should repeal the legacies tax. That is the proper sequence of events. I will not support giving up this type of money and forcing this issue until we have dealt with the education issue, which is the most important issue **TAPE CHANGE** is to do away with this tax, but to do it with this tax in conjunction that fixing the education problem that we have created because we didn't have the courage to do the right thing.

SENATOR J. KING: I rise to say that I am not going to support it. Not because I don't have strong feelings of the kind of tax that it is. But I do not see adding on to a deficit or passing the buck (BUCK) to the next people up. I think that it is wrong. If we can postpone it till then, we can wait till then because it isn't going to go into effect until then. But I think that there is still time left this year to hopefully, try to still work it out, whether it is this or the education, that my cousin, Fred King said, that it can be worked out. We can still work on it. We have to June or whatever. If I had my choices, probably two years from now or two years prior to this, I would have gone along strongly with this. Under the circumstances, there was money there to take care of the deficit. I am not going to have \$35 - \$30 million being taken out of the Health and Human Services, which is the only program that is going to get hit, you can rest assured that will be one of them. I am not going to be a supporter of that part of it. Thank you very much.

SENATOR MCCARLEY: I, too, cannot support this at this time. I didn't support it several weeks ago when it came in. I did allow us to put it on the table for discussion later. I also would say that while I was not here and would have agreed that foundation aid should have been funded, I am one of the few that has never said that we would not be right where we are right now regardless of what we had done, because I don't think that that lawsuit in that issue was going away. I think that you may have had a little bit of quiet. I think that it would have ended up here no matter, in terms of what we have done with education funding, and I think that this is the discussion we should have been having the past couple of years about education funding. I, over the last 18 months, have voted for a variety of things that would have indeed funded this, none of them have passed. Not a one of them. That being the case, while I have heard a lot about fairness, and once again, I have now been placed on the side of, I must love, unfair taxes, which is why I feel a need to stand and speak, I don't love unfair taxes. Oddly enough, I don't like taxes. But I do believe that there are things that you pay for in this life. There are things that you ask citizens to pay for that are good for all of us, but I certainly, cannot right now, talk about asking, having sat on Finance as well, to look for another \$80-\$90 million starting this coming January, if I am back here to be looking for that money. So while I applaud the efforts of trying to be more fair, I certainly cannot support this at this time.

SENATOR LARSEN: I rise to join in Senator King's belief that it in fact is going to take some courage from this group to vote on this bill. Why does it take courage? Because there are a lot of political forces on us which would say, as the *Concord Monitor* pointed out, 1) it is an election year. 2) voters don't like taxes. Well I came in here in 1994, and in 1994, we were arguing Augenblick, and we heard nothing about the fair-

ness of this tax. Finally this year, people have begun to understand the basis for our taxes and a lot of them aren't fair. But, we have to be responsible. We are the ones, some of us plan to come back next session, some of us are going to have to solve this problem. I think that this group is ready to solve the problem, but we need to know that that problem will be solved. We will find revenues to support the reasonable processes of the state, our education funding, and all of the other services which people have come to depend on. If you vote yes on this bill, you are in essence gambling. You are gambling 1) that we will find a revenue source that 424 people will agree on, or at least a majority of the 424 people will agree on next session, and you are gambling that if it is not found, you know where those cuts are going to come? You know where that \$30 million loss in revenue is going to come from? It is going to come from the Health and Human Service's budget. It is going to come from cuts to every state agency, because this body might again, refuse to find the revenue. That is the risk that you are taking. People with the biggest hearts in the world, and I tend to have a pretty big heart, I would love to repeal this tax, but I do not feel that I can responsibly do that. I ask you to think about that seriously, because it is going to be tough next time around if there is not enough agreement to pass a reasonable source of revenue raising in this state. You are going to be faced with how we are going to make the cuts to our own budget.

SENATOR BELOW: I don't think that this is an issue about political forces, or it being an election year and how it is going to play in the elections. Those of us who vote for it will be accused of being fiscal irresponsible, those who vote against it, perhaps will be accused of supporting an unfair tax. I think that this rises above that level of politics, it rises to a level of our duties under the constitution. We take an oath of office to perform to the best of our abilities, our legislative duties, in conformance, agreeably to the constitution of the state. We have a constitution that requires, that compels, all taxes, including taxes on all estates and inheritances to be reasonable and proportional. We also have a constitutional obligation, under Article 12 of part I, to all of us pay our just share of the common burden, and a constitutional right to pay no more than our just share. This is clearly a disproportionate and unreasonable taxation on some inheritance, and on estates, starting at 18 percent from dollar one, just because people choose not to have children, or are unable to have children, their estates are taxed at 18 percent. The vast majority do not pay that tax. If I felt that this was simply a matter of some subtle unfairness that we could put off, I would vote to put it off, in fact, we have voted to put it off and make it effective at the start of the next biennium. That, was a fiscally responsible thing to do so that we could plan on the impact of this. The loss of approximately \$25 million that would occur from this, and we, or our successors in office, will need to perform their duty under the constitution, and determine what is a "just, a reasonable and proportionate way of sharing the common burden" of support for the necessary functions of state government. Thank you Madame President.

SENATOR TROMBLY: TAPE INAUDIBLE the other exemption under that tax is levied under...you are exempt if you are married. Under the laws of the state of New Hampshire, I can't get married. I am not going to fight that battle this year. But I dare say to you that the estate that I am probating now, for my friend who died of AIDs in Manchester, who together, with his partner for 30 years, building up a life together, that relationship is no less valid in my eyes, than many of the relationships

of the people who don't pay that tax. I will tell you something, this tax is levied not on property owned in your own name, it is levied on jointly held property. So when Tommy died, even though they had lived in that house and had a joint savings account, and bought cars together and owned the house together, and did everything that everybody in this chamber does, together, the same way that you do it, the exact same way that you do it. Billy had to pay \$20,000 to live in a house, to keep the house. To keep the house that he lived in for 20 years. He lost his spouse and he almost lost his house. But for getting a loan, to pay who? The state of New Hampshire. You think that is fair? See there was no option to them or to me. I have to pay it. Because I can't get under one of those exemptions. That is not right. I understand the problem that you have in repealing this thing, because the answer is, you don't want to expand it. I am not comfortable with that argument, saying that we are losing \$60 million. There is an argument and Senator Gordon gave it to you. Put it on everybody. We need money, you pay 18 percent. You pay it. Because you don't let some of us get out of it. I think that imposing that tax, requiring people to be in those types of relationships, and saying to them, you can't get out of it, is wrong. So the answer here isn't lose \$60 million now or in two years. The answer here is make it fair now. If you want to raise money for Claremont, let everybody pay 18 percent, now. Put it on the table. Those of you who have problems repealing this grossly and inherently unfair tax, if you recognize that, put it on the table. I will vote for your amendment that says that everybody in my position and everybody in your position pays. We have heard a lot about tax fairness. The only way to make this tax fair is to make everybody pay it at the same level. So I will support a motion to table this bill and make everybody pay it. We will raise the money for Claremont, here and now and we won't lose a dime. We might make a few million. But if you are not going to do that, I am voting to repeal it.

Senator McCarley moved to have **HB 542-FN-A**, repealing the legacies and succession tax, laid on the table.

A roll call was requested by Senator Francoeur.

Seconded by Senator Trombly.

The following Senators voted Yes: F. King, McCarley, Trombly, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm.

The following Senators voted No: Gordon, Johnson, Fraser, Below, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Cohen.

Yeas: 9 - Nays: 14

Motion failed.

Recess.

Out of Recess.

SENATOR FERNALD: I think that in the future when we are speaking on an emotional issue, I am going to ask to speak before Senator Trombly so that I don't have to go after him, because he does such a good job. The criticism of this bill has been that we can't be doing, taking a step like this that costs us revenue unless we have a plan to replace it. I want to remind this body that we have such a plan. That we voted to repeal this tax last October when we passed an education income tax by a vote, if memory serves me right, of 15 - 8. Since that time, one who voted no that day, has come out in support, publicly, for that exact same plan. I

will vote yes to repeal this tax. It is indeed unfair. The effective date is July 2001. We all understand that the legislature in the future, if indeed this becomes law, could change that effective date and put it off further and make further changes, there are many things that we could do in the intervening period. This vote is a statement of intent. A statement that we believe in tax fairness, and if we can't do something about it this year, we are going to do something about it next year. One of the previous speakers said that we can't take this step until the legislature has acted responsibly on the school funding issue. I would like to respond by saying that this body has acted responsibly and the House has as well. The blame lies elsewhere.

SENATOR RUSSMAN: You know, I really think that everybody has good intentions here, but at the same time, I have to rise in support of my fellow Senator Fred King's remarks here. I think that to say that there are politics in an election year on this, I wonder how many people would...we don't have to have an 18 percent tax on everybody. If this \$30 or \$50 million or whatever it is, was actually funded over all of the estates, then maybe it might be 1, 2 or 3 percent. I wonder how many people that are going to repeal this would vote for an amendment to do just that. We recently had an opportunity to perhaps have it tabled so that an amendment could come forward to actually make tax equity right at this particular point and not have to put it off to other people to say, well, we will let the next group worry about that, and we will worry about it at another time; we have an election coming up and we have to be concerned about the appearance that we are going to be tough on taxes. Nobody likes this tax. Nobody likes taxes at all. But at the same time, I think that it is patently unreasonable to put it off to another legislature and say that we will let them worry about it, we can't step up to the plate. Now, in terms of avoiding this tax, creative financial planning, creative estate planning and even adoption has been used in different states to avoid these types of taxes for people who are in a position to have to pay them. They can be avoided with a number of circumstances if people put their minds to it, and it has obviously been on the books for a number of years, so people certainly have noticed that they are out there, even if they are unfair. It should be repealed, no question about that, but the revenue source ought to be replaced. We have a responsibility to pay our bills. We have to do that. We can't say, well we have them paid for this year, so we can let the next legislature worry about that, we are still going to do what we consider to be the responsible thing. I really think that is...literally more rhetoric than anything, because we are obviously saying that we don't have the wherewithal, nerve wise, to say that we are going to put this at 1 or 2 percent, or whatever the number is...and apply it to everyone in the state. We just will not do that. That is not going to pass because, again, it would be people voting for a tax, and we just can't seem to do that. So I think that given the fact that we are in an extraordinarily bad deficit position, and given the fact that this is only going to serve to make it potentially worse, I don't see how I can support it at this time.

SENATOR GORDON: Senator Russman, are you aware that the state has passed legislation that prohibits you from adopting in order to avoid the tax?

SENATOR RUSSMAN: Yes. I said in some jurisdictions. I mean, in some places, but creative estate planning, as you know, can obviate this situation in many instances.

SENATOR GORDON: I guess that I would follow up with that being an estate planning attorney, that the state has tried to plug as many loopholes as it possibly can to avoid that?

SENATOR RUSSMAN: Absolutely. I think that is true. They have tried to do that, but it is still possible.

SENATOR GORDON: Are you aware that in the House this bill originally came in as revenue neutral at 7 percent applying this to everyone? And are you aware that the House considered that bill and refused to pass it, and instead decided to repeal it?

SENATOR RUSSMAN: Right. But it doesn't mean that we shouldn't do the right thing.

SENATOR BROWN: I want to point out a couple of things to you that I have heard that I think that we can clarify. First of all, this is certainly not just an election year issue. This bill started, I think, four years ago as a result of a summer study committee in the House Finance committee, and it has gone through several years, election years, and non-election years. I don't think that this is the reason why those of us who want to repeal this tax want to do it. We have some options, if we repeal the tax today, taking effect in two years, you can always repeal that if you decide that you don't want to do that. There are a number of options left to you if we don't come up with the money. I think that it would be a shame, for all of the work that these people have done, and there have been hundreds of hours and people have come here week after week, waiting for us to act on this. I think that it would be a shame to lose all of that. It is almost a miracle that we got to this point, and start all over again. When I hear the tie of this being tied to the education funding problem, I think that it is a little bit ironic that we are asking people to, who don't have children, to pay an unfair tax because we haven't found a tax to pay for public education adequately. Then I just want to end with this one thing that I heard a politician say in this presidential election year. He said, "if not now, when? And if not us, who?" I think that it is time for us to do the right thing. Thank you.

SENATOR D'ALLESANDRO: I don't think that I have ever had as many letters or as much conversation on the telephone about any issue greater than this issue. Certainly the unfairness of the tax is quite clear. We have all manifested that. But in thinking about the situation, one has to consider the well-being of everyone in the state. When we run for public office we accept that responsibility. It seems to me that in accepting that responsibility, if we do one thing, we have to do something else to compensate for that. In this particular situation, what we are being asked to do is to create another void that we are not willing at this time to fill. I don't think that is responsible. It is very easy to vote to repeal the tax. It is unfair, we all know that it is unfair. Fortunately, some of us have heirs, and we aren't going to be involved in that and we can say a lot of things, but the one thing that we really have to say is when are we going to put our nose to the grindstone and accept the solution to the problem? When are we going to do that? A number of solutions have been offered, but it seems to me until we do that, we have to be responsible, and in being responsible, we have to do what we believe is in the best interest of all of the people that we represent. Thank you.

SENATOR BELOW: Senator D'Allesandro, do you recall that as recently as October of last year, that the majority of this body voted to repeal this tax and voted to enact a personal income tax which would have more than funded the loss of revenue? Haven't we already done that?

SENATOR D'ALLESANDRO: Yes we have. I didn't vote for that solution, but yes we have.

SENATOR COHEN: We can talk politics and elections all that we want. You can argue that a vote for this bill can help or hurt, electorally speaking, or if a vote against this can help us or hurt us. Let's put that aside really. As Senator Russman said, nobody likes paying taxes. That is true. But in the end, what are taxes for? We all know what they are for and we all agree for the common good. They are for the common good. Out of that basic understanding, that basic definition, to have built into that tax structure, something that is so filled with gross inequities and clear injustice, absolutely runs counter to the basic notion of what taxes are for, which is the common good. I am in agreement with Senator D'Allesandro. We need to take responsibility. This is inconsistent with the notion of the common good. I certainly plan to vote for the repeal.

SENATOR SQUIRES: I rise to point out that I think that the state case was made a few minutes ago, when the statement was made, I have heirs so I am not affected. I have heirs too, and that is the problem. Why is it that by virtue of simply having an heir, you are not taxed? And if you do not have an heir, you are taxed?

Recess.

Out of Recess.

SENATOR FRASER: For the record, I am going to vote against the bill. You should know that when I was serving on Ways and Means, I voted for it because I realized how onerous this tax is. But as a member of the Senate Finance Committee, I voted against the bill. I have to be fiscally responsible at all times. I realize in the last 20 minutes it has become quite a political issue here. But I have to do what I think is right. After listening to testimony in the Senate Finance Committee, and the fact that we just don't have the money to fund this, there is no way that we can make up the \$31 million that this bill would delete from the general fund, I am going to vote against the bill.

Senator Gordon moved ought to pass.

A roll call was requested by Senator Gordon.

Seconded by Senator Roberge.

The following Senators voted Yes: Gordon, Johnson, Below, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Wheeler, Cohen.

The following Senators voted No: F. King, Fraser, McCarley, Larsen, J. King, Russman, D'Allesandro, Klemm.

Yeas: 15 - Nays: 8

Adopted.

MOTION TO SPECIAL ORDER

Senator Fraser moved to have **HB 542-FN-A**, repealing the legacies and succession tax, made a special order for Thursday, April 6, 2000 at 10:01 a.m.

A roll call was requested by Senator Trombly.

Seconded by Senator Gordon.

The following Senators voted Yes: F. King, Johnson, Fraser, McCarley, Trombly, Larsen, J. King, Russman, D'Allesandro, Wheeler, Klemm, Cohen.

The following Senators voted No: Gordon, Below, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown.

Yeas: 12 - Nays: 11

Adopted.

HB 542 is made a Special Order.

TAKEN OFF THE TABLE

Senator Cohen moved to have **HB 617-FN-A-L**, relative to funding and monitoring seacoast harbor issues, taken off the table.

Adopted.

HB 617-FN-A-L, relative to funding and monitoring seacoast harbor issues.

Question is on the committee report of ought to pass.

SENATOR COHEN: We were all set to pass this last week and we just wanted to check with the different parties involved. There is support. The legislation is introduced to provide for a dredging and pier maintenance fund. It will save money in the long run as a means of preventing the need for further emergency dredging as is currently taking place in Hampton Harbor. I urge the Senate to vote ought to pass on HB 617.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

ANNOUNCEMENTS

RESOLUTION

Senator Cohen moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings, enrolled bills and amendments and that when we adjourn we adjourn to Thursday, April 6, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

SB 360, adopting a pupil safety and violence prevention act.

SB 379-FN, relative to lottery scratch tickets.

SB 399-FN-A, making an appropriation to the fish and game department for the purposes of the wildlife damage control program.

HB 568, establishing a program for performance evaluations of judges.

HB 617-FN-A-L, relative to funding and monitoring seacoast harbor issues.

HB 630-FN-L, relative to the Skyhaven airport transfer plan.

HB 699-FN-A, establishing the granite state scholars program and making an appropriation therefor.

HB 1161, making technical changes to the New Hampshire Aeronautics Act and establishing a committee to study revisions to the state aeronautics laws.

HB 1175, relative to license renewal for dental hygienists.

HB 1179, relative to final orders of the public utilities commission.

HB 1264-FN, relative to the unlawful use of theft detection shielding devices.

HB 1301, relative to regional appointments to the state committee on aging.

HB 1318, establishing a committee to study the instability of kerosene, gasoline, diesel fuel, and home heating fuel prices.

HB 1362-L, relative to the reconsideration of cost apportionment within a cooperative school district.

HB 1413, relative to the rights of ownership of cemetery plots or burial spaces.

HB 1462, extending the report date and changing the membership and duties of the committee to study methods to promote the use of renewable energy sources.

HB 1588, relative to the authority of the department of transportation regarding rail safety inspections.

HB 1613, exempting police officers on bicycles from certain motor vehicle laws and rules.

In recess.

Out of Recess.

2000-4014-EBA

03/01

Enrolled Bill Amendment to HB 1374

The Committee on Enrolled Bills to which was referred HB 1374

AN ACT extending the reporting date for the sex offender issues study committee.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1374

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to HB 1374

Amend RSA 1999, 89:2, I as inserted by section 2 of the bill by replacing line 2 with the following:

(a) ~~Four~~ 7 members of the house of representatives, one of whom shall be from the

Senator Trombly moved adoption.

Adopted.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, April 6, 2000 at 10:00 a.m.

Adopted.

Adjournment.

April 6, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

Good morning. I missed you while I was in Europe for two weeks. In fact, I thought of you last Sunday afternoon as I was walking through a freshly plowed field north of the Somme river in France. That was the scene of one of the worst battles of WW I. As I was walking along, I noticed a half buried piece of metal in the ground, which I leaned over and picked up. When I had done that, I realized that I was looking at the cap of an unexploded artillery shell from July 1, 1916, and I quickly put it back down. I was lucky, because the decision of a British Artillery officer in 1916 to fire that particular shell could have cost me my hand or my life. That was when I thought of you, because the decisions that you choose to make here, this year, whether or not they please you or the people, whatever they are, they do not just affect this year, but last for generations to come. So be very careful what artillery shells you choose to fire off, because whichever ones they are, their result will still be lying around for a long, long time after you and I have departed. So let us pray:

Gracious God of the long view, give us wisdom and vision that we may carefully and effectively wager our convictions in ways that both meet our financial obligations and also that reap a huge return of character, integrity and responsibility for generations to come. Amen.

Senator J. King led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

COMMITTEE REPORTS

SPECIAL ORDER

10:01 a.m.

HB 542-FN-A, repealing the legacies and succession tax. Finance Committee. Vote 3-3. Ought to pass, Senator J. King for the committee.

Senator Klemm offered a floor amendment.

Sen. Klemm, Dist. 22

Sen. D'Allesandro, Dist. 20

Sen. F. King, Dist. 1

Sen. Fraser, Dist. 4

Sen. Disnard, Dist. 8

Sen. J. King, Dist. 18

April 6, 2000

2000-4033s

08/09

Floor Amendment to HB 542-FN-A

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

AN ACT repealing the legacies and succession tax, increasing exemptions from the interest and dividends tax, lowering the state-wide education property tax, and authorizing video lottery machines at certain sites and under certain criteria.

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

1 Statement of Purpose. The general court finds that:

I. The people of New Hampshire need relief from certain taxes that are currently assessed against them, including the legacies and succession tax which assesses a tax against certain estates at a rate of 18 percent.

II. The people of New Hampshire need relief from a tax assessed against their savings by increasing the exemptions amount under the interest and dividends tax.

III. The people of New Hampshire need relief from the recently enacted statewide property tax, thereby reducing the dependency of state education on real property taxes.

IV. The people of New Hampshire want responsible tax relief; that is tax relief which does not create a budget deficit. The people of New Hampshire want tax relief which relies upon new revenue sources rather than taxes to fund tax relief.

V. The pari-mutuel industry provides substantial and positive impacts on the economies of the local communities in which racetracks are located, as well as that of the state of New Hampshire. The pari-mutuel facilities pay substantial local property taxes and fees and provide jobs to thousands of New Hampshire residents. The pari-mutuel industry is also a significant part of tourism in the state.

VI. The pari-mutuel industry and the grand hotels face substantial competition from various sources. Racetracks in other jurisdictions are assessed lower taxes and receive substantial incentives to support this industry.

VII. The economic vitality of New Hampshire's grand hotels is threatened by the creation of large gaming and resort complexes in southern New England and Canada. New Hampshire's grand hotels are an inherent part of our state's traditions, character, and quality of life. Their preservation and continued existence is of fundamental importance to the economic vitality, tourism trade, hospitality, and educational opportunities of the state and to the preservation and enhancement of employment in the communities in which they exist. Therefore, the grand hotels must be given an opportunity to position themselves in a changing and increasingly competitive environment.

VIII. New Hampshire's grand hotels provide substantial and positive impacts on the economies of the local communities in which they are located, as well as on that of the state of New Hampshire. The grand hotels pay substantial local property taxes, fees, and meals and rooms taxes and provide jobs to thousands of New Hampshire residents. The grand hotels are an important part of the tourism industry.

2 New Chapter; Video Lottery Games. Amend RSA by inserting after chapter 284 the following new chapter:

VIDEO LOTTERY GAMES

284-A:1 Definitions. In this chapter:

I. "Gaming oversight authority" means the authority established by RSA 284-A:2.

II. "Grand hotel" means a facility which operated with a minimum of 195 rental units in a single structure available to the public as of July 1, 1999, has restaurant facilities, restrooms, bathing facilities, public telephones, an adjacent 18-hole golf course in common ownership with the grand hotel facility and adequate parking for patrons, and is located within the North Country Tourist Gaming Area.

III. "Grand hotel applicant" means a person who owns and operates a grand hotel.

IV. "Grand hotel licensee location" means the sole location within the grand hotel where video lottery machines are located, which location must have existed as of January 1, 2000.

V. "Net machine income" means all cash or other consideration utilized to play a video lottery machine, less all cash or other consideration paid to players of video lottery machines as winnings.

VI. "Operator applicant" means the entity in which a pari-mutuel licensee or grand hotel applicant will participate and apply for an operator's license to operate video lottery machines at the pari-mutuel or grand hotel licensee location, as applicable.

VII. "Operator's license" means the license issued by the gaming oversight authority to an operator licensee which allows the operator licensee to possess, conduct and operate video lottery machines in accordance with this chapter.

VIII. "Operator licensee" means a pari-mutuel licensee, grand hotel or operator applicant who is issued a license by the gaming oversight authority to operate video lottery machines pursuant to this chapter.

IX. "Pari-mutuel commission" means the New Hampshire pari-mutuel commission as established in RSA 284:6-a.

X. "Pari-mutuel licensee" means an entity licensed and authorized to conduct either:

(a) Live horse racing as provided in RSA 284:16 for at least the number of days as required in RSA 284:22-a, II(a)(3) as determined by the pari-mutuel commission; or

(b) Live dog racing as provided in RSA 284:16-a for at least the number of days as required in RSA 284:22-a, II(a)(3) as determined by the pari-mutuel commission.

XI. "Pari-mutuel licensee location" means the facility at which the pari-mutuel licensee is located and where the pari-mutuel licensee is licensed to conduct live thoroughbred horse racing or live dog racing as of January 1, 2000 and any real estate in which the pari-mutuel licensee has an interest as of January 1, 2000 which is adjacent to the real estate on which the pari-mutuel licensee conducts live thoroughbred horse racing or live dog racing; provided that the pari-mutuel licensee location shall include any structures that may be constructed at such location after January 1, 2000.

XII. "Sweepstakes commission" means the New Hampshire sweepstakes commission as established by RSA 284:21-a.

XIII. "Technology provider" means any person or entity which designs, manufactures, installs, distributes, or supplies video lottery machines for sale or lease to the sweepstakes commission, and which are for use by an operator licensee for conducting video lottery games in accordance with this chapter.

XIV. "Token" means the coin, which is not legal tender, sold by a cashier in a face amount equal to the cash paid by a player for the sole purpose of playing a video lottery machine at a pari-mutuel licensee location or grand hotel licensee location or paid to a player of a video lottery machine, which can be exchanged for cash at the pari-mutuel licensee location or the grand hotel licensee location where the video lottery machine is located.

XV. "Video lottery machines" means an electronic, mechanical, or computerized machine licensed by the gaming oversight authority which, upon the insertion of cash, tokens or the payment of any consideration whatsoever, is available to be played where, by chance or skill, or both,

the player may receive cash, tokens or any consideration whatsoever. Video lottery machines include, but are not limited to, slot machines, video poker machines, and other lottery machines. Video lottery machines do not include any redemption slot machines and redemption poker machines as defined in RSA 647 or video poker machines or other similar machines used for amusement purposes only and which do not disburse cash or tokens.

284-A:2 Gaming Oversight Authority.

I. There is hereby established the New Hampshire gaming oversight authority. The gaming oversight authority shall consist of the attorney general, the commissioner of safety, and the commissioner of revenue administration or their respective designees. The attorney general or the designee of the attorney general shall serve as the chairperson of the gaming oversight authority.

II. No license shall be issued to any person under this chapter without the prior approval of the gaming oversight authority. The gaming oversight authority shall issue licenses only after completion of the investigations set forth in this chapter and the recommendation to issue such license from the pari-mutuel commission or the sweepstakes commission, as the case may be. If the pari-mutuel commission or the sweepstakes commission does not recommend that a license be issued to an applicant, such applicant may apply to the gaming oversight authority for such license.

III. A grand hotel applicant shall apply directly to the gaming oversight authority.

IV. In addition to the responsibilities set forth in RSA 284-A:2, II, the gaming oversight authority shall have general responsibility for the implementation of this chapter and shall adopt rules under RSA 541-A relative to:

(a) Hearing and deciding promptly and in reasonable order all license applications or recommendations for the suspension or revocation of any license issued under this chapter.

(b) Conducting all investigations required under this chapter with regard to the application of any applicant for a license.

(c) Notifying the pari-mutuel commission that it has received an application by a pari-mutuel licensee or an operator applicant for issuance of an operator license at a pari-mutuel licensee location and requiring the pari-mutuel commission to provide the gaming oversight authority with all records of the pari-mutuel commission regarding the licensing of the pari-mutuel licensee.

(d) Conducting hearings pertaining to civil violations of this chapter or rules under the provisions of this chapter and collecting all penalties under the provisions of this chapter.

(e) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for operators.

(f) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for technology providers.

(g) Establishing standards and a reasonable fee structure for the licensing and renewal of licenses for employees of the operator licensee.

(h) Establishing technical standards for approval of video lottery machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(i) Establishing criteria for licensing under RSA 284-A:8.

(j) Establishing standards for reviewing any structure at a pari-mutuel licensee location, any proposal involving the alternative removal, construction or enlargement of a grand hotel licensee location.

(k) Such other rules as may be necessary to implement this chapter.

V. The gaming oversight authority shall have the authority to issue subpoenas and compel the attendance of witnesses, to administer oaths, and require testimony of witnesses under oath.

VI. Pending the adoption of rules under RSA 541-A, and notwithstanding RSA 541-A:2, the gaming oversight authority shall adopt interim rules after public hearing and within 30 days after enactment of this chapter. Such interim rules shall automatically expire upon the adoption of rules under RSA 541-A.

VII. No later than March 31 in each calendar year, the gaming oversight authority shall provide a report to the fiscal committee of the general court, regarding the operation of video lottery machines. Such report shall include any recommendations for legislation.

VIII. With regard to minutes and records of the gaming oversight authority:

(a) The gaming oversight authority shall cause to be made and kept a record of all proceedings of public meetings of the gaming oversight authority. A verbatim transcript of those proceedings shall be prepared by the gaming oversight authority upon the request of any member of the authority or upon the request of any other person and the payment by that person of the costs of preparation. A copy of a transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The gaming oversight authority shall keep and maintain a list of all applicants for licenses it receives under this chapter together with a record of all actions taken with respect to such applicants. A file and record of the actions by the gaming oversight authority shall be open to public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The gaming oversight authority shall maintain such other files and records as the gaming oversight authority determines is necessary. All records maintained by the gaming oversight authority may be maintained on computer disks or other technology provided that such information can be produced in written form upon the request of the gaming oversight authority.

(d) All information and data required by the gaming oversight authority to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or, with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the gaming oversight authority from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction or to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subpara-

graphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules adopted by the gaming oversight authority.

IX. The gaming oversight authority may from time to time contract for and procure on a fee or independent contracting basis such financial, economic, or security consultants and any other technical and professional services as the authority deems necessary for the discharge of its duties. The cost shall be a charge against the general fund.

284-A:3 Duties of the Pari-mutuel Commission.

I. The pari-mutuel commission shall:

(a) Provide to the gaming oversight authority all records pertaining to the licensing of a pari-mutuel licensee under RSA 284 within 30 days after the pari-mutuel commission receives notice from the gaming oversight authority pursuant to RSA 284-A:2, IV(c).

(b) Hear and make recommendations promptly but no later than 60 days after receipt of notice from the gaming oversight authority pursuant to RSA 284-A:2, IV(c) to the gaming oversight authority and, if reasonable, order all license applications for a license under RSA 284-A:8, II.

II. The pari-mutuel commission shall make its recommendation to the gaming oversight authority in writing and after hearing. All hearings shall be conducted in accordance with the rules adopted by the pari-mutuel commission under RSA 284 and subject to RSA 284-A:3, III.

III. With regard to minutes and records of the pari-mutuel commission:

(a) The pari-mutuel commission shall cause to be made and kept a record of all proceedings of public meetings of the pari-mutuel commission pursuant to this chapter. A verbatim transcript of those proceedings shall be prepared by the pari-mutuel commission upon the request of any commissioner or upon the request of any other person and the payment by that person of the costs of preparation. A copy of a transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The pari-mutuel commission shall keep and maintain a list of all notices it receives under RSA 284-A, together with a record of all actions taken with respect to such notices. A file and record of the pari-mutuel commission's actions shall be open to public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The pari-mutuel commission shall maintain such other files and records as the pari-mutuel commission determines is necessary.

(d) All information and data required by the pari-mutuel commission to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the pari-mutuel commission from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction or to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subpara-

graphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules and regulations adopted by the pari-mutuel commission.

(g) All records, information or data maintained or kept by the pari-mutuel commission shall be maintained or kept at the office of the gaming oversight authority.

284-A:4 Duties of the Sweepstakes Commission.

I. The sweepstakes commission shall:

(a) Hear and make recommendations promptly to the gaming oversight authority and in reasonable order all license applications for technology providers.

(b) Collect all license fees imposed upon any applicant and all taxes imposed by this chapter.

(c) Adopt, pursuant to RSA 541-A, such rules as may be necessary to implement this chapter.

(d) Certify net machine income by inspecting records, conducting audits, having its agents on site, or by any other reasonable means.

(e) Establish a central computer system located at the office of the sweepstakes commission linking all video lottery machines to insure control over electronic games of chance. The sweepstakes commission shall establish a bid procedure for such contracts.

(f) Enter into lease agreements with technology providers to provide video lottery machines to operator licensees. These lease agreements shall provide that each technology provider shall supply the quantity and quality of video lottery machines as determined by an operator licensee in a timely and efficient manner. Each agreement shall also provide that the technology provider shall provide all maintenance and service of its video lottery machines at no additional charge or fee to the state or the operator licensees. Each agreement into which the sweepstakes commission enters shall require the technology providers to upgrade at least 20 percent of the video lottery machines on an annual basis.

(g) Establish technical standards for approval of video lottery machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

II. The sweepstakes commission shall have the authority to issue subpoenas and compel the attendance of witnesses, to administer oaths and to require testimony under oath.

III. No later than March 31 in each calendar year, the sweepstakes commission shall provide a report to the gaming oversight authority regarding the generation of revenues of video lottery machines by pari-mutuel licensees, grand hotel licensees, or their respective operator licensees.

IV. With regard to minutes and records of the sweepstakes commission:

(a) The sweepstakes commission shall cause to be made and kept a record of all proceedings held at public meetings of the sweepstakes commission. A verbatim transcript of those proceedings shall be prepared by the sweepstakes commission upon the request of any commissioner or upon the request of any other person and the payment by that person of the costs of preparation. A copy of the transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

(b) The sweepstakes commission shall keep and maintain a list of all notices for licenses as technology providers under RSA 284-A, together with a record of all actions taken with respect to such applicants. A file and record of the actions by the sweepstakes commission shall be open to

public inspection provided, however, that the information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after 5 years from the date of such action.

(c) The sweepstakes commission shall maintain such other files and records as the sweepstakes commission determines is necessary.

(d) All information and data required by the commission to be furnished to it, or which may otherwise be obtained, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(e) All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the sweepstakes commission from any source shall be considered confidential and shall be withheld in whole or in part. Such information shall be released upon the lawful order of a court of competent jurisdiction, or with the approval of the attorney general, to a duly authorized law enforcement agency.

(f) Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subparagraphs (d) or (e) of this paragraph, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules adopted by the sweepstakes commission.

(g) All records, information or data maintained or kept by the sweepstakes commission shall be maintained or kept at the office of the gaming oversight authority.

V. Pending the adoption of rules under RSA 541-A, and notwithstanding RSA 541-A:18, the sweepstakes commission shall adopt interim rules after public hearing and within 30 days after the effective date of this chapter. Such interim rules shall automatically expire in accordance with RSA 541-A: 19.

284-A:5 Restrictions on Employment.

I. No person who has held an interest in or been employed by the holder of a pari-mutuel license or an operator's license or has held an interest in or been employed by a grand hotel shall be employed by the gaming oversight authority, pari-mutuel commission, sweepstakes commission, or gaming enforcement division for 2 years from the expiration of such interest or employment. Excluded from this prohibition shall be employees of a pari-mutuel licensee who are employed on an emergency or temporary basis by the pari-mutuel commission for services in connection with a live race or live race meet.

II. No person who holds an interest in or is employed by the holder of a pari-mutuel license or an operator's license, or holds an interest in or is employed by a grand hotel shall be employed by the gaming oversight authority, pari-mutuel commission, sweepstakes commission, or gaming enforcement division.

III. No employee of the gaming oversight authority, pari-mutuel commission, sweepstakes commission, or gaming enforcement division shall play a video lottery machine.

IV. No employee of the gaming oversight authority, pari-mutuel commission, sweepstakes commission, or gaming enforcement division shall directly or indirectly pay or contribute money or things of value to:

(a) Any candidate for nomination or election to any public office in this state.

(b) Any political party or any committee of any political party in this state.

(c) Any group, committee or association organized in support of any such candidate or political party.

V. No person who was employed by the gaming oversight authority, pari-mutuel commission, sweepstakes commission, or gaming enforcement division shall hold an interest in or be employed by the holder of a pari-mutuel license or an operator's license, or hold an interest in or be employed by a grand hotel, for a period of 2 years from the termination of employment by the gaming oversight authority, pari-mutuel commission, sweepstakes commission, or gaming enforcement division.

284-A:6 Authorization for Video Lottery Games of Chance.

I. A pari-mutuel licensee or grand hotel applicant shall be authorized to install, operate and conduct video lottery games of chance at its pari-mutuel licensee location or grand hotel licensee location, subject to the provisions of this chapter.

II. A pari-mutuel licensee or grand hotel applicant may enter into one or more agreements to manage or participate in the operation of video lottery games of chance at its pari-mutuel licensee location or grand hotel licensee location; provided such operator applicant shall be licensed under this chapter.

284-A:7 North Country Tourist Gaming Area.

I. There is established a New Hampshire electronic gaming area known as the "North Country Tourist Gaming Area" which shall include all of the municipalities and unincorporated towns of Coos County.

II. The gaming oversight authority shall issue not more than 2 operator's licenses for the North Country Tourist gaming area established in paragraph I, provided there are eligible applicants for such licenses.

284-A:8 Licenses, Number of Video Lottery Machines.

I. No person shall engage in the ownership, possession, transfer, maintenance, repair or operation of a video lottery machine unless such person is licensed in accordance with the provisions of this chapter, local approval as provided in RSA 284-A:13 has been obtained, the gaming oversight authority has adopted interim rules pursuant to RSA 284-A:2, VI, and the sweepstakes commission has adopted interim rules as provided in RSA 284-A:4, VI.

II. Any pari-mutuel license issued by the pari-mutuel commission following the effective date of this chapter shall not authorize the pari-mutuel licensee to install, operate or conduct video lottery machines until the pari-mutuel licensee is issued an operator's license pursuant to the provisions of this chapter.

III. Any operator applicant shall be licensed as an operator licensee in accordance with the provisions of this chapter prior to engaging in any activity authorized by this chapter.

IV. Any employee of an operator licensee who is directly engaged in the installation or operation of video lottery machines or in any moneys associated with the playing of video lottery machines and all supervisory and managerial personnel, shall be licensed as a video lottery game of chance employee in accordance with this chapter prior to engaging in any activity authorized by this chapter.

V. Any technology provider engaged in the business of providing, installing, maintaining or repairing video lottery machines shall be licensed by the gaming oversight authority in accordance with the provisions of this chapter prior to engaging in any activity authorized by this chapter. No technology provider shall be entitled to operate video lottery machines.

VI.(a)(1) Each operator licensee at a pari-mutuel licensee location at which live dog racing is conducted shall be limited to 850 video lottery machines in operation at each such pari-mutuel licensee location.

(2) The operator licensee at the pari-mutuel licensee location at which live thoroughbred horse racing is conducted shall be limited to 1750 video lottery machines in operation at such pari-mutuel licensee location.

VII. Each operator licensee at a grand hotel licensee location shall be limited to 650 video lottery machines. In the event that a grand hotel location is not licensed to operate video lottery machines, the number of video lottery machines allocated to such grand hotel licensee shall be allocated to the operator licensees in RSA 284-A:8, VI as follows:

(a) Twenty percent of the video lottery machines to each operator licensee identified in RSA 284-A:8, VI(a)(1); and

(b) Forty percent of the video lottery machines to the operator licensee identified in RSA 284-A:8, VI(a)(2).

VIII. The gaming oversight authority shall consider the following factors prior to issuing an operator's license to a grand hotel applicant or its applicable operator applicant:

(a) Total distribution of net machine income.

(b) A detailed economic plan for the municipality and the surrounding region where the grand hotel is located with supporting documentation to explain the following:

(1) Quality of jobs including, but not limited to, wages and fringe benefits.

(2) Historical unemployment in the area.

(3) Direct and indirect employment gain.

(4) Impact on the tourism-based economy.

(5) Impact on regional economic development.

(6) Historical and projected household income.

(7) Tourist trends.

(c) A business plan to support the request for video lottery machines.

(d) Market demand for video lottery machines.

(e) Qualifications of those persons who own or manage the grand hotel applicant.

(f) Regional population.

(g) Vehicle traffic.

(h) Total square footage of the grand hotel and the total land acreage of such facility.

(i) Housing availability for employees.

(j) Availability of suitable infrastructure.

(k) Evidence provided by the applicant that the applicant has received local approval as required.

(l) Other information that the authority may require.

IX. In addition to all other enforcement powers it has, the sweepstakes commission may, after notice and hearing, reduce the number of video lottery machines at a pari-mutuel licensee location or grand hotel licensee location for cause, including the failure to comply with the rules and regulations of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission.

X. No pari-mutuel licensee, grand hotel applicant or operator licensee shall alter, construct, remove, or enlarge any structure at the pari-mutuel licensee location or grand hotel licensee location without the prior approval of the gaming oversight authority, except for winterization of structures existing as of January 1, 2000.

284-A:9 Application and License Requirement for State License for Video Lottery Games of Chance.

I. A pari-mutuel licensee, grand hotel applicant, or operator licensee applicant shall secure an operator's license from the gaming oversight authority. In the event that a pari-mutuel licensee or grand hotel applicant enters into an agreement to manage and operate video lottery machines pursuant to RSA 284-A:6, II, that entity shall make application as the operator licensee application. An applicant shall complete and sign an application on the forms prescribed by the gaming oversight authority. The application shall include the full name, residence, date of birth, and other personal identifying information of the applicant, and if a corporation or other form of business enterprise, the same information shall be provided with respect to each partner, trustee, officer, director, and any shareholder or other holder who owns more than 10 percent of the legal or beneficial interests of such entity.

II. Whenever the gaming oversight authority shall receive an application, including any application under RSA 284-A: 10, it shall refer the same to the attorney general who shall conduct an investigation. The investigation may be conducted through any appropriate state or federal law enforcement system and may seek information as to the subject's financial, criminal or business background, or any other information which the attorney general, in his or her sole discretion, may find to bear on the subject's fitness to be associated with the ownership or management of the operation of video lottery machines in New Hampshire, including, but not limited to, the subject's character, personal associations, and the extent to which the subject is properly doing business in the manner in which it purports to operate. When the gaming oversight authority requests such an investigation, the attorney general shall report the results of his or her investigation to the gaming oversight authority within 90 days after the receipt of said request. Notwithstanding any other law to the contrary, the results of any such investigation shall be confidential and shall not be subject to disclosure or to public inspection, except that the attorney general, in the attorney general's sole discretion, shall determine the extent to which and the manner in which said results may be reported to the gaming oversight authority or other state agency or official and, if reported, whether such results are to retain their confidential character; provided, however, that whenever the attorney general conducts such an investigation, the attorney general shall notify the gaming oversight authority whether or not in his or her opinion such person is fit to be associated with participation in the ownership or management of the operation of video lottery machines in this state. The attorney general shall have the authority to conduct an investigation on the attorney general's motion into the background of the license applicant or holder, or any person or entity upon whom the license applicant or holder relies for financial support.

III. In any investigation conducted pursuant to paragraph II, the attorney general or any duly authorized member of the attorney general's staff may require by subpoena or otherwise the attendance of witnesses and the production of such correspondence, documents, books and papers as he or she deems advisable, and for purposes of this section, may administer oaths and take the testimony of witnesses. No person shall be excused from testifying or from producing any book or paper in any investigation conducted pursuant to paragraph II upon the ground that such testimony or documentary evidence might tend to incriminate such person; provided that if, after a claim of privilege, the attorney general, in

writing, orders such person to testify or produce documentary evidence, he or she shall not be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing which he or she, under oath, disclosed or produced. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by the person in his or her testimony.

IV.(a) The gaming oversight authority shall charge the applicant an application fee of \$100,000 which shall be used to defray the cost of processing the application. If the cost of processing the application exceeds \$100,000, the applicant shall pay the difference. In the event that a pari-mutuel licensee or a grand hotel applicant makes an agreement pursuant to RSA 284-A:6, II and the operator applicant applies for the operator's license, then the aggregate amount of the fee shall be the greater of \$100,000 or the actual costs incurred by the gaming oversight authority.

(b) The attorney general shall charge the applicant an investigation fee of \$50,000 which shall be used to defray the cost of the background investigation. If the cost of the background investigation exceeds \$50,000, the applicant shall pay the difference. In the event that a pari-mutuel licensee or a grand hotel applicant makes an agreement pursuant to RSA 284-A:6, II and the operator applicant applies for the operator's license, then the aggregate amount of the fee shall be the greater of \$50,000 or the actual costs by the attorney general.

284-A:10 Licensure Requirements.

I. No operator's license shall be issued by the gaming oversight authority unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence:

(a) Its financial stability, integrity and responsibility, considering, without limitation, bank references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers.

(b) The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes and other evidences of indebtedness of the applicant.

(c) Its good character, honesty and integrity, considering, without limitation, information pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application.

(d) Its business ability and experience in the operation of video lottery machines, as appropriate, so as to establish the likelihood of a successful and efficient operation.

II.(a) In addition, no operator's license shall be issued by the gaming oversight authority to any applicant unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence that each director, officer or similar principal employee and each direct or indirect owner satisfies the standards for licensure contained in RSA 284-A:10, I.

(b) The gaming oversight authority may, in its discretion, waive the qualification requirement for any such person who is not significantly involved in the activities of the applicant, does not have the ability to significantly influence or control the applicant, or for other good cause.

(c) Except as provided in RSA 284-A: 10, II(d), no person who owns, directly or indirectly, legally or beneficially, 10 percent or less of the equity securities or 20 percent or less of the outstanding debt securities of

a publicly traded holding company of an applicant for an operator's license shall be required to be qualified pursuant to the provisions of this section prior to the issuance of such a license to the applicant.

(d) If an operator licensee has 25 or fewer holders of its equity securities, either directly or indirectly, legally or beneficially, then each such holder shall satisfy the standards of RSA 284-A: 10,II(a).

III. No technology provider's license shall be issued by the gaming oversight authority after recommendation by the sweepstakes commission unless the applicant has demonstrated to the satisfaction of the gaming oversight authority by clear and convincing evidence that it satisfies the standards contained in paragraphs I and II of this section. The sweepstakes commission shall establish the form of application which must be completed by each applicant for a technology provider's license. Each technology provider license applicant shall be subject to the investigation set forth in RSA 284-A:9 except that all investigatory reports shall be provided to the sweepstakes commission and the gaming oversight authority.

IV. No video lottery games of chance employee license shall be issued by the gaming oversight authority unless the applicant has proven to the satisfaction of the gaming oversight authority by clear and convincing evidence that such person satisfies the standards contained in RSA 284-A:10, I.

V. All information and data required by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division to be furnished pursuant to this chapter, or which may otherwise be obtained by the gaming oversight authority, the pari-mutuel commission, the sweepstakes commission, or gaming enforcement division in the performance of their duties under this chapter, except information regarding net machine income, shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this chapter, upon lawful order of a court of competent jurisdiction, or with the approval of the commissioner of safety, to a duly authorized law enforcement agency.

VI. The gaming oversight authority shall charge an application fee to the operator applicant of \$50,000 which shall be used to defray the cost of processing the video lottery games of chance employee licensing for all of the operator applicant's employees required to be licensed. If the cost of processing the application exceeds \$50,000 for the video lottery games of chance employee licensing, the operator applicant shall pay the difference.

VII. The sweepstakes commission shall charge to the technology provider an application fee of \$50,000 which shall be used to defray the cost of processing the technology provider's license. If the cost of processing the application exceeds \$50,000 for the technology provider's license, the technology provider shall pay the difference.

VIII. In addition to all other fees, the sweepstakes commission shall collect from each pari-mutuel licensee, grand hotel applicant, or its respective operator licensee, the annual fee of \$50 for each video lottery machine located at the pari-mutuel licensee location or grand hotel licensee location and the annual fee of \$10,000 from each technology provider. The sweepstakes commission shall distribute such sum to the treasurer for the establishment of a program within the department of health and human services to address issues of problem gambling.

284-A:11 Exclusion of Minors.

I. No person under the age of 21 shall play a video lottery machine authorized by this chapter.

II. No pari-mutuel licensee, grand hotel licensee, or its operator's licensee shall knowingly permit a minor to play or participate in any aspect of the play of a video lottery machine.

III. Each violation of RSA 284-A:11, I shall be punishable by a fine of no more than \$1,000 and shall be payable by such person who violates such paragraph.

IV. Each violation of RSA 284-A:11, II shall be punishable by a fine of no more than \$1,000 and shall be payable by the pari-mutuel licensee, grand hotel licensee, or its operator licensee that is found to have violated such paragraph.

284-A:12 Distribution of Net Machine Income.

I. The operator licensee at a grand hotel licensee location shall distribute net machine income generated by such operator licensee at a grand hotel licensee location as provided in RSA 284-A:12, II excluding the payment set forth in RSA 284-A: 12,II(c). All other operator licensees shall distribute net machine income as set forth in RSA 284-A:12, II excluding the payment set forth in RSA 284-A:12, II(d).

II. Subject to the provisions of RSA 284-A:12, I, net machine income generated by an operator licensee shall be distributed and paid as follows:

(a) Net machine income shall be distributed to the state as follows:

(1) Forty-four and eight-tenths percent of the first \$200 of the daily average net machine income generated by a video lottery machine for each calendar month shall be paid to the state from which the state shall pay for its costs of regulation and administration; the acquisition and operation of the central computer system; the lease payments due to technology providers; and the balance shall be deposited with the state treasurer for deposit in the education trust fund established by RSA 198:39.

(2) Fifty-four and eight-tenths percent of the average daily net machine income greater than \$200 and less than or equal to \$250 generated by a video lottery machine for each calendar month shall be paid to the state from which the state shall pay for its costs of regulation and administration, the acquisition and operation of the central computer system; the lease payments due to technology providers; and the balance shall be deposited with the state treasurer for deposit in the education trust fund established by RSA 198:39.

(3) Sixty-four and eight-tenths percent of the average daily net machine income greater than \$250 generated by a video lottery machine for each calendar month shall be paid to the state from which the state shall pay for its costs of regulation and administration; the acquisition and operation of the central computer system; the lease payments due to technology providers; and the balance shall be deposited with the state treasurer for deposit in the education trust fund established by RSA 198:39.

(4) The purpose of this section is to increase the amount of net machine income payable to the state on a graduated scale for the portion of the average daily net machine income in excess of \$200 and \$250 respectively. The average net machine income shall be determined for each calendar month and the operator and the state shall reconcile payments within 10 days after the last day of a calendar month.

(b) Two percent of the average daily net machine income shall be paid to the municipality in which an operator licensee operates video lottery machines.

(c) Three and two-tenths percent of the average daily net machine income generated by an operator licensee at a pari-mutuel licensee location shall be paid to the pari-mutuel commission which will establish a horse racing purse fund for live horse racing and the horse racing purse fund shall be disbursed as follows:

(1) The sum of \$257,000 each year and adjusted annually for inflation to the Jockeys Guild Health and Welfare Trust maintained by Jockeys Guild, Inc. for the sole purpose of providing health and welfare benefits to active, disabled, and retired jockeys in accordance with eligibility criteria established by the Guild; and

(2) The balance of such fund toward purses for live horse racing conducted by the pari-mutuel licensee at such pari-mutuel licensee location.

(d) Three and two-tenths percent of the average daily net machine income generated by an operator licensee at a grand hotel licensee location shall be paid and disbursed as follows:

(1) One and six-tenths percent of the average daily net machine income shall be paid to the travel and tourism joint promotional advertising fund hereby established in the office of the state treasurer, to be used by the office of travel and tourism, division of economic development, department of resources and economic development to promote travel and tourism in the state; and

(2) One and six-tenths percent of the average daily net machine income shall be paid to the pari-mutuel commission which will establish a live racing purse fund for live dog racing purses for live dog racing conducted by a pari-mutuel licensee at its pari-mutuel licensee location.

(e) The balance of the average daily net machine income shall be retained by the operator licensee.

III.(a) The pari-mutuel commission shall adopt rules and regulations regarding the disbursement of moneys collected in the horse racing purse fund created in RSA 284-A: 12, II(c) to the pari-mutuel licensee which conducts live horse racing for live horse racing purses.

(b) The pari-mutuel commission shall adopt rules and regulations regarding the disbursement of moneys collected in the live racing purse fund created in RSA 284-A: 12, II(d)(2) to the pari-mutuel licensee which conducts live dog racing at its pari-mutuel licensee location for purses for such live racing.

IV. Subject to reconciliation at the end of each calendar month, all distributions to the state, the pari-mutuel commission, the state treasurer, and the municipality shall be made by the operator licensee within 5 business days after the end of each week in which net machine income is generated. The operator licensee shall pay a fine equal to the greater of \$50 for each day in which such payments are overdue in whole or in part or interest on the unpaid amount with interest calculated at the annual rate of 10 percent for each day for which the payment due is late. The late payment penalty shall be paid by the operator licensee to the sweepstakes commission. Notwithstanding the foregoing, the fine imposed in this paragraph shall not limit the gaming oversight authority from imposing further sanctions if the sweepstakes commission determines that an operator licensee habitually violates this section.

284-A:13 Procedures for Adoption by Local Community.

I. Any town or city in which a pari-mutuel licensee location or grand hotel licensee location is situated may adopt the provisions of RSA 284-A, to allow the operation of video lottery machines, in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting under the procedures set out in RSA 39:3, and shall be voted on by ballot; provided, however, if the question is placed on the warrant at a special town meeting, it shall be the only question at such special town meeting. In a city, the legislative body may vote to place the question on the official ballot for any regular municipal election, or, in the

alternative, shall place the question on the official ballot for any regular municipal election upon submission to the legislative body of a petition signed by 5 percent of the registered voters.

(b) The selectmen or city council shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be substantially as follows: "Shall we adopt the provisions of RSA 284-A allowing the operation of video lottery machines at [insert the name of the licensed pari-mutuel facility or grand hotel] located within the town?"

II. If a majority of those voting on the question vote "Yes," RSA 284-A shall apply within the city or town and may not be rescinded by the city or town.

III. If the question is not approved, the question may later be voted upon according to the provisions of paragraph I, provided, however, that the town may consider the question at no more than one special town meeting and the annual town meeting in the same calendar year.

284-A:14 Inspection of Video Lottery Machines; Penalty for Tampering or Manipulating.

I. The sweepstakes commission shall, from time to time, test video lottery machines installed at a pari-mutuel licensee location or grand hotel licensee location. In conducting such tests, the sweepstakes commission shall use the services of an independent laboratory, the cost of which independent laboratory shall be paid by the technology provider.

II. Any person who, with the intent to manipulate the outcome, payoff or operation of a video lottery machine, manipulates the outcome, payoff or operation of any video lottery machine by physical, electronic or mechanical means, shall be guilty of a felony.

284-A:15 Video Lottery Machines.

I. An operator licensee shall provide to the gaming oversight authority, the sweepstakes commission and, if regulated by the pari-mutuel commission, to the pari-mutuel commission, by diagram a description of:

(a) The location of each video lottery machine available for play by the public.

(b) The location of all areas for the storage, maintenance or repair of video lottery machines.

(c) A description of all security measures to be taken for the safeguarding of video lottery machines.

(d) The location and security measures taken for the safeguarding of all moneys, tokens, or other items of value utilized in the use of video lottery machines.

(e) All procedures for the operation, maintenance, repair and inserting or removing of moneys, tokens, or other items of value from video lottery machines.

(f) All of the above shall be approved by the gaming oversight authority prior to commencing the operation of any video lottery machines.

II. No video lottery machine shall be possessed, maintained, exhibited, brought into or removed from a pari-mutuel licensee location or a grand hotel licensee location, by any person unless such machine has permanently affixed to it an identification number or symbol authorized by the gaming oversight authority and prior notice of any such movement has been given to the sweepstakes commission.

III.(a) Each operator licensee shall maintain secure facilities for the counting and storage of all moneys, tokens, or other items of value utilized in the conduct of video lottery machines.

(b) All drop boxes and other devices where moneys, tokens, or other items of value are deposited in video lottery machines and all areas wherein such boxes and devices are kept while in use shall be equipped with 2 locking devices, one key which shall be under the exclusive control of the sweepstakes commission and the other under the exclusive control of the operator licensee. Said drop boxes and other devices shall not be brought into the pari-mutuel licensee location or grand hotel licensee location or removed from a video lottery machine, locked or unlocked, except at such times and such places and according to such procedures as the sweepstakes commission may require to safeguard such boxes and devices and their contents.

IV.(a) No video lottery machine shall be used to conduct gaming unless it is identical in all electrical, mechanical and other aspects to a model which has been specifically tested by the sweepstakes commission and licensed for use by the sweepstakes commission.

(b) The sweepstakes commission shall, by rule, establish technical standards for approval of video lottery machines, including mechanical and electrical reliability and security against tampering, as it may deem necessary to protect the public from fraud or deception and to ensure the integrity of their operation.

(c) All video lottery machines in operation at a pari-mutuel licensee location or grand hotel licensee location shall provide a pay off of at least 87 percent on an average annual basis.

(d) All tickets given as prizes or winnings from video lottery machines must be redeemed for cash within one year after the date of winning. After the expiration of that one year, all such unredeemed tickets shall become property of the state of New Hampshire, notwithstanding any other law to the contrary.

V. An operator licensee who operates video lottery machines shall not be restricted in the days of operation of such machines, so long as the pari-mutuel licensee has scheduled at least the number of days of racing as required by RSA 284:22-a, II(a)(3). The hours of operation on each day shall be determined by the gaming oversight authority.

VI. The sweepstakes commission shall negotiate and execute agreements with at least 3 technology providers in accordance with reasonable business terms subject to the provisions of RSA 284-A:4,I(f). Each operator licensee shall obtain video lottery machines from such technology providers and no others, provided, that no operator licensee shall obtain more than 50 percent of its video lottery machines from any one such technology provider.

VII. The operation of video lottery machines at a grand hotel licensee location shall not be restricted in the days of operation of such machines. The hours of operation on each day shall be determined by the gaming oversight authority.

VIII. Video lottery machines shall be operated only at times when the public is allowed access to the locations. They shall not be operated during private functions.

284-A:16 Term of License.

I. Any operator's license or technology provider's license issued pursuant to this chapter and any renewal thereof shall be valid for 2 years unless earlier suspended or revoked by the gaming oversight authority.

II. Any video lottery games of chance employee license or renewal thereof issued pursuant to this chapter shall be valid for 3 years unless earlier suspended or revoked by the gaming oversight authority.

284-A:17 Presence of the Gaming Oversight Authority and Sweepstakes Commission.

I.(a) The gaming oversight authority may be present at any pari-mutuel licensee location or grand hotel licensee location at which video lottery machines are operated at all times when the facility is open to the public.

(b) The operator licensee may be required by the gaming oversight authority or gaming enforcement division to provide such office space and equipment which the commission shall by rule determine is reasonably necessary or proper for them to fulfill their responsibilities.

II. The sweepstakes commission may be present at any time a video lottery machine is opened to remove or insert any drop box, hopper, or other mechanism containing money, tokens, or other items of value. The sweepstakes commission may be present in the count room at any time money, tokens or other items of value utilized in video lottery machines are counted.

284-A:18 Sanction Powers of the Gaming Oversight Authority.

I. The gaming oversight authority shall have the sole and exclusive authority, following appropriate hearings and factual determinations, to impose sanctions against any person for any violation of this chapter or any rule of the gaming oversight authority, the sweepstakes commission, or the pari-mutuel commission adopted under the provisions of this chapter.

II. The gaming oversight authority shall have the authority to impose sanctions upon any person for any violation of this chapter or the rules of the gaming oversight authority, the pari-mutuel commission or the sweepstakes commission as follows:

(a) Revocation or suspension of a license.

(b) Civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed \$20,000 for each violation.

(c) Order restitution of any moneys or property unlawfully obtained or retained by a person.

(d) Issue a cease and desist order which specifies the conduct which is to be discontinued, altered, or implemented by the person.

(e) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each person so sanctioned.

(f) Impose any or all of the foregoing sanctions in combination with each other.

III. In determining appropriate sanctions in a particular case, the gaming oversight authority shall consider:

(a) The risk to the public and to the integrity of video lottery machine operations created by the conduct of the person.

(b) The seriousness of the conduct of the person and whether the conduct was purposeful or with knowledge that it was in contravention of the provisions of this chapter or the rules of the gaming oversight authority, the pari-mutuel commission, or the sweepstakes commission.

(c) Any justification or excuse for such conduct.

(d) The prior history of the person involved.

(e) The corrective action taken by the person to prevent future misconduct of a like nature from occurring.

(f) In the case of a monetary penalty, the amount of the penalty in relation to the of the misconduct and the financial means of the person.

(g) Notwithstanding the foregoing, in the event that a person receives 3 civil penalties each in the amount of \$20,000 during the term of

such person's license, the gaming oversight authority shall either revoke the license for the balance of the term of the license or suspend such license for a period of 60 days, as determined by the gaming oversight authority.

284-A:19 Declaration of Limited Exemption from Operation of Provisions of 15 U.S.C. section 1171-1172. Pursuant to section 2 of an act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being Chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C. sections 1171-1172, the state of New Hampshire, acting by and through the duly elected and qualified members of its legislature, does hereby, in accordance with and in compliance with the provisions of that section 2 of that act of Congress, declare and proclaim that section 2 of that act of Congress shall not apply to any gambling device in this state where the transportation of such a device is specifically authorized by and done in compliance with the provisions of this chapter and any rules adopted pursuant to it, and that any such gambling device transported in compliance with state law and rules shall be exempt from the provisions of that act of Congress.

284-A:20 Legal Shipment of Gaming Devices into New Hampshire. All shipments into this state of gaming devices, the registering, recording and labeling of which has been duly had by the manufacturer or dealer in accordance with sections 3 and 4 of an act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce, approved January 2, 1951, being chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C. sections 1171-1172, shall be deemed legal shipments into this state.

284-A:21 Effect on Other Laws. This chapter shall take precedence over any other law, rule, ordinance, or regulation, of the state or its political subdivisions to the contrary.

3 New Sections; Department of Safety Gaming Enforcement Division Established. Amend RSA 21-P by inserting after section 11 the following new sections:

21-P:11-a Department of Safety Gaming Enforcement Division.

I. There is established within the department a division of gaming enforcement under the supervision of the commissioner of safety. The division shall be authorized to:

(a) Investigate violations of RSA 284 or RSA 284-A and the rules adopted under the provisions of RSA 284 or RSA 284-A, and initiate proceedings before the gaming oversight authority for such violations.

(b) Report the results of any investigation conducted to the pari-mutuel commission, the sweepstakes commission, or the gaming oversight authority, as appropriate.

(c) Participate in any hearing conducted by the pari-mutuel commission or the sweepstakes commission.

II. The commissioner of safety shall organize the division into such units as the commissioner deems necessary. The commissioner of safety may employ such personnel as the commissioner deems necessary to fulfill the responsibilities of the division.

21-P:11-b Enforcement Expenditures. Notwithstanding any other provisions of law, the governor and council with the prior approval of the fiscal committee of the general court, upon request from the commissioner of safety may authorize the transfer of general funds to the department of safety to implement and enforce this chapter.

4 License Restricted. RSA 284:16-c is repealed and reenacted to read as follows:

284:16-c License Restricted.

I. Notwithstanding any other provision of law, the pari-mutuel commission shall not issue a license to conduct live thoroughbred horse racing or live harness horse racing pursuant to RSA 284:16 to any applicant if the place where such races or race meets are to be held is within a radius of 40 miles of the place where live thoroughbred horse races or race meets have already been licensed pursuant to RSA 284:16; provided, however, that the pari-mutuel commission may issue a license to conduct live harness racing to the holder of a license to conduct live thoroughbred racing if the live harness racing is conducted at the same place where the live thoroughbred racing is being conducted.

II. Notwithstanding any other provision of law, the pari-mutuel commission shall not issue a license to conduct live dog racing pursuant to RSA 284:16-a to any applicant if the place where the races or race meets are to be held is within a radius of 40 miles of the place where such races or race meets have already been licensed pursuant to RSA 284:16-a.

5 Restriction on Gambling. RSA 284:17-c is repealed and reenacted to read as follows:

284:17-c Restriction on Gambling. Except as provided in the introductory paragraph of RSA 284:22, RSA 284:22-a, and RSA 284-A, no licensee who holds running horse races shall at the same facility hold any other kinds of races or permit any other type of gambling except harness horse races and activities licensed by the gaming oversight authority, pari-mutuel commission, or the sweepstakes commission.

6 New Subparagraphs; Grand Hotel Licensee and Pari-Mutuel Licensee; On-Sale Special License. Amend RSA 178:20, V by inserting after subparagraph (u) the following new subparagraphs:

(v) Grand Hotel. The commission may issue a special license to any person holding an operator's license with respect to a grand hotel licensee location under the provisions of RSA 284-A, provided the grand hotel has an existing liquor license. Such special license shall allow the sale of liquor, wine and beverages in a dining room, function room, gaming room, lounge or any other area designated by the commission, without regard to whether meals are served therein, but only during the time gaming is being conducted under RSA 284-A.

(w) Pari-Mutuel Licensee or Operator Licensee. The commission may issue a special license to a person holding a pari-mutuel license or an operator's license at a pari-mutuel licensee location under the provisions of RSA 284-A, provided the pari-mutuel licensee location has an existing liquor license. Such special license shall allow the sale of liquor, wine, and beverages within the pari-mutuel licensee location, including dining room, function room, gaming room, lounge, or any other area designated by the commission, without regard to whether meals are served therein, but only during the time gaming is being conducted under RSA 284-A.

7 New Subparagraph; Travel and Tourism Joint Promotional Advertising Fund Created. Amend RSA 6:12,I by inserting after subparagraph (aaaa) the following new subparagraph:

(bbbb) Moneys received under RSA 284-A:12,II(d), which shall be credited to the travel and tourism joint promotional advertising fund established in 284-A:12,II(d).

8 New Subparagraph; Authorized Video Lottery Machines Not Prohibited. Amend RSA 647:2, V by inserting after subparagraph (c) the following new subparagraph:

(d) Video lottery machines authorized pursuant to RSA 284-A.

9 Repeal. The following are repealed:

I. RSA 86, relative to the legacies and succession tax.

II. RSA 198:39, I(c), relative to the education trust fund.

10 Apportionment, Assessment and Abatement of Taxes; Education Property Tax. Amend RSA 76:3 to read as follows:

76:3 Education Property Tax. An annual education property tax at the uniform rate of \$6.60 on each \$1000 of the value of taxable property is hereby imposed on all persons and property taxable pursuant to RSA 72 and RSA 73, except property subject to tax under RSA 82 and RSA 83-F. *The rate set forth in this section shall be reduced to the uniform rate of \$6.30 on each \$1,000 of value of taxable property as of April 1, 2001 and shall be further reduced to the uniform rate of \$6.00 on each \$1,000 of value of taxable property on April 1, 2002 and thereafter.*

11 Taxation of Incomes; Who Taxable. Amend RSA 77:3, I(a)-(c) to read as follows:

(a) Individuals who are inhabitants or residents of this state for any part of the taxable year whose gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$5,200** during that taxable period.

(b) Partnerships, limited liability companies, associations, and trusts, the beneficial interest in which is not represented by transferable shares, whose gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$5,200** during the taxable year, but not including a qualified investment company as defined in RSA 77-A:1, XXI, or a trust comprising a part of an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, section 3.

(c) Fiduciaries deriving their appointment from a court of this state whose gross interest and dividend income from all sources exceeds [~~\$2,400~~] **\$5,200** during the taxable year.

12 Taxation of Incomes; Exemptions. Amend RSA 77:5, I to read as follows:

I. Income of [~~\$2,400~~] **\$5,200**.

13 Taxation of Incomes; Returns and Declarations. Amend RSA 77:18, IV(a) and (b) to read as follows:

(a) Every individual whose total interest and dividend income is less than [~~\$2,400~~] **\$5,200** for a taxable period.

(b) For joint filers whose total interest and dividend income is less than [~~\$4,800~~] **\$10,400** for a taxable period.

14 Education Trust Fund; Video Lottery Money Received. Amend RSA 198:39, I(k) to read as follows:

(k) *All moneys due the state treasurer from the sweepstakes commission pursuant to RSA 284-A:12, II(a).*

(l) Any other moneys appropriated from the general fund.

15 Repeal. The following are repealed:

I. RSA 198:39, I(i), relative to the education trust fund.

II. RSA 78-A:26, III, relative to the tax on motor vehicle rentals.

16 Severability. If any provision of this act or the application thereof to any person or circumstance is deemed invalid, the invalidity does not affect the other provisions or applications of the act which can be given effect without the invalid provisions or application.

17 Effective Date.

I. Sections 9 and 11-13 of this act shall take effect on July 1, 2001.

II. Sections 14 - 15 of this act shall take effect on July 1, 2000.

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

2000-4033s

AMENDED ANALYSIS

This bill:

I. Repeals the legacies and succession tax effective July 1, 2001.

II. Increases the exemptions from the interest and dividends tax effective July 1, 2001.

III. Lowers the state wide education property tax to \$6.30 on April 1, 2001 and to \$6.00 on April 1, 2002.

IV. Provides that tobacco settlement funds currently designated for the education trust fund be deposited in the general fund.

V. Provides that funds raised by the tax on motor vehicle rentals and currently designated for the education trust fund be deposited in the general fund.

VI. Authorizes video lottery machines at racetracks, grand hotels and resort hotels upon certain conditions and sets forth criteria for establishing and conducting video lottery machines.

VII. Establishes requirements and guidelines for the distribution of net machine income.

VIII. Establishes a gaming oversight authority and its authority and duties.

IX. Establishes a division of gaming enforcement within the department of safety.

X. Establishes gaming areas.

XI. Establishes fee amounts for license applicants.

XII. Authorizes the issuance of special liquor licenses to license locations within grand hotels and pari-mutuel locations that have liquor licenses.

XIII. Creates a special fund to be used by the office of travel and tourism for the promotion of travel and tourism in the state.

XIV. Establishes live dog racing and horse racing purse funds administered by the pari-mutuel commission.

SENATOR KLEMM: I am here proposing an amendment on HB 542 because as most of you know, we face a budget shortfall in our current budget. We also have a number of bills, which our constituents have called us and want to see us pass. They want us to give increased interest and dividend exemptions, and they want us to repeal the legacy and succession tax. We have a current shortfall in our budget of approximately \$37 million. As we go out into the future, our adequacy amount of \$824 million, although frozen for this year and next year, could go up in the following two years. If that were to happen without any additional revenue flow into the state of New Hampshire, we would be forced to pass a statewide property tax of approximately \$8.35. The proposal that I am going to put forth today, is to help remedy that situation. The amendment that is before you, first of all, would eliminate the New Hampshire Inheritance Tax effective 7/01/01. We would double the interest and dividend exemption from \$2,400-\$5,200 per person. The bill that passed the Senate raises that amount to \$3,000. This would bring us back to the original bill, which was introduced to the House from \$2,400 to \$5,200, which meant that a married couple would have an exemption of \$10,400. We are also going to provide statewide property tax relief. We are going to bring the statewide property tax from \$6.60 this year, to \$6.30 next year, to \$6 the year after. Now to solve our budget shortfall for the current biennium, we are proposing that we take the \$40 million Tobacco Settlement Money, which was dedicated to the Education Trust Fund and putting that money back into the general fund. That is as you see,

approximately \$40 million. We are also returning the new tax on the car rentals, the rooms and meals tax on cars, that raises approximately \$7.2 million, would be going back into the general fund. Those two changes would take care of the shortfall that we are looking at, effective 6/30/01. Additional benefits that this bill would do, or this amendment, it would fully fund our education trust fund. It would leave our general fund in tact and would prevent budget reductions or cuts. If we do not find additional revenue, we do have to cut. We are doing this with no new taxes. We are going to be strengthening the New Hampshire tourism. This bill would provide an additional \$1.3 million to further promote tourism in the state of New Hampshire. We would be enhancing our existing revenue sources. Our rooms and meals tax, our gas tax, our cigarette tax, our liquor revenue and so forth. This amendment would also provide revenue to the host communities that would host the video lottery machines. That is a rate of 2 percent. This might even be given to the host communities in case they needed to do road repair or upgrade facilities. It would also revitalize the New Hampshire racing industry, which at one point in our state provided a significant amount of money to our general fund. We do this by establishing video lottery. We establish the video lottery at our four racetracks and two grand hotels. It would be under strict state control. The state would set up a gambling authority under the attorney general. It would be fully funded through the video lottery, this commission would be fully funded. We would maintain local control in that the host community would have to vote on allowing the video lottery machines at the racetracks or the hotels before they were allowed to go in. We have a graduated state share of net machine income. We have a sliding scale of revenue to the state under this bill, which starts at 50 percent and goes all the way up to 70 percent. It requires live racing to continue at our tracks. If there was no live racing, they would not be able to apply for a permit for the video poker or the video lottery machines. The model that we are using is the one that was used in Delaware, which has proved to be very, very successful. It has provided significant revenue to the state as well as providing thousands and thousands of jobs in the state of Delaware. We also have in the bill, revenue to address problem gambling. We currently do not have a fund in the state, and this would provide revenues to do that. What we are proposing on the distribution on the dollar that is spent through the video lottery machines, that an average of 90 percent is returned to the wagering patron, and 10 percent of every dollar wagered, would represent net machine income to the state. That 10 percent would be broken up as follows: It would be an average of 40 percent to our New Hampshire Education Trust Fund, this is 40 percent net. There would be two percent to our host communities, the towns that these venues would be in. There is 3.2 percent, which would be split between the New Hampshire Tourism Promotion and racing purse enhancements. There would be 8 percent administration for equipment, machines, central computer systems, the enforcement and oversight of these facilities. There would be 46.8 percent of gross commissions to the video licensees, from this would come their costs of facilities, operational expenses and taxes. This would net out, in the case of Rockingham, this would net out to approximately 1.1 percent going to the bottom line.

SENATOR D'ALLESANDRO: Let me summarize our proposal. A summary of an act to provide tax reduction. In the legislative process, you should be responsive and responsible. If you are going to do something, you should provide an alternative that doesn't create a deficit situation

for the state of New Hampshire. We know that people want the legacy and succession tax repealed. We all support that. This piece of legislation repeals the New Hampshire Inheritance Tax, and the Legacy and Succession Tax. We also know that property taxes are of great concern to everyone. Our initial bill lowered property taxes, and this piece of legislation would continue to do that. The statewide property tax would go from \$6.60 to \$6.30 on April 1, 2001 and to \$6 on April 1, 2002. We create a new \$1.3 million special fund to promote New Hampshire tourism. The benefits from that obviously, go well beyond. We have a number of revenue sources that are dependent on tourism and these would be enhanced by \$1.3 million. We more than double the interest and dividends tax exemption. That is better than the bill that is on the table. It replicates the original piece of legislation that was introduced in the House of Representatives, from \$2400 to \$5200. There was great consternation in this Senate about the tobacco settlement money and where it should go. We take the \$40 million from the tobacco settlement money and return it to the general fund. We also take the \$7.2 million that is generated by the auto rental tax revenue and return that to the general fund. That is erasing any deficit in the general fund. We do this by establishing a new revenue source. By authorizing limited state controlled video lottery at four pari-mutuel tracks and up to North Country grand hotels. We are not doing something that is an apparition, we have looked at a successful model in the state of Delaware, which is comparable to the state of New Hampshire. It actually has a population of only 60 percent of the state of New Hampshire. They have successfully implemented this program at three venues. They have restored their industry, their thoroughbred racing industry, which is a significant part of their economy. They have enhanced the venues and created a situation that has produced significant revenue sources for the state of Delaware. I met with the police in Delaware. They believe that this situation does not cause further crime. They are very satisfied with what is happening in Delaware and have seen no surge in any way. Again, this proposal is responsive and responsible to the people of the state of New Hampshire. This proposal is before you and we certainly hope that you can support it. Thank you. Thank you, Madame President.

SENATOR KRUEGER: Senator Klemm, I appreciate your trying to find funds to support the repeal of the New Hampshire inheritance tax; however, given the fact that we know for a fact that the House has placed the issue of gambling on an indefinite postponement and would need two-thirds of the members to get it reconsidered, would not this, adding this amendment, relative to gambling, pretty much ensure the killing of the repealing of the New Hampshire inheritance tax, which would be a grave, grave concern to me and I am sure to you too?

SENATOR KLEMM: Absolutely. It would be a great concern. First of all, this is the Senate and I think that we have a responsibility to the state and to our constituents to offer a balanced budget. I believe that the two-thirds question could be debatable since we don't have joint rules. The House, I believe, would have to take the Senate message. I believe that we would be responsible in trying to prevent a budget shortfall and a fiscal crisis in the state.

SENATOR KRUEGER: Thank you very much for your answer and I appreciate your optimism; however, do you not again feel that the repealing of the New Hampshire inheritance tax, the legacy and succession tax

is of such importance, that to jeopardize that by placing this amendment, also is an issue that should be held in the Senate, since we have already voted to pass that bill?

SENATOR KLEMM: I believe that it is a very important issue. But I also believe that with the effective date that is in that bill presently, there is nothing from preventing this Senate, when we are preparing the next budget, in the trailer bill, to repeal the legacy and succession tax, at the same time that this bill is presently before us would do.

SENATOR BELOW: Senator D'Allesandro, do you have any analysis of the potential costs to state and local government and the state economy that may arise as a result from this proposed expansion of gambling?

SENATOR D'ALLESANDRO: No.

SENATOR BELOW: Senator D'Allesandro, specifically, do you have an estimate of what kind of increase in the rates of problem and pathological or compulsive gambling that we might expect to see among New Hampshire residents due to the closer proximity of this kind of gambling, thousands of video slot machines?

SENATOR D'ALLESANDRO: I have no idea. I would venture to say, Senator Below, that there isn't anybody alive on this planet who can give you an estimate of pathological problems.

SENATOR BELOW: Thank you.

SENATOR F. KING: Senator D'Allesandro, I just scanned the amendment quickly. In order for there to be video lottery, video poker type machines in the state, they will have to be licensed by the commission?

SENATOR D'ALLESANDRO: That is correct.

SENATOR F. KING: Which means that they will no longer be available to be located in the state except at the locations that have been prescribed?

SENATOR D'ALLESANDRO: That is correct, Senator King.

SENATOR F. KING: Do you have any estimate of how many machines that are presently **TAPE CHANGE**

SENATOR D'ALLESANDRO: I have no way to estimate that.

SENATOR F. KING: But the fact would be that these machines that are presently being played by citizens, and I can take you to a restaurant here in Concord, where I have seen them, they would no longer be available to be in those locations?

SENATOR D'ALLESANDRO: Any machine that is played for amusement only, and licensed by the local community, remains operative in that location.

SENATOR F. KING: But not that gambling type machines.

SENATOR D'ALLESANDRO: That is correct.

SENATOR F. KING: Thank you.

SENATOR FERNALD: Senator Klemm, what is the total revenue that you project?

SENATOR KLEMM: The total revenue from these facilities would be projected at \$198 million the first year.

SENATOR FERNALD: Do you also have a projection on the total amount of wagered?

SENATOR KLEMM: I don't have a total amount, but I believe that the \$198 million includes the churn that goes through the machines. In other words, if you win, a lot of people take the money that falls into the tray and put that back into the machine. That is what the \$198 million projection is based on.

SENATOR FERNALD: Thank you.

SENATOR SQUIRES: I will begin by reference to classics. Homer reminds us when Odysseus was sailing home, he went by this place where the sirens lived, and these seductive creatures fellow colleagues, put out a message so compelling that no human being could resist it. So Odysseus chained himself to the mast and went on through the next 500 pages...this is a seductive song that you have sung for us, my colleagues. But I am sort of anchored here from a different perspective. First of all, I raise the question of holding out to the people ninety cents back on every dollar invested. That is not a very good investment it seems to me. If you give me a dollar, I will keep a dime. There is a social cost here. There is a profound social cost. I, frankly, am more interested in what the police chiefs in New Hampshire think again, with respect in what the officers in Delaware...and we all know that the police officials, the public officials in New Hampshire, believe that this is an ill-founded idea. There is a moral question here, which leads me to the next questions. We have in front of us, an enormous breath and depth of problems, and the school funding is only one of them. We heard compelling testimony yesterday, in Senator King's committee about forthcoming issues in Health and Human Services, and what is going to happen there if this infrastructure is curtailed by support. We have enormous problems at the university, which should be self evident. We have tremendous problems, one of which we are going to try and deal with today about conservation. So we have these broad problems, and we have reached a narrow solution. Of course there is a majority that want gambling, because most people don't gamble, so someone else is going to pay for it. It is perfectly logical. That is not the way that we should conduct the state's business. We are all citizens and we are all responsible to address these issues. What this bill does is take vulnerable, sometimes ill people, and say, support me and I am off free. That is wrong. That is profoundly wrong. So I am complimenting my colleagues on the clarity of their presentation, it was very good and I understand it, but I do not support it. Thank you.

SENATOR J. KING: I rise in support of the bill. The best part of the passage of this bill is that it is not compulsory for anybody. Rich or poor or in-between. To participate in this is purely voluntary. I think that judging whether you should participate or not should be an individual thing and not a joint thing. You decide whether you want to participate, if you don't participate, you don't have to pay a cent out of your money. The revenue collected by this act is purely voluntary. We could even consider it contributions. Those concerned about having to pay more taxes don't have to worry because this is 100 percent voluntary. If you don't want to play, you don't have to pay. That is the story of it. If you don't want to play, you don't have to participate. There is no statute here saying that you have to pay this. If you don't want to play, you don't have to pay. It makes good sense to the extent that the locations for these operations, four of them have been in existence for quite a while, one for many, many years, four tracks, and two hotels. This legislation will strengthen their current operations. We all know that none of them are bustling with business or with dollars. We now have bus loads of residents of New Hampshire traveling to other states, hopefully, we would instead have, bus loads travel-

ing into New Hampshire. Funds collected from these machines will be dedicated to education as we all know. We also know that it is very difficult to pass a tax of any kind in this legislature, and probably in any legislature throughout the world. There are many reasons, but the main reasons are that I have to pay more and I believe strongly, that we are paying too much taxes as it is now. Many people dislike paying for something that they don't believe in or think that it is the wrong type or whatever, but this tax is purely voluntarily. If you don't like it, don't participate. As I said, we already have the implementation, the process that **TAPE INAUDIBLE**. This would provide a boost for the business that at one time, Rockingham Racetrack, financed about 20 percent of the state budget. This new program would be monitored and supervised in the same topnotch manner as has been in style since the beginning of the racetracks. Does anybody know of any big problem that we have had with any one of the tracks or with any of the sweepstakes or anything that we have? We have governed them well. We do the same thing here, there would be no difference. I am sure that the person who would supervise this new operation will be just as consistent and concerned with the new operation. It will be run just like a business, because it is a business. Next, we don't want to provide an unbalanced budget. This is a way of not doing it. It is a way of eliminating a deficit. We must be fiscally responsible. We also must provide businesses that have been good to us for years, the power to update their businesses and to keep on going and keep supporting this state. As one of our colleagues said, Junie Blaisdell, "this bill does not threaten the New Hampshire advantage, it enhances it. It does not diminish our quality of life, it protects it. It does not change the character of our state, it preserves it." Some say that this would cause patrons, as we just heard from Senator Squires, of the track to get hooked on gambling. True. Some people may. People from all walks of life get hooked on different things, many different pastimes, which could create some hardship, such as overeating, overdrinking, oversmoking, card playing, sports, TV, bingo, car obsessions, overtaxation, shopping, prescriptions and you could go on and on. Are we going to set up something for everybody in this world? Let them make their own decisions. There are a few things in life that can be done to excess. For even workers, who become what we call workaholics. What are we doing about those people? By passing this legislation **TAPE INAUDIBLE**. Let's pass it and eliminate the deficit, have a program, and I think that down the road we would be looking again, but we would have something definite to take care of the education crisis that we have been trying to pass for the last four years. Thank you.

SENATOR KRUEGER: Senator King, you used the word "volunteer" quite frequently in your well thought out address to this body; however, would you agree with me that a person who is addicted, certainly with the addictions that you just mentioned, certainly does not make a volunteer act to participate in gambling or any of the other addictions?

SENATOR J. KING: Well if we are going to set all of our legislation by one...or determine whether they are going to be involved in the thing, we will find out that we will not be passing any legislation on anything. We have to make a decision. There is going to be some that are going to get in hot water, there is no doubt about it. No matter what we do. This is one of them, hopefully, with the situation that we have, we can make it less as addictive as possible.

SENATOR KRUEGER: Thank you.

SENATOR WHEELER: The analogy that I was going to use was not as eloquent or elegant as Senator Squire's sirens song. I was thinking about that poor dead horse that we keep beating, and in this case, kind of half dead dogs that we are going to keep forcing to race. We had this debate and so I won't belabor it, but I want to make just a few points. It isn't voluntary after the first time for many people. It can become as addictive as tobacco or heroin and as fatal to people. I do not believe that the New Hampshire advantage consists of encouraging people to gamble. I think that there is a strong difference between state-sponsored and encouraged addictive behavior and perhaps the bad lifestyle choices that we may make that have no state involvement in them. So there is a very clear distinction that this would be a state policy for sponsored, encouraged, addictive behavior. I thought that it was interesting to at the very beginning of this discussion that we said, well of course we are not talking about the machines that are for amusement only, indicating that these are not just for fun, this becomes a real proposition for people. A business for people. They are slot machines, there is no point in just wrapping them up in a nice bow and saying they are anything but that, they are slot machines, people sit there and plunk their large amounts of money into them, and they get no return, or a very poor return, on what is not truly an investment. My final thought is, many of you seriously want to repeal the legacy and successions tax. We have had that vote, we have had a very important debate on that. We know that our constituents want that tax repealed. I think it is a specious argument to say that we don't have joint rules, therefore, we don't have to pay attention to the fact that the House has indefinitely postponed this issue. The House feels that they have indefinitely postponed the issue. They will require the 2/3 majority or whatever they require for indefinite postponement to override it. We have indefinitely postponed issues in this body and we expect that the House would understand that, and that if they were to send it to us, that we would have to have the super majority to override it. So if you truly want to pass the interest and legacy tax, don't encumber it with this bill that will never get through the House, and which is totally different in purpose, from the initial bill. Thank you.

SENATOR F. KING: Let me start by saying that we all, not some, but all, want to do away with unfair taxes. I think that we all want to have a balanced budget. Last year in one of the committees on education, I didn't speak as eloquently as Senator Squires, but my reference was to the Titanic. That was very popular at that time. I said that the legislature was at the wheel of this huge ship of state, much like the captain was of the Titanic, and headed towards an iceberg. If we did the right thing we would be able to steer the ship away from the iceberg and enabling us to do that we had to pass an appropriate legislation. I am here today to tell you now that we didn't do that, and that we have hit the iceberg. If you don't believe that, you need to look at where the state's financial position is. I know that you have heard me say this over and over again, and I apologize, but as long as I sit in this seat and have the opportunity, I am going to continue to say that here and throughout the state as I have been doing. This is the latest fiscal report available as of yesterday. We ended with February with about a \$13 million surplus of our revenues over our plan. We ended March with a \$1.2 million surplus. That growth that we were seeing in revenues for some reason, has yet to be explained, but primarily because we seem to see a shrink in our business profits taxes, and a substantial shrink in our insurance revenues, is essentially gone. So that the hope that we had, well cer-

tainly I had, that we were going to grow our way out of a substantial portion of our \$36 or \$37 million deficit at the end of this biennium is certainly in question right now. We have all tried to solve the problem, but we haven't solved it. We heard yesterday as Senator Squires said, from an organization, and there were many people there. Eventually you will all have a copy of the transcript of that hearing. I encourage you all to read it, because these are very sincere people representing different concern groups in the state. If you were to listen to them carefully, you would find that the deficit that we are looking at is not potentially \$400 million at the end of the next biennium, it is going to be twice that. They believe that we are not spending enough money on education, and that the amount should be \$5,555 per student and not \$4200 per student. They talked about the shortcomings in all of the social programs and all of the impacts that potentially are there. So we are looking at a billions of dollars if you listen to those people who thought this process through, in many cases, a lot more than we have. We have an obligation, I have an obligation, I believe, to not go home in June without having solved the budget deficit problem. This bill, if it passes, doesn't begin to deal with the real issue, how we are going to fund education. This simply takes care of the problem that we have created in the present operating budget. It eliminates some taxes that need to be eliminated, and gives us a little bit more hope that maybe we can keep the ship from sinking. But I will tell you that this ship of state has hit the iceberg. Anybody that thinks that it hasn't, hasn't really analyzed the numbers. So we have to do something. We have all voted for different ways to fund it and none of them have been successful. Maybe the House won't accept this bill, we don't know that. We certainly know that the polls have shown that it seems to be...the gambling issue seems to be something that our citizens would prefer over more taxes. I agree that's because most people don't gamble and therefore, they don't care about the problems that arise from gambling. The people who gamble would like to have an opportunity to do that. So I guess that it is not surprising that the polls show that. So I think that if we can't pass this bill, it is not the way to do it we need to tell ourselves that we are going to find a solution to this problem. We should not go home, run for reelection and wait until January to have some next commission report to us about the problem. If this legislature that has been sitting through this process, going on four years, doesn't understand the problem yet, the people of the state sent the wrong people to Concord to solve the problem.

SENATOR DISNARD: Senator King, would you believe when we add up our liquor sales, which evidently, people do not think is addictive, when we add up our beer tax, which people think is not addictive, when we add up our tobacco tax, which people think is not addictive, we are talking close to the amount of money that this might bring in. What happens...have you ever heard anyone in this body suggesting to not sell liquor? That we not sell tobacco? At least I want to say, that at least these people that made this presentation, if there is anyone becoming addictive to gambling, are taking some of the profits, I would assume you would be believing, but I haven't heard any of our good people who don't want this suggesting that we take alcohol money profits to work with the those alcoholics or any others. Would you believe that?

SENATOR F. KING: If you say so, I believe it. Let me just add that we passed, last week, I think that it was, with hardly a murmur, a \$10 scratch ticket in this body, which now means that in the convenience stores and the restaurants and the bars in this state, people can go in

and put a \$20 bill in and get two scratch tickets when that goes in. Where was the concern about addiction when we passed that? Where was the addiction four-years ago when we went to a \$5 scratch tickets. I mean, we have that here. New Hampshire has been famous for years for running its government on sin taxes and you are certainly correct.

SENATOR FRANCOEUR: Senator King, where you had sponsored the \$725 million for education, if the Senate had passed that, would we be in this position today?

SENATOR F. KING: Yes. This is not...we have a problem. This plugs a hole to keep the state alive and the general fund situation with a few extra dollars so that we can fund the university system, we can give the community colleges a few more programs. This is not designed to fix the education system. The issue of an income tax or a sales tax or a huge statewide property tax will exist after this bill passes, if it passes. This really gets us...buys us that extra time to get to the next biennium when we can try to solve the education issue. This in no way, deals with that issue.

SENATOR FRANCOEUR: Senator King, didn't a large percentage of the money, approximately \$400 million, come out of the general fund, which was raised from other taxes, which would have been only \$300 million if we would have passed the \$725 instead of the \$825, and that is creating the shortfall in the general fund revenues or the shortfall that the general fund doesn't have?

SENATOR F. KING: The bill that we passed, that we have talked about in the sheets that have been passed around and you have all seen it, that shows approximately a \$400 million deficit at the end of the next biennium, strictly is an education issue. So had we passed...we would have had to pass, perhaps, the bill that I had earlier that was only \$520 million. That was the first bill that I offered to this body, and that would have helped us, but this situation is much greater than the education issue. This is a substantial general fund issue that we have now. The fact that we talk about gambling, you know, if there ever was a gamble on the state of New Hampshire, it was taken by this legislature and this governor, when we accepted SB 179 and went forward. Talk about a gamble, that is a \$400 million gamble in the next year. Talk about taking the wrong bet, I mean, nobody that was any kind of a card player would ever bet into a hand like that. So we have gambled the whole state because we have no courage to raise money, and we have tried every way that we can, and we worked diligently at it, we just can't agree, and we may not agree today, but we have to keep trying. We have bet \$166 million of money, one-time money that we will never see again, to get us where we are today, and we are still not there. So we have been gambling. We have been gambling in the legislature and we are still going to keep gambling, I guess.

SENATOR BELOW: Earlier I asked the question about if there was any analysis of the cost to state and local government and the economy that might occur from this expansion of gambling? Specifically, what kind of increase in the rates that we might see in problem or pathological gambling? It was suggested that nobody really knew the answer to that question or it hadn't really been looked at. Interestingly enough, that was one of the questions that was asked and researched by the National Gambling Impact Study Commission. I think that you have all received

the copy of the executive summary. It was a major investigation initiated by the U.S. Congress. They reported less than a year ago, and in part of that they commissioned a major study. I think that the largest study to date on Gambling Impact and Behavior Studies, that is the name of it. Just a year ago this month, that report was released. One of the conclusions of the report which is reported in the highlights, I will just quote from it, "the availability of a casino within 50 miles versus 50-250 miles, is associated with about double the prevalence of problem and pathological gamblers." They also found that result was consistent with other studies that have been conducted on the issue. I would submit that that is a reasonable proxy for what is going on here. The closest casinos to New Hampshire are more than 50 miles away, in Rhode Island and Connecticut. These kinds of video slot machine hauls, are essentially what casinos are these days. There is relatively little difference between a full blown casino in Las Vegas or Atlantic City and what you would see with these video slot machine operations. It is true that the majority of people who gamble are social or recreational gamblers, people who gamble with moderation and within an affordable budget for the entertainment value. But, a disproportionate and apparently growing portion of total gambling revenue comes from people who can be considered pathological gamblers. These are compulsive gamblers who engage in destructive behaviors. It was only about 20 years ago, in 1980, that the American Psychological Association identified pathological gambling as a mental illness and included it in their diagnostic manual. Their short definition is "Pathological gambling is persistent and recurrent maladaptive gambling behavior as it disrupts family, personal and vocational pursuits." Compulsive gamblers commit crimes, they run up large debts, they damage relationships with families and friends and they kill themselves at rates that are more frequent than nongamblers or social gamblers. In between the extremes of pathological gambling and nongamblers or social gamblers, who have no ill effects from gambling, are at risk gamblers or problem gamblers who are beginning to see some significant negative consequences from gambling, and they tend to progress towards increasing addiction. Research shows that the prevalence of these gambling problems and pathology, is closely related to proximity to gambling opportunities. When people can visit these operations after work, on a daily basis, it is a different affect than if you have to get on a bus and go for the day, or just go on weekends, or monthly or whatever. This type of gambling, video slot machines, which has sometimes been called the crack-cocaine of gambling, is perhaps the most pernicious and addictive form of gambling, due to the fast action and seemingly frequent insubstantial wins. Ninety cents on the dollar keeps coming back so people keep churning the money. Well there are certainly significant economic benefits, and we have seen some of them itemized. The tax revenue and the fact that some of the people who are spending some of this money out-of-state do it in-state. It is also true that more people that are already here will spend more money on this activity and there are economic costs, real dollar costs that we need to weigh against the benefits. These real economic costs include health and human costs, mental health system will incur significant costs, pathological gambling is particularly difficult and expensive to treat. There is a high rate of recurrence and it is often correlated, perhaps the cause and effect relationship to other mental health illnesses from depression to suicide. It is also linked with alcohol and substance abuse. The presence of this massive expansion of gambling, will be a challenge for people

who are in recovery or who need to get into recovery from other addictions and illnesses. For people, unfortunately, there is a high correlation for people with major mental illness. It aggravates people's problems in this regard and challenges them. There are increased rates of spouse and child abuse and child neglect. This is a known fact. There are increased physical health problems that are directly attributable and related to pathological gambling, and increased medical costs that result from it. In fact, the study attempts to document and quantify some of those costs in each of these areas. There are also financial problems and crime related problems. There are real costs to employers, from increased absenteeism, somewhere around the number of 70 percent of pathological gamblers, report recurrent absence from work. There is an increase in turnover, lower productivity. There is embezzlement and theft problems for employers. There is bad credit costs, credit card debt, personal and business loan defaults, business loan costs, rent and utility defaults and eviction costs. There are unemployment and welfare costs, both to our local towns and to the state unemployment funds. There are criminal justice costs related to increased robbery and burglary, theft, motor vehicle theft, fraud and embezzlement and so forth, not to mention the costs of domestic violence, prosecutions, divorce costs and so forth. I am not saying that the benefits don't necessarily outweigh these costs, but we need to weigh the costs and the benefits. It has been pointed out that New Hampshire has a history about relying upon so-called sin taxes. The alcohol sales, tobacco sales and gambling. Unfortunately, we also have a history about not doing a good job about addressing **TAPE CHANGE** alcohol sales and use it for prevention and treatment of alcohol abuse, but that is still not law yet. We haven't passed that yet. It is really the first time that we have seen that kind of initiative. The governor has indicated that one of her reasons for perhaps opposing an income tax is concern about its impact on the economy, the negative impact on the economy. Income tax proponents have tried to address that and to look at that, but she has appointed a commission to look at the economic cost of all of the revenue options. I would submit that there has been no attempt to look at the economic costs to the state, to our communities, to our economy, from this kind of massive expansion of gambling. Once we go this route, we will be addicted, as a state, to the revenues that it creates, and even if we find after the fact, that the costs don't outweigh the benefits, it may be too late, it will be too late to turn back. So I would urge defeat of this amendment and say that, like so many things, we need to look at this more carefully before we move ahead. Thank you.

SENATOR TROMBLY: I have so little to say, I don't know where to begin. I don't think that the issue today is whether or not this state should expand gambling, because we have debated that, and quite frankly, I don't think that we pass anything in this legislature until we kill it at least once and probably twice, and here we go again on this. We voted for the income tax three times. Some of you in here that that were vehemently opposed to taking the court out of its role in the Claremont situation have voted twice to put that question to the voters. I have a certain judgement on that. I think, for me today, the real question is what is going to happen to the people that pay this inheritance tax after we proceed from here? You know what? Maybe I am talking to the 23 of you, but it is the people up in the gallery who worked hard on this issue. That Legacy and Succession tax is dead. It has no chance of becoming law. It has no chance. This governor, I think, because I haven't spoken with her

about this, but I think, that this governor sees her responsibility to the people and the children of this state, not to increase the deficit, so that in a year or two, or even right now, we are trying to find more money so that we can cut property taxes and fund education so that every child has an equal chance. I think that that means for those of us that want to see this thing repealed immediately, or the bill passed, that our time is delayed on that. For you know, I don't blame this governor, because Mel Thomson wouldn't have signed this bill. John Sununu wouldn't have signed this bill. Judd Gregg increased that tax for the first time in 40 years. Judd Gregg increased it so we know that he wouldn't have signed a repeal. Steve Merrill wouldn't have signed this bill. So I don't think that the problem lies with this governor in particular. I think that the facts are the facts. The situation here is, I don't think that this bill will pass, and that is a sad, sad thing. But that is the fact of life. I think that the people need to know that it is a process. But having said that, I still have some hope that we need to do something, and we need to move forward. The fact and the reality is, if that bill is going to die, what are we going to do? I am going to vote for this amendment because it takes care of some problems.

SENATOR GORDON: Again, I feel privileged to follow Senator Trombly, and perhaps feel some of the same things that he is feeling and expressed, particularly to the gallery. That is, because a vote for this amendment is in fact a vote against repealing the Inheritance Tax. I think that we all understand that. The one thing that I am going to disagree with or about is, I don't think that it makes any difference whether John Sununu or Steve Merrill or Mel Thomson would have vetoed this bill if it came to their desk. I think that is irrelevant, because we are not talking about those governors, we are talking about this point in time. The fact is, that I probably wouldn't have voted in my two prior terms to repeal the Inheritance Tax, but I think that the time is right, the time has come, and now is the time to do it. We all take a constitutional oath. I have come to believe in this debate, that this tax is unconstitutional. We have all taken an oath to uphold the constitution. Yesterday there was a lady in my office, she is one of ten kids. She was doing an estate plan. She is the only one of the ten kids who didn't have any kids. It wasn't because she didn't want to, it was because God planned it that way for some reason. Now she is not going to be able to pass her wealth on to those people that she has designated in the same way as her nine siblings. She is going to have to pay a tax, or those who inherit her property are going to have to pay a tax? Is that fair? No, it isn't. How can that be constitutional? How can that be fair? Well I have been convinced that it isn't fair. I have become convinced that it is unfair in the year 2000, not in the year 1997, 1960 or 1975. If you vote to pass this amendment, you are voting to kill the bill. We all know pretty much realize that. I don't object to the presentation, because I think that Senator Klemm and Senator D'Allesandro did a nice job. They made their presentation. What I was sitting here thinking about at the time, however, was high school, and the fact is, that I hate to admit this, but I was kind of a loser in high school. What I used to try to do was to hang around with the real popular kids because I thought that maybe people would think better of me, and then maybe it raised my self esteem. That is sort of what I think is happening here. We have gambling, who traditionally, or at least in this body and the other body across the hall, has been a loser. Now maybe if they can associate it with something that is very popular, repealing the Inheritance Tax, maybe it increases its chance of passage, increases its esteem. I was very taken back by the

Titanic analogy, and I think it is very good, although we are having a tendency to take a little narrow bill about repealing one tax and making it into a bill to solve the entire budget crisis for the state. I love the Titanic analogy because...and again, in my mind, I have put another vision. I have this vision of the captain of the Titanic, knowing that soon they would enter this field of icebergs, getting the passengers together and choosing among those passengers, a blue ribbon committee and telling them we will get back to them in the morning. This isn't a bill to solve all of the state's economic problems. I hear people saying "well we can't repeal this \$30 million if we don't know where the money is going to come from", when those exact same people were here deciding to spend \$825 million with no idea how we were going to fund it. That is what put us in this problem in the first place. In fact, before that, spending \$960 million to fund education with absolutely no idea where the money was going to come from. We find ourselves in the situation and now we talk about us repealing a tax that is going to create a problem for \$30 million and we are saying, "Oh, my God, \$30 million." I just don't understand how you can take those two separate points of view. The fact is that the issue on this particular bill is, do you want to repeal the New Hampshire Inheritance Tax," an unfair tax that the majority of the people in this state, our constituents, know is unfair and who would want to see us repeal that tax, because it is the right thing to do; or do you want to find some obscure way of either passing gambling or find a way to prevent the governor from having to sign it or veto it? My feeling is, let's pass the initial bill. I do not believe that the amendment is germane. I don't see anything in the original bill that says increasing the exemptions from the Interest and Dividends Tax, lowering the statewide Education Property Tax, authorizing the video lottery machines on certain sites. How can this amendment be germane? Senator Trombly, I think that your question was very good. If this doesn't go over and they don't pass it in the House, can we just pull the bill back and do it again? Well if that is the case, why don't we pull the other bills back that we have already sent them and put it on those bills? Why do we have to use this bill when we know, when passing this amendment is going to kill the repeal of the Inheritance Tax, the Legacy and Succession Tax. So, I think that I am going to vote against the amendment and I am going to suggest that anybody who does vote for the amendment, is voting to kill the repeal of the Inheritance Tax because that in effect is what it is going to do. I would hope that you would all vote against it. I would hope that before that, we would have a vote on whether or not this in fact, is a germane amendment, because I don't believe that it is. I hope that you would vote against the amendment.

SENATOR J. KING: Senator Gordon, my question is, do you think that it is a good policy or a better policy to pass or eliminate funds coming in when you are in a deficit? Let's just say that it doesn't make any difference, and just don't bother with it, or would you think that it would be better to try and find some funds, which is what happened today, to do the job to get rid of the Legacy and Succession Tax? Nobody is in favor of that, I don't think, in this room, but you can't make a situation worse because then you are going to be taking the money away from somebody else, and that is the Health and Human Services. You can't put an unbalanced budget out there and have to balance that without getting that money from someplace. My feeling has always been that if you are going to do something, get the money to go with it, whether you agree with it or don't agree with it, you vote it down or up. This is our

way, or this was our way, or is our way, to say that the Legacy Tax can be amended or eliminated, but let's take care of the money, the \$25 million or whatever it is in there so that it can be handled, and then it is gone. That is what I have always said, if you can take it away, make sure that someone is going to feed that mouth that is sitting there.

SENATOR GORDON: Senator King, I always believe what you tell me you think you believe. The issue is this, and that is, what if we don't pass it, and we say that we are not going to fund it this year so we can't pass it this year because we don't fund it? You know what is going to happen? We are going to have this same debate in the next biennium? Do you know what the argument is going to be? We can't do it this biennium because we don't have enough money to do it this biennium, and we haven't planned for it. My personal feeling is, and you know, the bill, as we passed it, in the last session, the last time that we met, wouldn't have this repeal go into effect until the next biennium. This does not create one single financial crisis. What it does is, it tells those people who get elected in November, that when you come down here, you are going to have to find a way to support this state responsibility, and you can't use the Legacy and Succession Tax because it is an unfair and unconstitutional, unwarranted tax upon people's property. Property that they were already taxed on at least once in the past.

SENATOR J. KING: Senator Gordon, would you believe that is known as passing the buck? And passing it onto another legislature and we shouldn't be doing that? If we are going to do something, let's make the money available and do it and pay for it. I don't see why we can't take this bill and pass it, and if the House decides...they are going to have the same kind of talk, they are going to have the same kind of response that we have...let them pass it over there. That is the way it ought to be. Would you believe that?

SENATOR GORDON: I believe that you said passing the buck...

SENATOR J. KING: To the next legislature.

SENATOR GORDON: To the next legislature. I don't agree with you in your sentiments on that at all, in that I know that many times, Senator King, and this particular session, that we have passed legislation that won't take effect and its effects won't be felt until the next legislature. I believe that that is our responsibility, because our responsibility isn't to act just one year at a time, two years at a time, our responsibility as Senators is to act out into the future and do what we think is in the long-term best interest, because we don't just live for ourselves, we live for our children and we live for all of the people of the state.

SENATOR COHEN: I don't plan to use any analogies. I am not going to talk about what the state can do to help those citizens with addictive personalities. I just want to talk about the bill as amended here. I think that we all, or most of us recognize that the Legacy and Succession Tax is unfair to many people, not all people, but to many people and must be repealed. A number of us, I certainly believe, that the statewide property tax is also unfair to many, not everybody, but enough people, and it must also be repealed. I think that it is incumbent upon us to do what we can to reduce the inequities and to erase them, the inequities inherent in both. This would repeal, as amended, it would repeal one tax, which we recognize is unfair to many, and reduces the statewide property tax, which is also unfair to many, but not everybody. Now we all

recognize that by simply repealing the Legacy and Succession Tax we create a bigger hole than we already have. It is my belief that it is incumbent on us to help fix that hole and not make it worse. Now this bill, the amendment as we all know, restricts gambling to the tracks and to the North Country, which needs the jobs. If you haven't been up there, the economic boost from this will be useful there. Gambling would never be imposed where it is not wanted in the state of New Hampshire. Either way, this bill faces two hurdles. The governor says that if there is no funding, if we simply repeal the Legacy and Succession Tax she will veto it. The other big hurdle is in the House. But I think that it is important to us to recognize that even though there are difficulties in the House, our job here, as part of the mix, is to support a policy which we believe is best. We, the Senate, believes is best. We have done that before, and I am sure that we will do it again. Whether or not this amendment is rejected by the House, I believe that we must strengthen our resolve to eliminate the inequities in both the Legacies and Succession Tax as well as the statewide property tax. These are blatantly unfair taxes. We have to eliminate the inequities and repeal them both and replace with what we know is fair, sustainable and inevitable for the long term. So I am voting for this amendment.

SENATOR FERNALD: We have a basic question that we have to answer with this amendment. Is an expansion of gambling good for the state of New Hampshire? I want to understand the magnitude of what is being proposed here. The total amount wagered under this proposal is ten times the size of the lottery. An expansion of gambling that size is going to have economic consequences. It is going to take money out of existing businesses in this state. It is going to affect state revenues. It is going to affect what we get on Rooms and Meals Tax. It is going to affect what we get from the lottery. It is going to have a societal affect as Senator Below pointed out. I will not go into that further. I want to address two of the arguments that have been made in favor of this proposal. One, that it is voluntary. Those businesses that are going to see a dropoff in their business because money is being diverted into gambling. It is not voluntary for them. Those people who are affected by the social affect of gambling, it is not voluntary for us. It will change the way of life in New Hampshire. It will change what we think is special about New Hampshire. It will affect all of us. It is not voluntary for us, this change. The other argument that I have heard over and over is, that people are taking buses down to Foxwoods every day of the week, so we really should do it here and keep the money home. An interesting argument. I guess my response is this, if they legalized prostitution and cocaine in Connecticut, and people start taking the buses down to the brothels and the drug dens, are we going to hear arguments that we need to do the same here in New Hampshire? An expansion of gambling is not good for New Hampshire. I am happy to say that the proponents of this amendment appear to agree with me, because if they thought that gambling was a good thing, they would be voting to repeal all of our restrictions on gambling so that we could have casinos from the seacoast to the mountains. Then we could put them everywhere if it is a good thing. The basic truth of what is happening today, is that we are having a vote on repealing the Legacy and Succession Tax. The House has already voted to indefinitely postpone any further discussion of slot machines. So that if we amend this bill to add slot machines to it, we kill the bill. So I want it to be clear to all who are listening and to all

who are reporting on this issue today in our deliberations, that a vote for this amendment is a vote against the repeal of the Legacy and Succession Tax. It is a vote against tax reform. It is a vote for the introduction of casino style gambling in New Hampshire, and I will vote against this amendment.

SENATOR RUSSMAN: I have to admit that I really enjoyed the maritime theme that we have had this morning...the ship of state, the Titanic, the icebergs, the sirens, it has been pretty good so far, and I am sure that it is going to go on for a while longer. I have to agree with my fellow Senator, Fred King that our first and foremost issue is fiscal responsibility. I think that the amendment is germane. It deals with money, so I think that takes care of that. In fact, I think that if the Legacy and Succession Tax is unconstitutional I suspect that, maybe the Supreme Court may strike it down, we shall see. Certainly I think that no one likes voting for any of the taxes that we have had. I have had to vote for my share of them and I haven't quite frankly, enjoyed doing that. At the same time, I have voted against repealing the Legacy and state tax the last time I was here, not because I wanted to, but because I didn't think that it was fiscally responsible to vote to do that without some other means of funding it. Now the only thing that has come forward here, and into their credit, my hat is off to Senator Klemm and D'Allesandro, to come forward with a proposal such as this, that will resolve that issue so that I feel comfortable voting for the repeal of the Legacy and Succession Tax. So the idea of saying to us that voting for the amendment is voting against the Legacy and Succession Tax, that is a terrible tax and we ought to do away with it, but we need to be fiscally responsible at the same time. I think that I try to take a pragmatic approach where I can. I think that that is the right thing to do in terms of balancing our budget and seeing that the checkbook is balanced. We had a referendum of sorts in Derry, not too long ago, where they had people that voted in the last election that had an opportunity to vote on the various proposals, income tax, sales tax, gambling and so on, and gambling won by a huge majority in terms of what the people thought the best solution to fiscal crisis was, and certainly that is important. But you know, the sweepstakes thing, it is like we vote this \$10 increase for the sweepstakes, and frankly, we are in gambling right now. It is kind of like being a little bit pregnant. I mean you either are or you aren't. One way or the other, you can't be just a little bit. I think that certainly given the fiscal status that we find ourselves in, the dilemma that we find ourselves in, we have to do that. Again, it is not that a lot of us feel joyful about voting for the gambling part of it, but at the same time, we have an obligation to the state, and we have an obligation to our constituents. Certainly I think that the amendment which is proposed is reasonable in what it does and the protection that it has in it and I certainly would urge support of it.

SENATOR BROWN: I listened to the presentation this morning and I have to say that it sounds too good to be true. Two hundred million dollars and no pain to anyone; however, I am rising to oppose this amendment. Number one, I think that it has been stated very clearly that it does jeopardize the repeal of this tax and that is my main objection. However, I have some real concerns about the revenue projections over the long run. I am not a gambler. My husband and I went to Las Vegas for a trade show and I spent \$5 in a slot machine, and I said "this is not for me". However, I have a brother in-law in Iowa where they put in riverboat gambling to fund their schools. It is very interesting,

because my brother in-law is a teacher. I asked him about it. I asked him "what is your experience"? He said, "originally the revenue came in pretty well and then it gradually declined." However, one of his colleagues, a fellow teacher who went to the riverboat with him, he didn't go home. He became addictive. This teacher went through bankruptcy, divorce and he is now banned from the riverboats, casinos. I don't have the experience, I have never been a gambler so I can't tell you that we are going to have lots of folks doing this, but if you look at the bill and you look at the amount of money, that it appears in this bill to deal with the problem gamblers, I come up with approximately \$300,000. I think that we have to think long and hard before we put this kind of amendment on a bill to repeal the Legacy tax. As I said in the beginning, if it sounds too good to be true, I think that we need to be careful. There may be some things that we are not considering. Thank you.

SENATOR LARSEN: I think that there is not a person in this room that doesn't agree that the Legacy and Successions Tax is an unfair tax. I think that the other good feature of this amendment is that it doubles the Interest and Dividends tax exemption. We all know that is unfair, that it is an added burden on the elderly. I have supported taxes which I believe are fair. I have supported taxes that measure a person's ability to pay. I have not been in support of expanded gambling. But I think that we have been gambling lately. The greatest fear that I have is that we have been gambling with the financial stability of this state. To pass HB 542 without a revenue replacement, is a gamble of the highest proportion. It is a gamble that the next legislature will have the courage and find the consensus that we couldn't find to fully fund education, and to find where that revenue is going to come, in a reliable way. It is a gamble. It is a further gamble that that \$30 million loss, if we were to pass HB 542 without a revenue replacement, but that loss of \$30 million will also be replaced and not come off of the backs or be carved out of the Health and Human Services budget. Expanded gambling may not be good for this state. The House will look at this carefully. I believe that the House has already spoken on the issue of gambling. But an expansion of the gapping hole that is our budget, and our budget projections into the future, is definitely not good for the state. Thank you.

SENATOR KRUEGER: Senator Klemm, I was just rereading this and I have a question for you. With regard to the hotels for example, if the hotels don't want the slots, and we have no indication at this moment that they do as far as I know, then in fact, those machines would be divided amongst the tracks, correct?

SENATOR KLEMM: Yes.

SENATOR KRUEGER: So therefore...and if a municipality decided that gambling the slots...they didn't want them within their municipality, the same thing would occur? Let's say Belmont, the dogtrack for example. What is the largest number of machines that could in fact be at the race tracks? Horse racetrack?

SENATOR KLEMM: The initial figures that are in the bill are 1750 at Rockingham and 850 at each one of the dogtracks.

SENATOR KRUEGER: Thank you so much for your answer. I was just a little confused. That would be the maximum number considering what-

ever happened at the hotels. But if the hotels and everyone decided that they want it, what then would be the number at the horsetracks? Appreciably less than that?

SENATOR KLEMM: That is the original number. They would be proportionately dispersed if one of the hotels didn't want them. They would be proportionately divided among the four tracks.

SENATOR KRUEGER: I am sorry to keep asking you these questions, but I just really need clarity on this. So that 1750 number is given with the idea that if no one else wanted it...where does that number come from? In other words, is that the number that if the hotel said no, that would increase the number of machines at the racetracks? Would that be enough to accommodate that?

SENATOR KLEMM: The number, 1750, is the number that would be originally at the track. If one of the hotels did not want the machines, they would be proportionately divided among the four tracks.

SENATOR KRUEGER: So therefore, 1750 is not exactly the number that would be at the tracks? The tracks could in fact have the original 1750 plus a third or fourth of whatever the remaining applicants whom in fact wanted to move forward with this...so it could be more than 1750? In fact, if everyone but the horsetracks wanted it, it would be a great deal larger, because it would be absorbing all the machines from all of the hotels? Is that correct?

SENATOR KLEMM: No larger than the total authorized in the bill as it is now.

SENATOR KRUEGER: But larger than 1750. Thank you.

SENATOR PIGNATELLI: **TAPE CHANGE** D'Allesandro to hear your presentation, I was over in the House trying to make Nashua and the state safe from toll booths. But I think that even if I were here to hear your presentation, I don't think that it would have changed my mind or my vote on this issue. I was here, and I am glad that I was here to hear Senator Katie Wheeler and Senator Jim Squire's speeches because I think that they eloquently expressed my feelings about gambling and where I see it taking our state. If you truly want members of the Senate to eliminate the Legacy and Succession Tax, an unfair tax, I implore you, don't put this amendment on this bill. This amendment is a killer. It is a killer. We won't pass the repeal of the Legacy and Succession Tax, and you know as well as I do that the House is not going to accept this amendment and you won't even get gambling, which is your ultimate goal. So that won't happen either. The bill will die. I believe in a balanced budget as much as anyone else, and I believe that if we find ourselves in deficit and we see no way of raising a tax, I believe that we have to look at the budget and look where we can find the \$25 million to make up for this repeal. I would be willing to sit on a panel and look at the budget, and look to see where we can get that \$25 million and make it up. I know that it is painful to look at cutting the budget, but I am willing to do that in exchange for the repeal of this unfair tax. To keep the Titanic analogy alive, I believe that if we passed this amendment and we end up getting this kind of gambling in our state, we would have stepped off of the Titanic and onto the Exxon Valdez.

SENATOR DISNARD: Senator Pignatelli, if this bill is passed unamended, do you really believe that the governor is going to sign it and we are going to repeal this tax? Do you really believe that?

SENATOR PIGNATELLI: Yes I do.

SENATOR DISNARD: Do you think that she will veto it?

SENATOR PIGNATELLI: I am sorry, I didn't hear you.

SENATOR DISNARD: Do you really believe that the governor will sign this bill?

SENATOR PIGNATELLI: I do believe that she will sign it, and even if she doesn't, I believe that we will have done the right thing by passing it.

SENATOR DISNARD: Thank you. In other words, you are gambling that she will sign it with the difference in the gambling.

SENATOR PIGNATELLI: I would say that I am not gambling, I am doing what I think is right. As Senator King said, "we don't have a very good history of gambling in this state."

SENATOR MCCARLEY: I promised myself that I was not going to speak. I also promised Senator Trombly. I am going to make a point of saying that I am not going to say why I decided to speak, because I think that we periodically get caught up in feeling like somebody has said something that is pointed at us and we need not to do that. That is not a good thing. But I am going to comment. I think that we have, to some degree, told things personally about ourselves over particularly the last 18 months, about where we come from on things. I found myself thinking that I have always been considered to be fairly practical, fairly logical, believe it or not, extremely fair, very caring and concerned about solving problems. When I drive home after every Thursday session, I think to myself, several of my colleagues pointed out that none of that must be true about me, based on my vote. I think, I hope that all of you occasionally go through that because really, we respect one another, we try to work together, and so you sort of re-analyze what you have done and why you have done it. I would argue that each of us could sit down with one another and walk through precisely, at each case, at each vote, be it about \$960 million Senator Gordon, or \$825 million or \$550 million, while we put forward and argued for the things that we felt would move this state forward and be good for people. I guess that I look at where we are now, and I look at the time spent developing the budget that right now, I am concerned will not look anything like what it was going to deliver for services if we don't do something more. I say, it is time now, once again, to make a decision and vote to move this ball forward. The Titanic sunk, I think the Exxon Valdez...I don't think that the New Hampshire has to...I think that we are going to have to keep working. I agree with Senator King. I think that I may have had the most recent city council vote in the state to support this solution to solve at least, initially, our problems going forward, so I will be supporting the amendment. Thank you.

SENATOR D'ALLESANDRO: First, I have listened attentively to the eloquence of my fellow Senators and I appreciate their take on each one of these issues. As this is the season of lent, I do believe in resurrection. I want to make that point perfectly clear. So the analogy to the Titanic is a good one. The analogy to the Greek theory is a good one, but I am a very practical guy, very practical guy. I grew up in a family that was very humble. I had a mother who worked very hard to raise four kids and who passed away at a young age. I had a father who worked all of the time. The only thing that I can say that they gave to me, I hope that I have, is a feeling of responsiveness for my family and for my fellow

man. When I come here, I come here to be responsible, and I come here to be practical. So to my fellow Senators who say that if we vote for this amendment that you are voting the death of the Legacy and Succession Tax, I don't agree with that. What I say is that we have found a way to enable an unfair situation to disappear. We have also found a way to create another situation, the interest and dividends tax. We have found a way to solve that problem. There is no one solution that is an imperative for the rest of civilization. It just doesn't happen. What we try to do is to address things that are before us in a reasonable and responsible manner and move forward. What you have before you addresses a situation in a reasonable and responsive manner. Reasonable and responsive. We eliminate things that people don't want and that we believe are not fair. We generate income to replace that because we realize that as painful as it may be, destroying the budget is not an option. That is not an option to me. I don't want to be a party to that. I get calls every night from people who have problems. I work to try and solve those problems. It is an impossibility to solve all of them. By cutting the operating budget, I am just going to create more problems. That is not going to happen. That is never going to get my support. What has been brought to this table is in my opinion, a reasonable alternative. Now we talk about the proliferation of gambling. Thirty-eight states in the United States have gambling. We, in the state of New Hampshire, are talking about limiting this mechanism to a) areas that already have gambling. That is our pari-mutuel tracks. And, if they are accepted, two grand hotels. We are talking about strict supervision by our state police. Something that we believe in. We talk about that constantly in this chamber. So we are being responsible in that respect. I don't think that any one of us can cure all of the ills of the world. We can't cure pathological gambling. We can't cure pathological lying. We can't cure all ills. We just can't do it. But there isn't one of us here that wouldn't like to say "I can do it." And I want to do it. We can't do it. Well, what do we do? We do the best that we can do. And your vote will indicate the best that you can do. I don't have any problem with that. The merits of this case have been presented to you. You will make a valued judgement based on the merits of this case. The merits of this case are: you eliminate taxes that people don't want. You reduce property taxes. You fill a hole in the operating budget. You return \$40 million of the tobacco settlement money to the general fund and the option is that you fund it with limited state controlled video lottery. That is the option that is before us. That is real. Almost 60 percent of the people in the state of New Hampshire support that, poll after poll, after poll indicates that that is reality. We are reducing property taxes. People want reduction in property taxes. I think that we are showing to the people that we represent, that a) we hear them and b) we react to what they say. I am voting for this amendment. Vote your conscience and do what you think is the right thing, but don't let anybody tell you that by voting for this you are creating a situation where one of these taxes is not going to be repealed. There are options that are available. Let's do what we think is best for the state of New Hampshire and the right thing to do. Thank you, Madame President.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Pignatelli.

The following Senators voted Yes: F. King, Fraser, McCarley, Trombly, Disnard, Eaton, Larsen, J. King, Russman, D'Allesandro, Klemm, Cohen.

The following Senators voted No: Gordon, Johnson, Below, Roberge, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Wheeler.

Yeas: 12 - Nays: 11

Floor Amendment adopted.

Senator Gordon moved to have **HB 542-FN-A**, repealing the legacies and succession tax, laid on the table.

Question is on the motion to have HB 542-FN-A, laid on the table.

A roll call was requested by Senator F. King.

Seconded by Senator Gordon.

The following Senators voted Yes: Gordon, Johnson, Below, Roberge, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Wheeler.

The following Senators voted No: F. King, Fraser, McCarley, Trombly, Disnard, Eaton, Larsen, J. King, Russman, D'Allesandro, Klemm, Cohen.

Yeas: 11 - Nays: 12

Motion failed.

Question is on the motion of ordering to third reading.

Adopted.

Ordered to third reading.

Recess.

Out of Recess.

HB 1559-FN, establishing a committee to study the organization and functions of the New Hampshire state port authority. Energy and Economic Development Committee. Vote 3-0. Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: This study committee would complement the planning effort already underway at the Port Authority. The Port Authority, together with the city of Portsmouth, is considering a master plan developed by consultants. This plan proposes four alternative scenarios for the development of the port. The early 1990's, the state invested significantly in the expansion of the port by constructing a new pier; however, this investment has not lead to increased cargo or passenger traffic. Because of the importance of the port to the city of Portsmouth as well as the state, a thorough study of the Port Authority is appropriate at this time. The committee recommends ought to pass.

Adopted.

Referred to the Finance Committee (Rule #24).

SB 401-FN-A-L, establishing the New Hampshire land and community heritage investment program and making an appropriation therefor. Finance Committee. Vote 9-0. Ought to pass with amendment, Senator Below for the committee.

2000-4018s

08/01

Amendment to SB 401-FN-A-LOCAL

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

5 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plates; Fee. Amend RSA 261:97-a, I to read as follows:

I. The director is hereby authorized to issue special conservation number plates, in lieu of other number plates. The design of these special plates shall be determined as provided in RSA 261:97-d. The plates shall retain the "live free or die" logo. Such plates shall be issued only upon application and upon payment of a [~~\$25~~] **\$30** fee that shall be in addition to the regular motor vehicle registration fee and any other number plate fees otherwise required.

6 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plates; Fee. Amend RSA 261:97-a, III to read as follows:

III. Plates shall be renewed on an annual basis for [~~\$25~~] **\$30** per set. Of this sum, the department shall retain an amount as is necessary to recover production and administrative costs as approved by the fiscal committee of the general court. The remaining funds shall be paid to the state treasurer and distributed as provided in RSA 261:97-b. The cost of replacement number plates shall be identical to the cost of initial number plates and the revenue from replacement number plates shall be distributed in the same manner as revenue derived from initial number plates.

7 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plate Trust Fund; Distribution of Funds. Amend RSA 261:97-b, I to read as follows:

I. There is hereby established a conservation number plate trust fund under the administration of the state treasurer. The fund shall be used for the promotion, protection, and investment in the state's natural, cultural, and historic resources. The fund shall be nonlapsing. The state treasurer shall distribute the funds annually on July 1, ***except as provided in paragraph II-a***, as follows: \$5,000 of every \$100,000 received, up to a total of \$50,000, shall be distributed to the department of transportation for the expanded wild flower establishment program for use in planting native wild flowers; the remainder shall be distributed equally among the department of cultural resources, the department of fish and game, the department of resources and economic development, [~~and~~] the state conservation committee, ***and the New Hampshire land and community heritage investment authority***.

II-a. The state treasurer shall distribute the share of funds due the New Hampshire land and community heritage investment authority, pursuant to RSA 261:97-b, 1, on the first day of each month.

8 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plate Trust Fund; Use of Funds. Amend RSA 261:97-c, V-VI to read as follows:

V. The funds transferred to the New Hampshire land and community heritage investment authority shall be used for the administration of the New Hampshire land and community heritage investment program.

[~~V~~] VI. The funds transferred to the department of transportation shall be used for the expanded wildflower establishment program to be used in maintenance districts.

[VI.] VII. Any funds transferred from the conservation number plate trust fund which remain unexpended at the end of the fiscal year shall be non-lapsing.

9 Appropriations; New Hampshire Land and Community Heritage Authority. The sums of \$3,000,000 and \$6,000,000 are hereby appropriated to the New Hampshire land and community heritage authority established in section 1 of this act for the purposes of this act for the fiscal years ending June 30, 2001 and June 30, 2002, respectively.

10 Bonds Authorized. To provide funds for the appropriations made in section 9 of this act, the state treasurer is hereby authorized to borrow upon the credit of the state not exceeding the sum of \$3,000,000 for fiscal year 2001 and \$6,000,000 for fiscal year 2002 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest on the bonds and notes shall be made from the general fund of the state. Issuance of bonds for fiscal year 2001 shall be no earlier than April 1, 2001.

11 Appropriation; Administrative Costs. The sum of \$75,000 is appropriated to the New Hampshire land and community heritage authority established in section 1 of this act, for the purpose of funding administrative costs of the authority for the biennium ending June 30, 2001. The source of funds for the \$75,000 shall be as follows:

I. \$45,000 from the forest management and protection fund, established in RSA 227-G:5.

II. \$10,000 from fiscal year 2000 funds appropriated to the department of environmental services that would otherwise lapse.

III. \$10,000 from PAU 01, 02, 01, 01, class 80, senate out-of-state travel funds for fiscal year 2000.

IV. \$5,000 from PAU 02, 03, 01, class 20, department of agriculture, markets, and food funds for the fiscal year 2000.

V. \$5,000 from PAU 02, 03, 05, 01, class 24, department of agriculture, markets, and food funds for fiscal year 2000.

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

2000-4018s

AMENDED ANALYSIS

This bill:

I. Establishes the New Hampshire land and community heritage investment program.

II. Establishes the New Hampshire land and community heritage investment authority, and establishes its powers, duties, and authority.

III. Establishes membership on the authority's board of directors.

IV. Establishes criteria for acquisition of lands and other natural, cultural, and historical resources.

V. Increases the fee charged for the issuance of special conservation number plates from \$25 to \$30.

VI. Provides that a portion of funds received in the conservation numbers plate trust fund shall be distributed monthly to the New Hampshire land and community heritage investment authority for the purpose of administering the New Hampshire land and community heritage investment program.

VII. Provides a \$75,000 appropriation for the purpose of administering the program for the biennium ending June 30, 2001, with such funds being transferred from the forest management and protection fund, the department of environmental services, the department of agriculture, markets, and food, and senate out-of-state travel funds.

VIII. Provides appropriations to the program for 2001 and 2002, including a \$3,000,000 bond issue for 2001 and a \$6,000,000 bond issue for 2002.

IX. Transfers responsibility for the administration of the land conservation investment program and monitoring endowment under RSA 162-C to the office of state planning.

SENATOR BELOW: Senate Bill 401 was referred to Finance by the Capital Budget Committee. Senate Bill 401 as amended by the Senate Finance Committee provides that the fee charged for the issuance of the special conservation number plates be raised from \$25 to \$30. That \$5 increase portion would be distributed on a monthly basis to the New Hampshire Land and Community Heritage Investment Authority for the purpose of administering the program. This is an important improvement to the bill, because it provides an on-going source of funds for the operation costs. The conservation plates are something that we enacted a couple of years ago. It is in the works and in a couple of months the plates should be available. The people who purchase the plates will be contributing to the four existing programs that are funded, plus this without any detraction from what the current programs will receive. The capital expenses for the program are then also funded with the authorization for a \$3 million bond after April 1 of next year and \$6 million in the next biennium. That will ensure in the first year, or two of operation, \$9 million of funds for acquisition of land. In addition, to help provide start-up money, the bill provided a \$75,000 appropriation to be funded with transfers from various accounts, however, upon adoption of this committee report, a floor amendment will be offered to adjust that down to \$50,000, based on the estimation that approximately \$100,000 should be available over the next year from the sale of the special plates, which would achieve the goal of approximately \$150,000 for first year operating costs.

SENATOR RUSSMAN: I think that I am urging support of this and I would obviously, see a good strong vote on this bill. I think that in reality, this is probably the single most important piece of conservation legislation of the decade really. I think that if we are to have some vision into the new millennium, in terms of where New Hampshire ought to be, and what is important in New Hampshire, in terms of preservation, open space, historical and cultural important places in the state, this is a step in the right direction. Obviously, it is not funded where it needs to be funded. Certainly it is a step in the right direction. It does show some vision on the part of the legislature, and it is something that the people really want. Clearly, poll after poll indicates that New Hampshire citizens want to keep New Hampshire New Hampshire virtually, and this goes somewhat towards the step of doing that, so I would urge your positive vote on this piece.

Amendment adopted.

Senator Below offered a floor amendment.

2000-4040s

08/10

Floor Amendment to SB 401-FN-A-LOCAL

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

5 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plates; Fee. Amend RSA 261:97-a, I to read as follows:

I. The director is hereby authorized to issue special conservation number plates, in lieu of other number plates. The design of these special plates shall be determined as provided in RSA 261:97-d. The plates shall

retain the "live free or die" logo. Such plates shall be issued only upon application and upon payment of a [~~\$25~~] \$30 fee that shall be in addition to the regular motor vehicle registration fee and any other number plate fees otherwise required.

6 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plates; Fee. Amend RSA 261:97-a, III to read as follows:

III. Plates shall be renewed on an annual basis for [~~\$25~~] \$30 per set. Of this sum, the department shall retain an amount as is necessary to recover production and administrative costs as approved by the fiscal committee of the general court. The remaining funds shall be paid to the state treasurer and distributed as provided in RSA 261:97-b. The cost of replacement number plates shall be identical to the cost of initial number plates and the revenue from replacement number plates shall be distributed in the same manner as revenue derived from initial number plates.

7 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plate Trust Fund; Distribution of Funds. Amend RSA 261:97-b, I to read as follows:

I. There is hereby established a conservation number plate trust fund under the administration of the state treasurer. The fund shall be used for the promotion, protection, and investment in the state's natural, cultural, and historic resources. The fund shall be nonlapsing. The state treasurer shall distribute the funds annually on July 1, ***except as provided in paragraph II-a***, as follows: \$5,000 of every \$100,000 received, up to a total of \$50,000, shall be distributed to the department of transportation for the expanded wild flower establishment program for use in planting native wild flowers; the remainder shall be distributed equally among the department of cultural resources, the department of fish and game, the department of resources and economic development, [~~and~~] the state conservation committee, ***and the New Hampshire land and community heritage investment authority***.

II-a. The state treasurer shall distribute the share of funds due the New Hampshire land and community heritage investment authority, pursuant to RSA 261:97-b, I, on the first day of each month.

8 Motor Vehicles; Certificates of Title and Registration; Conservation Number Plate Trust Fund; Use of Funds. Amend RSA 261:97-c, V-VI to read as follows:

V. The funds transferred to the New Hampshire land and community heritage investment authority shall be used for the administration of the New Hampshire land and community heritage investment program.

[V.] VI. The funds transferred to the department of transportation shall be used for the expanded wildflower establishment program to be used in maintenance districts.

[VI.] VII. Any funds transferred from the conservation number plate trust fund which remain unexpended at the end of the fiscal year shall be non-lapsing.

9 Appropriations; New Hampshire Land and Community Heritage Authority. The sums of \$3,000,000 and \$6,000,000 are hereby appropriated to the New Hampshire land and community heritage authority established in section 1 of this act for the purposes of this act for the fiscal years ending June 30, 2001 and June 30, 2002, respectively.

10 Bonds Authorized. To provide funds for the appropriations made in section 9 of this act, the state treasurer is hereby authorized to borrow

upon the credit of the state not exceeding the sum of \$3,000,000 for fiscal year 2001 and \$6,000,000 for fiscal year 2002 and for said purpose may issue bonds and notes in the name of and on behalf of the state of New Hampshire in accordance with RSA 6-A. Payments of principal and interest on the bonds and notes shall be made from the general fund of the state. Issuance of bonds for fiscal year 2001 shall be no earlier than April 1, 2001.

11 Appropriation; Administrative Costs. The sum of \$50,000 is appropriated to the New Hampshire land and community heritage authority established in section 1 of this act, for the purpose of funding administrative costs of the authority for the biennium ending June 30, 2001. The source of funds for the \$50,000 shall be as follows:

I. \$40,000 from the forest management and protection fund, established in RSA 227-G:5.

II. \$5,000 from PAU 02, 03, 01, class 20, department of agriculture, markets, and food funds for the fiscal year 2000.

III. \$5,000 from PAU 02, 03, 05, 01, class 24, department of agriculture, markets, and food funds for fiscal year 2000.

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

2000-4040s

AMENDED ANALYSIS

This bill:

I. Establishes the New Hampshire land and community heritage investment program.

II. Establishes the New Hampshire land and community heritage investment authority, and establishes its powers, duties, and authority.

III. Establishes membership on the authority's board of directors.

IV. Establishes criteria for acquisition of lands and other natural, cultural, and historical resources.

V. Increases the fee charged for the issuance of special conservation number plates from \$25 to \$30.

VI. Provides that a portion of funds received in the conservation numbers plate trust fund shall be distributed monthly to the New Hampshire land and community heritage investment authority for the purpose of administering the New Hampshire land and community heritage investment program.

VII. Provides a \$50,000 appropriation for the purpose of administering the program for the biennium ending June 30, 2001, with such funds being transferred from the forest management and protection fund and the department of agriculture, markets, and food.

VIII. Provides appropriations to the program for 2001 and 2002, including a \$3,000,000 bond issue for 2001 and a \$6,000,000 bond issue for 2002.

IX. Transfers responsibility for the administration of the land conservation investment program and monitoring endowment under RSA 162-C to the office of state planning.

SENATOR BELOW: As I mentioned, this floor amendment adjusts the appropriation. The initial appropriation is \$50,000 to seed this and get this going, that is funded by \$40,000 that is transferred from the Forest Management and Protection Fund that is operated under the Department of Resources and Economic Development, and they are aware of that and feel that they can afford to do that and that this is a worthwhile cause. Also, \$5,000 from each of two different accounts of the Department of Agriculture, where the commissioner has identified that he would have funds that would otherwise lapse. That provides the total of \$50,000. We

were targeting \$150,000 for the first year of operation. The annual income from the plate fee is expected to be around \$150,000. I just spoke with the assistant commissioner of the Department of Safety, and he is optimistic that they will have the plates out maybe by the end of summer or early fall, so that we could expect at least two-thirds of year revenue from the plates sales in the next fiscal year to fund this program.

Floor Amendment adopted.

SENATOR LARSEN: I think that the bill that we just got through with is unfortunate, because the importance of this bill is of highest importance. Senate Bill 401 has been worked on and supported by communities across the state. It is an investment in our future, it is an investment in everything that we care about in New Hampshire. I want to congratulate Senators Klemm and Below who worked hard on making this bill happen. Senators who found the monies to make this happen. I think that it is incredible that we are now at this point to be able to send it to the House. It is our job to make this get through this session, through the House.

SENATOR SQUIRES: Every once in a while I come onto something that is pertinent to say or close to it, and I would just like to read this to you. Many of you remember in 1987 the legislature created a New Hampshire Land Conservation and Investment Fund. It was self limited to expire in six years. During that period of time, about \$50 million was spent on about 100,000 acres, and they were set aside. This is a tremendous issue in the part of the state that I represent, thus, I came upon the following at the conclusion of the introduction and their final report. That is the program that mirrored this one, but during a different time period. It says, "A generation always hopes to make life better for the one that will succeed it. Only rarely do the members of a generation agree that the best way to do that is to guarantee that some things should be preserved as it is, to be passed along, not as a museum artifact, but as a living, working piece of whatever New Hampshire is yet to become." That is what this bill does. I urge you to pass it.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Larsen.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No:

Yeas: 24 - Nays: 0

Adopted unanimously.

Ordered to third reading.

HCR 31, urging the New Hampshire congressional delegation to take action to keep the international border crossing between the United States and Canada, in the town of Pittsburg, New Hampshire, open 24 hours a day. Energy and Economic Development Committee. Vote 3-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: HCR 31 merely sends a message to our congressional delegation that we support keeping open the only international port that New Hampshire has between New Hampshire and Canada. It

is an economic issue. It is a convenience issue for the people that live in northern New Hampshire and the people who need to cross into Canada from New Hampshire. The delegation is working hard in congress to keep this port open. It is open right now. This issue came up when we had the issue of terrorism in the state. All over the country. They picked up some people of questionable character that it was already known that they had passed through the border in Pittsburg when it wasn't manned, and were subsequently caught at a port in Vermont. So I would ask your support for this HCR.

Adopted.

Ordered to third reading.

HB 648-FN, relative to a sludge testing program. Environment Committee. Vote 5-0. Ought to pass with amendment, Senator Krueger for the committee.

2000-4012s

08/01

Amendment to HB 648-FN

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

AN ACT providing that coated printing paper purchased by or for state agencies shall contain not less than 10 percent post consumer waste material.

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

1 Recycled Materials; Uncoated Printing Paper; Post Consumer Waste Material Requirement. Amend RSA 21-I:14-a, III to read as follows:

III.(a) [~~Printing and writing paper purchased by or for state agencies shall contain not less than 20 percent post consumer waste material.~~

(b) ~~Not later than December 31, 1998,~~ *Uncoated* printing and writing paper purchased by or for state agencies shall contain not less than 30 percent post consumer waste material *and coated printing paper shall contain not less than 10 percent post consumer waste material.*

[~~(e)~~] (b)(1) "Post consumer waste material" means a substance or a finished product which has served its original or intended use and has been discarded for disposal or recovery, but does not include any substance or by-product generated by the original manufacturing process. "Post consumer waste material" for paper means de-inked paper and recovered textiles cleaned and bleached for use in the manufacturing of printing and writing papers.

(2) If compliance with this paragraph cannot be met by following current industry standards for any item or items, the director of plant and property management may exempt specific items of printing and writing papers from the requirements of this paragraph.

2 Effective Date. This act shall take effect July 1, 2000.

2000-4012s

AMENDED ANALYSIS

This bill provides that coated printing paper purchased by or for state agencies shall contain not less than 10 percent post consumer waste material.

SENATOR KRUEGER: Before I begin my floor remarks, I just want to let my fellow Senators know that there was a misprint in the calendar,

so therefore, a floor amendment, which will be passed out, is what the committee had moved on. I rise in support of HB 648. This bill is intended to replace the present random Sludge Testing Program instituted by the legislature in 1998 in HB 1224, with a testing program that produces statistical evaluation of containment levels in sludge. It is important to continue to collect useful data on sludge in New Hampshire as the debate over what should be done with sludge continues within the legislature. This bill allows sampling and testing of sludge and biosolid materials to be conducted by independent third parties as well as the state. The sampling methodology designed by DES shall be with the consultation of UNH statisticians and sludge and biosolids experts. DES supports this legislation, but cautions that the proposed funding source is not guaranteed, as it is contingent on the availability of surplus waste water state aid grant money. The amendment was a request made by the Department of Administrative Services. The amendment is to RSA 21-I:14-a, III(b). And would include the following. Effective July 1, 2000. Uncoated printing and writing paper purchased by or for state agencies shall contain not less than 30 percent post consumer waste material, and coated printing paper shall contain not less than 10 percent post consumer waste material. This amendment is necessary due to the fact that there are technical obstacles to manufacturing coated papers with high levels of post consumer waste content. In addition, there are no coated papers on the market today that have 30 percent post consumer waste content. The use of coated paper is critical to accomplishing the design mission of many state of New Hampshire printing projects. Under the present statute, special written permission must be obtained each and every time that a state agency wants to have something printed on coated paper, therefore, I urge you to pass this with the amendment. Thank you very much. Actually, I stand corrected. I urge my fellow Senators to agree with me once this morning and vote down this amendment, as in the Senate Calendar, and then I will be offering a floor amendment to correct it.

Amendment failed.

Senator Russman offered a floor amendment.

2000-4035s

08/01

Floor Amendment to HB 648-FN

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

AN ACT relative to a sludge testing program, and providing that coated printing paper purchased by or for state agencies shall contain not less than 10 percent post consumer waste material.

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

1 Recycled Materials; Uncoated Printing Paper; Post Consumer Waste Material Requirement. Amend RSA 21-I:14-a, III to read as follows:

III. (a) [~~Printing and writing paper purchased by or for state agencies shall contain not less than 20 percent post consumer waste material.~~

(b) ~~Not later than December 31, 1998,]~~ **Uncoated** printing and writing paper purchased by or for state agencies shall contain not less than 30 percent post consumer waste material **and coated printing paper shall contain not less than 10 percent post consumer waste material.**

[(e)] (b)(1) "Post consumer waste material" means a substance or a finished product which has served its original or intended use and has been discarded for disposal or recovery, but does not include any substance or by-product generated by the original manufacturing process. "Post consumer waste material" for paper means de-inked paper and recovered textiles cleaned and bleached for use in the manufacturing of printing and writing papers.

(2) If compliance with this paragraph cannot be met by following current industry standards for any item or items, the director of plant and property management may exempt specific items of printing and writing papers from the requirements of this paragraph.

2 Waste Disposal; Duties of Department; Sludge Testing Program. RSA 485-A:4, XVI-c is repealed and reenacted to read as follows:

XVI-c.(a) To design and implement a program for state or independent third party sampling and testing of sludge or biosolid materials that are intended for land application. The department shall design the sampling methodology, in consultation with university of New Hampshire statisticians and sludge and biosolid experts, to provide a statistical evaluation of the contaminant levels contained in sludge or biosolids. The department shall concentrate its testing on those contaminants that pose greater risks to public health and the environment due to their toxicity, potential availability, concentration levels, or concentration uncertainty. The department shall maintain a database of testing results and prepare, in consultation with university of New Hampshire statisticians and sludge and biosolid experts, and make available to the public and the general court, an annual report by November 1 of each year which analyses the compiled test results, including data from prior years, as appropriate. The analysis shall detail contaminant concentrations on both a statewide and generator level and shall indicate the statistical degree of certainty in the results of the analysis. The department shall attempt to present the report in terms that are understandable to the layperson including practical examples such as the probability that any given load of untested sludge exceeds a contaminant standard.

(b) The department shall establish a fee of \$500, to be paid by sludge quality certificate holders by January 1 of each year. The fee shall be deposited in a special, nonlapsing sampling and analysis of sludge or biosolids samples fund, for exclusive use by the department to implement the program established in subparagraph (a).

3 New Paragraph; Duties of Department; On-Site Inspections. Amend RSA 485-A:4 by inserting after paragraph XVI-c the following new paragraph:

XVI-d. To conduct on-site inspections of sludge or biosolid application sites to monitor adherence to all state and federal requirements for such activity.

4 Testing Method Evaluation. In preparation for and as part of the annual report required by November 1, 2000 under RSA 485-A:4, XVI-c(a), the department, in consultation with university of New Hampshire statisticians and sludge and biosolid experts, sludge quality certificate holders, and other interested parties, shall evaluate whether the overall financial resources dedicated to sludge testing in the state are being optimally allocated between regulatory testing and statistical testing. As part of the evaluation, the department shall consider what short and long-term financial, environmental, or assurance benefits there may be to the department, the public, and sludge or biosolid generators in having sampling conducted by a party other than the generator.

5 Transfer of Appropriation. Up to \$85,000 each fiscal year that was appropriated for state aid grants by 1999, 159:1, PAU 03-04-02-01-02 shall be transferred to the non-lapsing sampling and analysis of sludge or biosolids samples fund established by RSA 485-A:4, XVI-c, provided all approved state aid grant payments have been made to eligible municipalities in each fiscal year.

6 Effective Date.

I. Section 1 of this act shall take effect July 1, 2000.

II. The remainder of this act shall take effect June 30, 2000.

2000-4035s

AMENDED ANALYSIS

This bill:

I. Allows sampling and testing of sludge and biosolid materials to be conducted by independent third parties as well as the state. The sampling methodology designed by the department shall be with the consultation of university of New Hampshire statisticians and sludge and biosolids experts. The department shall make available to the public and general court a report by November 1 each year which analyzes the compiled test results.

II. Provides that as part of the annual report required by November 1, 2000, the department shall evaluate whether the overall financial resources dedicated to sludge testing in the state are being optimally allocated between regulatory and statistical testing.

III. Appropriates certain funds to the sampling and analysis of sludge or biosolids samples fund.

IV. Provides that coated printing paper purchased by or for state agencies shall contain not less than 10 percent post consumer waste material.

SENATOR RUSSMAN: We have a floor amendment. What happened was that the original amendment actually replaced the bill and obviously it was to be added to the bill, so all of this is a technical measure to add the amendment on the deduction of the post consumer waste from 30 to 10 percent to the sludge testing bill itself. So hopefully, you will support this floor amendment which will actually do that in a proper manner. We apologize for the confusion.

Floor Amendment adopted.

Referred to the Finance Committee (Rule #24).

HB 1235, relative to defining surface waters. Environment Committee. Vote 5-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: I rise in support of HB 1235. This legislation as amended, proposes to add the phrase "perennial and seasonal" to the statutory definitions of surface water found in statute. DES supports this bill. The department testified that the definitions for perennial stream and seasonal stream were recently developed, and are the result of a year's work of a committee of the DES staff. Representative Kibbey and others, represented many facets of public and private development. DES believes that these definitions will help both the department and the public to have a better workable understanding of these terms. Their addition to the statute will allow DES to incorporate these definitions into department rules and regulations. I urge you to support the committee recommendation and vote ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1258-FN, relative to invasive plant, insect, and fungal species. Environment Committee. Vote 5-0. Ought to Pass, Senator Russman for the committee.

SENATOR RUSSMAN: This is a request from the commissioner of Agriculture. It establishes a number of requirements relative to these types of species that we are having a real problem in New Hampshire with, with various invasive species coming in from not just other states, but other countries, and jeopardizing our crops and things of that nature. So this goes a long way towards helping that. DES and DRED were in support of the legislation as well.

Adopted.

Ordered to third reading.

HB 1416-FN, establishing a brownfields cleanup revolving loan fund. Environment Committee. Vote 4-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: I rise in support of the committee recommendation of ought to pass on HB 1416. This bill was requested by DES in order to clarify its authority to administer a brownfields cleanup revolving loan fund. The department successfully pursued federal support to capitalize this fund and now needs legislative authority to administer the fund. The loan program will help the department further its efforts to promote or encourage hazardous waste cleanups and redevelopment of brownfields in New Hampshire. These are all federal funds, there are no state funds involved. I urge you to vote in favor of HB 1416.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Below moved to have **SB 132**, requiring the removal of the telecommunications tower on Mount Kearsarge, taken off the table.

Adopted.

SB 132, requiring the removal of the telecommunications tower on Mount Kearsarge.

SENATOR BELOW: The committee prepared an amendment, which is in our calendar, however, I am going to primarily direct myself to a proposed floor amendment, which is what we want to really offer at this point. It is a floor amendment dated March 23 and sponsored by myself, Senator Krueger and Senator Trombly. We will get to the floor amendment after the first vote on the bill. I think that the point of voting on the bill is so that we can get to the floor amendment. If the floor amendment is not adopted then I would not support moving ahead with the bill. The bill, as introduced, required...had a series of findings concerning the development of the tower on Mount Kearsarge. As all of you know, this has been a controversial issue, as towers have been in general. It has been particularly controversial on Mount Kearsarge because it is a state park that was given to the state specifically for perpetual use as a forest reserve and for recreational uses by the state. The state has pursued, with the support and encouragement of the general court, an extensive communications system upgrade for the state police. A very important part of our public safety communications. A new tower that is 180' was put on the summit to accommodate that use as well as other public safety clauses, public and

commercial uses on the summit of the mountain. Unlike current policy and current law would require at that time, there was an intentional decision to avoid a general public notice and abutter notification. So there was no public hearing, there was no general notification to the surrounding towns or to the public about this major development on a mountain that many people feel is part of the public trust that is a property of the state that people feel a lot of ownership in. So after the tower went up, much of the people were sort of shocked and surprised one October day when the helicopter arrived and plunked it down on a foundation that had been put in, in that fall of 1997. Subsequently, all of the surrounding towns, Andover, Danbury, New London, Sutton, Warner and Wilmot all resoundingly passed warrant articles expressing outrage about the construction of the towers, and particularly the lack of public notification and due process. I am not going to go into all of the details. The original bill had a whole bunch of findings. All of the findings would be removed by the floor amendment. The original bill called for the removal of the tower. That is removed in the floor amendment. What the floor amendment does is just three things. It directs the commissioners of resources and economic development and of safety to undertake a review of the technical requirements for public safety and public communications on the summit, including looking at if there are any alternatives to the existing tower, so that we ensure continued public safety communications, but also look at whether it could be provided with a lesser obtrusive tower. Then it calls upon those commissioners to make reports, any findings of recommendations, including if they need funds for additional study of the technical issues by December 1. That is one thing that the bill does. As I understand it, both the commissioners have indicated that they plan to do this whether we pass the bill or not, and that that part of the bill is not a problem. The fact that they would do a technical review is not a problem. The second part of the bill creates a Mount Kearsarge telecommunications tower advisory committee. It is not an oversight committee. It has no particular authority. Its only purpose is to advise and to consult with those two agencies in their technical review. So that there is a process by which members of the public, stakeholders, concerned people have a process to have some input and to develop some trust in communication with the agencies, and I would hope, result in some consensus about what the needs are and how they might be accommodated. That committee would consist of three members of the Senate, and three members of the House, and representatives of Warner, Sutton, Wilmot, Andover and New London, selected by the selectmen of those towns; representatives of Merrimack county appointed by the county commissioners office which has a direct interest in the public safety communications for their sheriff and other purposes. Representative of New Hampshire State Troopers Association, which has been concerned about the issue, representative of Fish and Game and a representative of save our Mountain, which is a local group which has been organized around it and the Society for the Protection of New Hampshire Forests, which is the entity that originally gifted the land to the state. The Advisory Committee would also make its own report at the end of the year. Finally, the only other element of the bill is a moratorium on new or extended leases. It simply provides that new leases or new extensions of leased terms that have to be approved by the Department of Resources and Economic Development, be suspended for one year until July 1, 2001. The purpose of that is so that there is no additional commercial encumbrances on the tower while this issue is sorted out. In many ways, the amendment is just some baby steps, baby steps in healing what is a deep

wound and a deep hurt in the side of many people surrounding those communities and in fact, throughout the state. A concern that we are a government of the people, by the people and for the people. And yet in the feeling of this instance, there was a problem with the process, and this is an attempt to correct and heal that problem and let us look at whether there are other alternatives. It doesn't say that we are going to do anything else, it doesn't say that we are going to take down the tower, it doesn't make any findings in this bill, except that we want to review the technical issue and have a process for stakeholders to have some advice on that process. Thank you.

SENATOR BROWN: Senator Below, what was handed out to us was the Senate bill as introduced. The amendment, was that something that we received before?

SENATOR BELOW: No, that amendment isn't handed out until we vote on the committee amendment first. I was speaking to it because really that is the point. The point of adopting ought to pass with amendment now is not to pass the bill, but to make it available for the floor amendment.

SENATOR JOHNSON: It is very difficult to get an amendment in at the last minute, not having seen it, but I think that I do have a couple of things that I would like to discuss. On the first page, line 17, the amendment says that...well it is questioning whether it is necessary to satisfy the requirements for improved public safety communications. Well I think that that was proven. I don't know whether Senator Below was at the public hearing when they took a 5-watt hand phone that a state trooper would use outside of the car and tried to make contact with the lower tower that existed, and that was not able to accomplish that. That is one reason that if you take the event that happened up in Colebrook where the troopers are outside of the car – this tower might have had some impact on that because they could have probably reached contact where they probably couldn't under those conditions. On line 20, I question whether the department is violating its public trust. I guess that I would have to ask the question of Senator Below where the information that he has that would document that they have violated the public trust?

TAPE CHANGE Line 24, stating, they were...the department failed to give due and timely notice of its intentions regarding the tower. This question was taken to the court and the court came back with a decision that the department was absolutely correct, and that they did go through the process and did have the public hearings. That certainly is part of the records. Then on line 28, where it says, "with purposeful intent, avoid a general public notice and abutter notification" I don't believe that that was the case. I think that there is plenty of documentation that shows that they did have public notice and abutter notification. Finally, I think that there was certainly correspondence between the agencies and myself and others, and I believe that Senator Below got that letter which stated that the departments, the agencies, were more than willing to sit down with the people and start the process of looking at something down the road where telecommunications is rapidly changing, and they are certainly willing to pursue that; but I often think of the person that might be standing out there with a cell phone in his hand, and he is calling somebody to be against this piece of legislation or against the tower, and I am just wondering if they realize how they communicate on these phones that they have. I think that we are going to see more of these towers throughout the state. I know one of the earlier ones was on Gunstock

and, as I sit on my deck on Winnepesaukee, I can look right up at that tower. Is it offensive to me? No it isn't, because we have the towers there that are lighted for the aircraft coming into Laconia Airport. I think that you just have to realize that we are in an age where communication is very important to this state, and I think that we are going to need these at least for a while. As other new telecommunications come forward, I think that it is reasonable to think that we should have the safety for our troopers every day. This, also, by the way, is for the sheriff's department and the local police, EMT's and a lot of other agencies that are involved. I would ask you not to support this amendment.

SENATOR FRANCOEUR: Senator Johnson, like you, I still don't have the amendment in front of me, I haven't had time to see it. Do you think that it would be appropriate at this time, that we table this bill to take a better look at the amendment and then bring it up next week?

SENATOR JOHNSON: I suggested that earlier today and I would hope that we could do that. Thank you very much.

Recess.

Out of Recess.

Question is on the adoption of the committee amendment (#3159).

Amendment adopted.

Senator Below offered a floor amendment.

Sen. Below, Dist. 5

Sen. Krueger, Dist. 16

Sen. Trombly, Dist. 7

March 23, 2000

2000-3936s

08/01

Floor Amendment to SB 132

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

AN ACT requiring a review of public safety communications requirements regarding the summit of Mount Kearsarge, establishing an advisory committee regarding the review, and placing a moratorium until July 1, 2001 on new leases, use permits, or extensions of lease or permit terms for telecommunication facilities on the summit of Mount Kearsarge.

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

1 Study by the Commissioner of Resources and Economic Development and Commissioner of Safety. The commissioner of resources and economic development and commissioner of safety shall undertake a review of the technical requirements for public safety and quasi-public communications on the summit of Mount Kearsarge and alternatives to the existing 180-foot tower, including facilities on a location other than the current parcel of land where the tower is located, in consultation with the advisory committee established in section 2 of this act. The purpose of the review is to assess whether communications needs for public health, safety, and emergency services can be provided with a less obtrusive and smaller tower than the existing 180-foot tower and what the technical requirements might be for other alternatives. The commissioner of resources and economic development and commissioner of safety shall report on any find-

ings and recommendations for legislative action, including funding needs for additional study, to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before December 1, 2000.

2 Mount Kearsarge Telecommunications Tower Advisory Committee. There is established an advisory committee to advise and consult with the department of resources and economic development and department of safety as to a technical review of requirements for public safety and quasi-public safety communications on the summit of Mount Kearsarge, including possible alternatives to the existing 180-foot tower.

3 Members and Compensation.

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

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

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

(c) One representative each from Warner, Sutton, Wilmot, Andover, and New London, appointed by the selectmen from each respective town.

(d) One representative of Merrimack county, appointed by the county commissioners.

(e) One representative of the New Hampshire State Troopers Association, appointed by the Association.

(f) One representative of the department of fish and game, appointed by the executive director of fish and game.

(g) One representative of Save Our Mountain, appointed by the organization.

(h) One representative of the Society for the Protection of New Hampshire Forests, appointed by the organization.

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

4 Chairperson; Quorum. The members of the advisory 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. Eight members of the committee shall constitute a quorum.

5 Report. The committee shall report any recommendations for future action by the legislature or the executive branch to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, the commissioner of resources and economic development, the commissioner of safety, and the state library on or before December 1, 2000.

6 Moratorium on New or Extended Leases. The department of resources and economic development shall not approve or enter into any new leases, use permits, or extensions of lease or permit terms for commercial telecommunications facilities on the summit of Mount Kearsarge before July 1, 2001.

7 Effective Date. This act shall take effect 30 days after its passage.

2000-3936s

AMENDED ANALYSIS

This bill requires the commissioner of resources and economic development and commissioner of safety to undertake a review of the technical requirements for public safety and quasi-public communications on the summit of Mount Kearsarge and alternatives to the existing 180-foot

tower. This bill establishes an advisory committee to advise and consult with the department of resources and economic development and department of safety as to requirements for public safety and quasi-public safety communications on the summit of Mount Kearsarge. This bill also places a moratorium on new leases, use permits, or extensions of lease or permit terms for commercial telecommunication facilities on the summit of Mount Kearsarge entered into or extended by the department of resources and economic development until July 1, 2001.

SENATOR BELOW: I would like to move the adoption of this floor amendment. I can speak real quickly. This is a complete substitution of the original bill. I heard Senator Johnson's concerns. I think that they were legitimate questions. All of that language is stricken from the bill. Nothing that he was referencing would be in the bill if we adopt this floor amendment.

SENATOR TROMBLY: I think that for those of us who are responding to what was a grave situation for our constituents, and if I might answer Senator Johnson's question on the bill, which is basically rewritten. The public trust that was violated, was a public trust held by the people in those towns that passed on their warrant articles at town meeting. Resolutions calling for either removal of the tower, condemning the action taken against them. I think that those are the people to whom we were listening when we put in the original bill to remove the tower. Well that is gone, because there is a certain practicality that needs to exist, and that is quite frankly, that the issue of safety, raised by some, and the issue of whether or not we are getting involved in an area that we want to go, raised by some, have been addressed in this amendment. So we have brought it down to the level where we are providing exactly what our constituents asked at the time that this process was going on, and that was, please listen to us and take into consideration what we have to say. The committee that is set up is an advisory committee. It says that the report that they will issue has to be in the state library by December 1, 2000, so my sense is that we will be able to read what they collectively can gather for information and what their input might be. That is it. Now it doesn't mean a huge great deal to the agencies involved in this, but it is a tremendous step forward for those people, the people in those communities who believe, whether you believe it or not, but who believe that they were left out of this process. I think that this resolution is one that rights a tremendous wrong against these people. I think that it is not casting aspersions. It is not making statements about what happened was right or whether it was wrong, it simply says that we are going to go to our local communities and ask them for their input on the resolution of this, it doesn't order the tower to come down. It simply asks for their opinion and their input. I don't know anyone who should be afraid of that in the state of New Hampshire.

SENATOR FRASER: Senator Trombly, does the commissioner of safety support the amended version?

SENATOR TROMBLY: I don't know whether the commissioner of safety supports the amendment. The commissioner of safety supported the process that brought us this problem. I do know that it has been represented to me by people who don't support this amendment, that the commissioner of safety and the commissioner of DRED would like to meet with those people in those communities. My response has always been, well they have had the opportunity to do that. I don't know why he would object to this amendment, Senator Fraser, because it doesn't require him to do anything except for to listen to the people of the state of New Hampshire.

SENATOR WHEELER: Senator Trombly, thank you, I certainly support the amendment, but I have gotten questions from constituents about other towers on other mountains and I note that...somehow I had thought that it was going to be a little broader to have public involvement before the siting of other telecommunication towers.

SENATOR TROMBLY: I thought that you were going to break into the Sound of Music, Senator Wheeler, Climb Every Mountain.

SENATOR WHEELER: Oh, good thought.

SENATOR TROMBLY: I think that this is site specific because the bill was site specific. Quite frankly, the concern of the people in this area was represented through votes that they had taken at town meetings. So we thought that we would address this process. We did have a bill that Senator Fernald sponsored relative to leasing state property and getting permission to legislate that. I think that we have dealt with that already. So the reason why it is specific is because the bill is specific.

SENATOR WHEELER: Thank you.

SENATOR D'ALLESANDRO: Senator Below, on line 22 on page two, you talk about a moratorium on all new and extended leases.

SENATOR BELOW: Yes.

SENATOR D'ALLESANDRO: Are any leases that have any affect on public safety going to be jeopardized by this? For example, if we had a lease with the FBI or someone of that nature, would that be terminated?

SENATOR BELOW: No, those would not. First of all, those would not be considered commercial, those are public. In the case of the FBI that is a public safety clearly. This does not affect any of the current leases that are up there. They all play out. I think that there is at least one entity that has a license that they automatically give notice once a year and they keep renewing it. This does not affect their ability to automatically renew or send a letter of renewal. This only affects new leases or new lease terms, extensions of lease terms that require the express approval or signature of DRED for commercial installations only.

SENATOR D'ALLESANDRO: So what you are saying is that an automatic extension is guaranteed if it is a provision of an existing lease?

SENATOR BELOW: Some of the leases have the ability to renew or extend their term by simply sending a letter into DRED. Those would not be affected. They could still do that, if their lease has the ability for them to just notify and extend term, they could do that. DRED simply couldn't execute a new lease or change a lease term by agreement, to extend it.

SENATOR D'ALLESANDRO: Thank you.

SENATOR KRUEGER: I will speak very briefly. I certainly am not known within this body, and I am sure that the chair of the Environment Committee would certainly agree, as a strong proponent of huge amounts of environmental concern and intrusion, however, I remember the hundreds of people who sat there. I remember their concerns, but more importantly, a basic tenant of my philosophy is one of local control. So therefore, I come back to issues that are important to me, local control. I come back to the art of compromise. I think that Senator Below needs to be commended, that this particular amendment, I would suggest, just puts in writing what has already been stated to us through the commis-

sioners. I would look to this body to support this amendment. It is a good amendment. It is a good start. Relating back to what Senator Wheeler asked. I think that it would set a tone for the same kind of intrusive behavior that might happen in other parts of the state, and I really would look for all of your support for this measure. Thank you very much.

SENATOR F. KING: I am going to support this amendment for a different reason. This does something that I have felt that we needed to do for a long time in this state. I am going to tell you about something that happened in my district a few years ago. Up in the town of Errol, which is the most northern town in the eastern corner of the state. There was a meeting one cold winter night in December and the citizens were called into a meeting. People from Concord and Washington came and they announced to the people that they were going to establish a Wildlife Refuge which consists of 4000 acres of land and coming off of the tax rolls. We are going to do this because we have been studying the issue and we have decided that this is the best thing to do for you, and we thought that you ought to know that. I thought at the time, wouldn't it have been nice if they asked the people in the first place and they would have had a chance to participate in that process? That has happened over and over again in the northern part of the state. Forty thousand acres of land was tied up primarily in the town of Odell. They didn't have an advisory board made up of the people in Groveton and Stratford when they decided to do that. So I hope that if I vote for this today, that if one of those issues comes up for the North Country in the future, that you will allow the citizens up there to participate like they have never been allowed to do before. I am going to support this because I think that it is the right thing to do. It is the right thing to do everywhere for reasons that are for the economy and not just the environment.

SENATOR LARSEN: Senator King, would you believe that I think that it is not just in the town of Errol or North Country, but across the state? One summer I was in Newfound when all of a sudden a boat access went in with very little input as to how it went in. Many times in Concord, the state decides to put in a building or do any kind of access roads without checking with the people who live in that town. I agree with you and would you believe that I think that it is important that we add that public input and give people the feeling that the state in fact, does listen to them. This amendment doesn't take the tower, correct?

SENATOR F. KING: I guess that I don't care whether it does or not. It appoints a committee so that the people can be heard and that is all that I am asking for, something that has been happening in my part of the state and I am so tickled to death to hear that you agree with me.

SENATOR LARSEN: Would you believe that I do care if the tower comes down because it serves a lot of Merrimack county safety facilities, but this amendment doesn't take the tower down, and it does allow public input, and I think that it is important.

SENATOR JOHNSON: I just want to remind Senator Trombly and Senator King that again, to the fact that they did have public hearings. Some of these people in these towns may not believe what the court said, but the court said that they did it the right way. I am not a lawyer so I am not going to challenge you on that, but that is what the court said and I read the court document and I know what it said. The other thing that I am concerned about here, is as far as I am concerned, this tower belongs to everyone in the state of New Hampshire. On this advisory com-

mittee, you have a person from Warner, Sutton, Wilmot, Andover and New London, who are all on the perimeter of the tower. I don't see anyone on there from my part of the country or from Senator King's part of the country. They have some on there from Save Our Mountain, I guess I probably have an idea where they're going to be on this issue. Then you have someone on there from the Society for the Protection of Forests, and I am pretty sure where they're going to be on the issue. I think that if I look at the makeup of the committee, it looked as though the public members, we already have a vote of 7-3. I really have a problem with that, and I would hope that would vote against the amendment, which is the bill.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Johnson.

The following Senators voted Yes: F. King, Gordon, Below, McCarley, Trombly, Disnard, Roberge, Fernald, Pignatelli, Larsen, Krueger, Brown, J. King, Russman, Wheeler, Hollingworth, Cohen.

The following Senators voted No: Johnson, Fraser, Eaton, Francoeur, D'Allesandro, Klemm.

Yeas: 17 - Nays: 6

Floor Amendment adopted.

Ordered to third reading.

HB 51, providing for the voluntary registration of commercial maple producers and maple packers. Executive Departments and Administration Committee. Vote 5-1. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: This bill allows maple producers to voluntarily register with the department of agriculture. The voluntary registration program will provide maple product consumers in New Hampshire a measure of protection. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1172, providing staggered terms for agricultural advisory board members. Executive Departments and Administration Committee. Vote 3-0. Ought to Pass, Senator Cohen for the committee.

SENATOR COHEN: This bill reintroduces staggered terms for members of the agricultural advisory board. The language regarding the staggered terms was inadvertently removed which would have had the board memberships all expire next year, leaving the board without a member with experience on the board. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1234, relative to special commissions to perform marriages in New Hampshire. Executive Departments and Administration Committee. Vote 3-1. Ought to Pass, Senator Cohen for the committee.

SENATOR COHEN: This bill puts into statute a reciprocity measure for out-of-state people who perform marriages. Allowing the secretary of

state to grant a special commission allowing non-ordained ministers residing out-of-state and individuals residing out-of-state who are authorized by law to perform marriages in those states to perform marriages in New Hampshire. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1321, relative to certain funds collected by order of the public utilities commission. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill authorizes the state treasurer to maintain funds collected pursuant to electric utility restructuring orders in a separate account. The funds in question are only those that are directly attributable to programs for low income customers. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1583, increasing the education requirement for estheticians and manicurists and relative to the board of barbering, cosmetology, and esthetics. Executive Departments and Administration Committee. Vote 4-0. Ought to pass with amendment, Senator Francoeur for the committee.

2000-4019s

08/04

Amendment to HB 1583

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

2 Applicability. Members of the board of barbering, cosmetology, and esthetics serving on the board on the effective date of this act shall serve out the full duration of their terms of appointment unless removed by the governor and council as provided by RSA 313-A:3. Terms served by such members serving on the board on the effective date of this act shall be counted toward the limit of 2 consecutive terms provided by RSA 313-A:2, I.

3 Effective Date. This act shall take effect January 1, 2001.

SENATOR FRANCOEUR: This bill as amended makes clearer the time period that estheticians and manicurists must be trained to be eligible for licensure. The amendment clarifies that members currently serving on the board will continue to serve their term after the changes in this bill are implemented. The committee recommends this bill ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 359, establishing a committee to study the issues relative to manufactured housing parks in New Hampshire. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill establishes a study committee to review laws and rules pertaining to the manufactured housing industry and the rents that are charged to tenants by manufactured housing parks. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 457, relative to ownership of certified public accounting firms. Executive Departments and Administration Committee. Vote 3-1. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: The current law requires that two thirds of ownership in a certified public accounting firm is held by registered public accountants. This bill lowers the ownership threshold to fifty-one percent, a simple majority ownership. The bill does not affect who may be employed by public accounting firms, only the ownership requirements. The committee recommends this bill ought to pass.

SENATOR LARSEN: Senator Roberge, I unfortunately missed the executive session that this bill was reviewed, and so I wanted to take this moment to hear if you have reviewed...one of the concerns that I heard in hearing this bill was that the small CPA firms of New Hampshire might be forced out by the larger CPA firms, the chains, that in fact would result in ownership out-of-state, and that the small CPA's would be pressured to sell out. Did you address that concern and go over that?

SENATOR ROBERGE: We heard that, but we really didn't take into too much consideration. When the subject came up, for instance, they might diversify and in addition having public accountants, they might have stockbrokers and people from other persuasions working there and being able to cover a whole range of kinds of things other than certified public accounting. But we felt that in our state that it was not going to be an issue, but quite frankly, the committee really did not feel very strongly about it either way.

SENATOR LARSEN: I had some real concerns about this bill and I apologize that somehow I must have had an overlap in my schedule and wasn't able to address it in committee. The concern is...and what we heard was that in fact, it would be possible for stockbrokers or other large firms to own a CPA firm and refer, after handling someone's financial matters, to refer them upstairs for purchases of stock or other options. I had real concerns about the kind of conflict that might occur with that happening in New Hampshire. I want to raise this to people and I intend to vote no. If anyone else has that concern, they could move to table it. I think that it is worth thinking about before we rush this out of the Senate.

Adopted.

Senator McCarley moved to have **SB 457**, relative to ownership of certified public accounting firms laid on the table.

Adopted.

LAI D ON THE TABLE

SB 457, relative to ownership of certified public accounting firms

SB 458, increasing the salary of the executive secretary of the retirement system and changing the title to executive director. Executive Departments and Administration Committee. Vote 4-0. Ought to Pass, Senator Brown for the committee.

SENATOR BROWN: This bill changes the title of 'executive secretary' in the retirement system to that of 'executive director'. The change in title more aptly reflects the expanded duties of the position, as they have grown over the years. The bill also increases the salary for the position. Though the Executive Departments and Administration Committee supports the increased salary range for the executive director position, Madame President, the committee would request sending this bill to

Finance so the Finance Committee can examine whether or not funding for the position of executive director is coming from the most appropriate source of revenues.

Adopted.

Referred to the Finance Committee (Rule #24).

HB 279-FN-A, relative to refinancing the cost and rehabilitation of the Cheshire Bridge. Finance Committee. Vote 7-0. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: House Bill 279 refinances the cost and rehabilitation of the Cheshire Bridge, abolishing the toll, and authorizing bond payments from a special account in the Highway Fund. Currently the Cheshire Bridge is the only toll bridge in the entire state, and the bridge connects rural parts of New Hampshire and Vermont. Paying this toll of significant impact to the residents and the workers in this region, and when the tolls are abolished the debt service on outstanding bonds will be paid for excess accumulated toll funds placed in a special account for these purposes and then by highway funds when this special fund is depleted. As of June 30, 1999 the Cheshire Bridge had accumulated funds totaling \$806,925. Senate Finance recommends that HB 279 ought to pass.

Adopted.

Ordered to third reading.

HB 305-A, relative to a lease-purchase agreement between Cheshire county and the state for construction of a new district courthouse to be located in the town of Jaffrey. Finance Committee. Vote 9-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: House Bill 305 was referred to Finance by the Capital Budget Committee. This bill provides a lease-purchase between Cheshire county and the state for a new district courthouse serving Jaffrey and Peterborough district court. The current facility is in an old manufacturing building leased at a cost of \$53,230. A private family is donating land for the new court with a four-year time limit for construction expiring in 2001. If the state does not act soon, the donors may rescind their gift. The judicial branch has placed this project first on their list of priorities. The town has done environmental testing and engineering studies at its own expense. If Cheshire county and the state enter into a lease-purchase agreement, the county will issue bonds in the amount of \$2.6 million to cover the cost of construction. The state will pay rent to cover the counties repayment of the bonded construction debt over 20 years. The state will pay all operating costs to the facility including maintenance cost, manpower for building and grounds maintenance, building security and utilities. Current operating costs are the \$53,000. The rent and operating costs will be charged against the general fund beginning in FY 2002. The bill also appropriates an additional \$600,000 to the Department of Safety for the design and construction of Troop D barracks. This appropriation will be taken from the highway fund. Senate Finance recommends HB 305 ought to pass.

Adopted.

Ordered to third reading.

SB 380-FN-A, relative to the availability of matching funds for improvements to South Fruit Street at Industrial Drive in the city of Concord. Finance Committee. Vote 8-0. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: TAPE CHANGE access are part of the 1994 master plan for the New Hampshire hospital campus. The City of Concord would like to begin improvements at this time due to the federal funds being available through the Federal Congestion Mitigation and Air Quality Program. For those of you who don't know, a Park and Ride will be on Fruit Street with access from the CAT bus for people to be able to park on Fruit Street in Concord and take the CAT bus into the inner city, the center of our city. Capital Budget amended the bill to make the available \$45,000 for the matching funds for the biennium ending June 30, 2001 using matching funds from existing budgetary allocations within the Department of Health and Human Services. Senate Finance recommends SB 380 ought to pass.

Adopted.

Senator Brown moved to have **SB 380-FN-A**, relative to the availability of matching funds for improvements to South Fruit Street at Industrial Drive in the City of Concord, laid on the table.

Adopted.

LAI D ON THE TABLE

SB 380-FN-A, relative to the availability of matching funds for improvements to South Fruit Street at Industrial Drive in the City of Concord.

SB 413-FN, relative to confidentiality of addresses for victims of domestic violence, stalking or sexual assault. Finance Committee. Vote 8-0. Ought to Pass, Senator Larsen for the committee.

SENATOR LARSEN: Senate Bill 413 was referred to Senate Finance by the Senate Judiciary Committee. This bill establishes in the Secretary of State's Office, a Victims Address Confidentiality Program for victims of domestic violence, stalking or sexual assault. This bill would allow victims to establish the secretary of state as their mailing address for purposes of request for public records by state and local agencies, and for receiving service of process and regular mail. Senate Bill 413 will increase state expenditures by an undeterminable amount, but we know that it will be quite small and each year thereafter. The secretary of state's office estimates that it will need one part-time administrator to oversee the program at an annual cost of approximately \$20,000. The Senate Finance Committee recommends SB 413 as ought to pass.

Adopted.

Ordered to third reading.

SB 436-FN, relative to permanent revocation of driver's licenses for causing a fatality or serious bodily injury while driving intoxicated. Finance Committee. Vote 8-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, SB 436 was referred to Finance by the Senate Judiciary Committee. This is a get tough legislation that establishes a new class of offenses. This bill would require permanent revocation of individuals driver's license when convicted of causing a motor vehicle fatality or serious bodily injury while under the influence of drugs or alcohol. It further requires a three-year mandatory prison term for driving after a permanent license revocation. The fiscal impact resulting from the prosecution, incarceration, and probation on the state could not be estimated. Senate Finance Committee recommends, unanimously, ought to pass.

Adopted.

Ordered to third reading.

HB 1282, establishing a committee to study the possibility of self-insuring state employees. Insurance Committee. Vote 4-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: This bill would create a committee to look at programs in place in some communities around the state that have self-insured employees. The committee could then determine whether or not a self-insurance program for state employees would be beneficial to the state. It is possible that self-insurance would mitigate insurance costs for the state, which will be a focus of the committee's work. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1311, relative to payment of employer contributions for unemployment compensation. Insurance Committee. Vote 6-0. Ought to Pass, Senator Eaton for the committee.

SENATOR EATON: This bill exempts employers from the requirement to pay unemployment compensation taxes when those taxes amount to less than one dollar in the quarterly pay period. Processing these low amounts is actually more costly than the money collected from the payments. This exemption, however, does not exempt employers from making their quarterly filing with the department of employment security, it only exempts the payment requirement. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1326, relative to managed care programs under worker's compensation. Insurance Committee. Vote 4-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill requires a managed care program under worker's compensation to maintain a business office in New Hampshire and to have a sufficient number of resident injury management facilitators. This will ensure that those companies providing managed care under worker's compensation have facilitators available to those New Hampshire residents receiving care. This requirement also eases the efforts of the NH Department of Labor when they need to contact the facilitators. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1512-FN, establishing a committee to study the feasibility of implementing a paid family and medical leave insurance program and potential funding sources to support it. Insurance Committee. Vote 4-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: The committee established by this bill will explore the feasibility of paid family and medical leave for New Hampshire workers. The committee will examine ways to implement this program as well as potential methods for funding. Family and medical leave strengthens families, allowing parents to spend time with newly born or adopted children, or allowing family members the time to care for someone that is ill. There is currently an unpaid leave program, but the

majority of employees simply can't afford to take the time without pay. This committee would allow us to explore various options. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1212, relative to extending the reporting date of the open adoption study committee. Judiciary Committee. Vote 6-0. Ought to pass with amendment, Senator Brown for the committee.

2000-3995s

04/10

Amendment to HB 1212

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

AN ACT relative to extending the reporting date of the open adoption study committee and relative to persons eligible to adopt.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as section 3:

2 New Paragraph; Adoption; Who May Adopt; Eligible Persons Amended. Amend RSA 170-B:4 by inserting after paragraph V the following new paragraph:

VI. Two unmarried adults together.

2000-3995s

AMENDED ANALYSIS

This bill extends the reporting date of the open adoption study committee established in 1999, 40 from November 1, 1999 to November 1, 2000 and provides that two unmarried adults shall be eligible to adopt together.

SENATOR BROWN: House Bill 1212 extends the reporting date of the open adoption study committee from November 1, 1999 to November 1, 2000. The work of this important committee could not be completed; therefore, they have asked for this extension. The committee amendment to HB 1212 corrects an unintended glitch in statute. Legislation previously enacted, which amended the adoption statutes inadvertently precluded certain individuals from adopting. This amendment would correct that. The Judiciary Committee unanimously recommends that HB 1212 be ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

CACR 5, relating to voting and elective rights of incarcerated felons. Providing that any person who has been convicted of a felony may be denied the right to vote for any or all of the time between conviction and final discharge of sentence, as provided by law. Public Affairs Committee. Vote 5-0. Inexpedient to Legislate, Senator Trombly for the committee.

SENATOR TROMBLY: We reported this inexpedient because between the time of the hearing on this bill and the executive session, the Supreme Court ruled that incarcerated felons had no right to vote, so it made this issue moot.

Committee report of inexpedient to legislate is adopted.

HB 521-L, allowing municipalities that have adopted the municipal budget act to override the 10 percent limitation on exceeding appropriations recommended by the budget committee. Public Affairs Committee. Vote 4-2. Ought to pass with amendment, Senator McCarley for the committee.

2000-3996s

08/09

Amendment to HB 521-LOCAL

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

AN ACT providing a procedure to allow municipalities that have adopted the municipal budget act to override the 10 percent limitation imposed on appropriations not recommended by the budget committee.

Amend RSA 32:18-a as inserted by section 1 of the bill by replacing it with the following:

32:18-a Legislative Body Override of Limitation of Appropriations.

I. Notwithstanding any other provision of law, in any municipality electing this subdivision, or any district wholly within a town electing this subdivision, if a bond request is not recommended in its entirety by the budget committee, the governing body of such municipality, after a majority vote by the governing body of the municipality in favor of the bond request at a duly posted meeting, shall place the bond request on the warrant.

II. The legislative body of any municipality described in RSA 32:18-a, I, may approve a bond request despite the 10 percent limitation provided in RSA 32:18 in the following manner:

(a) The governing body shall place the following statement at the beginning of the warrant article for such bond request: "Passage of this article shall override the 10 percent limitation imposed on this appropriation due to the non-recommendation of the budget committee." Immediately below the bond request on the warrant shall be displayed (1) the recommendation of the governing body and (2) the recommendation of the budget committee, as included in the budget forms for the annual meeting pursuant to RSA 32:5, IV.

(b) If those voting "Yes" on the bond request satisfy the requirements of RSA 33:8, the bond request is thereby approved.

III. If the bond request is approved pursuant to RSA 32:18-a, the governing body of such municipality shall forward a copy of the minutes of the duly posted meeting described in RSA 32:18-a, I to the commissioner of the department of revenue administration.

2000-3996s

AMENDED ANALYSIS

This bill allows the governing body of a municipality operating under the municipal budget act to put a bond request not recommended by the budget committee on the warrant of a town meeting and provides a procedure to override the 10 percent limitation imposed on appropriations not recommended by the budget committee.

SENATOR MCCARLEY: House 521-L allows the governing body of a municipality operating under the Municipal Budget Act to put an initial bond request, which has not been recommended by the Budget Committee, on the warrant of a town meeting. House Bill 521 was re-referred in the House last year and received substantial work by the Municipal

and County Government Committee. House Bill 521 does not apply to any cities in New Hampshire, and only to towns under the Municipal Budget Act. In some towns, the Budget Committee fails to approve a bond request supported by the selectmen or other governing body. This would enable the bond request to go forward without the Budget Committee's approval. The Public Affairs Committee recommends ought to pass as amended.

Amendment adopted.

Ordered to third reading.

Senator Roberge is in opposition to the amendment on HB 521-L.

HB 1110, establishing a committee to study landlord-tenant issues. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: While this is an often debated and studied issue in the past, this committee will be investigating a means to deal with businesses as the tenant. The current statutory provisions were put in place to protect people from being evicted from their homes without due process and notice. These provisions do not necessarily apply to a business that has been delinquent in paying its rent. I'd like to assure the Senate that members have already volunteered to serve on this important study committee. The Public Affairs Committee recommended that HB 1110 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1124-L, relative to local building codes. Public Affairs Committee. Vote 6-0. Ought to pass with amendment, Senator Krueger for the committee.

2000-3997s

08/10

Amendment to HB 1124-LOCAL

Amend RSA 674:52, IV-a as inserted by section 1 of the bill by replacing it with the following:

IV-a.(a) The provisions of this section shall not be construed to permit the adoption by reference of any provision of any nationally recognized code, rules, or regulations that restrict or encumber the local governing body's authority relative to the appointment, removal, or duties of municipal employees and the organization of municipal departments.

(b) In the case of a local building code enacted prior to the effective date of this paragraph, subparagraph (a) shall not apply to the extent that it would cause such local building code to fail to comply with the minimum requirements of RSA 674:51 or if it is proven by clear and convincing evidence that adoption by reference of any such provision was the deliberate act of the municipality. In either circumstance, however, any provision of any national code adopted by reference that conflicts with existing or amended local ordinances, regulations, policies, practices, or procedures regarding the appointment, removal, or duties of municipal employees and the organization of municipal departments, shall not apply.

2000-3997s

AMENDED ANALYSIS

This bill provides that the adoption by reference of any provision of a nationally recognized building or fire code shall not be construed to re-

strict a municipality's authority relative to the appointment, removal, or duties of municipal employees and the organization of municipal departments, provided, however, that this shall not apply to the extent that it would cause, in the case of a local building code enacted prior to the effective date of this bill, a local building code to fail to comply with certain minimum requirements or if it is proven that adoption by reference of a national building code provision was the deliberate act of the municipality.

SENATOR KRUEGER: House Bill 1124 provides that the adoption of any provision of a nationally recognized building or fire code shall not be construed to restrict a municipality's authority relative to personnel procedures. Testimony received at the hearing detailed a municipality which had adopted the BOCA code, and had subsequently fired a building inspector, found itself involved in a "wrongful release" lawsuit. The fired individual charged that under the BOCA code, he could not be discharged from duty without permission from BOCA officials. House Bill 1124 is offered to relieve municipalities from standards to which they should not be held – and to enable towns to separate building and fire codes from local personnel policies. The committee amendment clarifies that local ordinances, regulations, policies, practices, or procedures regarding employees and municipal departmental organization shall not be affected by the adoption of these codes. The Public Affairs Committee recommends that HB 1124 be ought to pass as amended. Thank you.

Amendment adopted.

Ordered to third reading.

HB 1166, relative to confidentiality and information collection by the department of agriculture, markets, and food. Public Affairs Committee. Vote 6-0. Inexpedient to Legislate, Senator Eaton for the committee.

SENATOR EATON: House Bill 1166 would have provided the commissioner of Agriculture, Markets, and Food with the authority to collect information on subjects within the jurisdiction of the Department and to provide confidentiality around any information collected. The commissioner of Agriculture testified at the public hearing that he would like the bill killed. He stated that HB 1166 conflicts with their regulatory acts and the pesticide regulations, and could potentially be harmful to the public. Questions also arose during the hearing regarding the public's right-to-know. While the committee is sympathetic with the plight of a small agricultural producer when issues arise such as the lead content in maple syrup or the pasteurization of apple cider, the overriding consideration must be given to the safety of the public. The Public Affairs Committee recommends that HB 1166 be inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 1199, establishing a study committee on funding for affordable housing. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator Disnard for the committee.

SENATOR DISNARD: Rental housing units in New Hampshire have declined steadily since 1991, and now are under a 2 percent availability. In 1995, the median gross rent in New Hampshire for a two bedroom unit was \$618. This has increased to \$730 in 1999. Rental housing vacancy is the highest in Coos, Sullivan and Grafton counties, and the lowest in Merrimack, Rockingham, Strafford and Hillsborough counties. The current waiting list for Section 8 housing in the state is 3,095 persons.

Since the building boom of the mid-1980's, housing unit permits have remained almost flat since 1990. The establishment of this study committee would allow one group of legislators to draw upon the expertise of the office of State Planning, DRED, the NH Housing Finance Authority, the Community Development Finance Authority and the Department of Health and Human Services in order to make recommendations. The Public Affairs Committee strongly recommends that HB 1199 be ought to pass. Thank you.

Adopted.

SENATOR LARSEN: I just want to say that there can't be a more important study that we could do this year, and I hope that people..and I would certainly find time to do this. At a recent meeting in Concord, in trying to focus on the homeless in Concord, there are 48 people that were at the Brick Tower who are currently, as of April 1, were not able to be there, 41 of whom were family members. So we are talking about a serious problem of affordable housing in this state and certainly in our city. I hear Merrimack doesn't have the highest rent rates, but it sure feels like it to those who have no homes. We were told that the people that were in the Brick Tower were going to be encouraged to try to find campgrounds. This is not acceptable.

Ordered to third reading.

HB 1531, relative to the preemption of local regulations of firearms. Public Affairs Committee. Vote 6-0. Ought to pass with amendment, Senator Krueger for the committee.

2000-4004s

05/10

Amendment to HB 1531

Amend the bill by replacing section 1 with the following:

1 New Section; Preemption of Local Firearms Regulations. Amend RSA 159 by inserting after section 6-f the following new section:

159:6-g Preemption of Local Firearms Regulations. No political subdivision shall impose special taxation on, enact any law, ordinance, or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, carrying, or possession of handguns or other firearms, or components of handguns or other firearms, except as otherwise provided in state or federal law. This section shall not be deemed to affect RSA 159-B, nor the control of municipalities over the use of municipally owned property, nor the administration of other sections of this chapter.

Senator Krueger moved to recommit.

Adopted.

HB 1531 is recommitted to the Public Affairs Committee.

HB 1256, clarifying certain health care laws. Public Institutions, Health and Human Service Committee. Vote 3-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: I rise in support of HB 1256. This bill was a request of the Department of Health and Human Services. The legislation seeks to alter the language of RSA 125:25-c and the unintended impact that this law has on certain health care providers. The existing law requires health care practitioners, physicians, nurses, etceteras to disclose when they have an ownership interest in or receive compensation from an entity when they refer a patient to that entity for a diagnostic or

therapeutic services. This was a really good bill. I think that we probably all supported it. I am glad that we have it, but it has had some consequences that we hadn't anticipated, who are retired providers who no longer see any patients. Under the existing law, retirees must still file even though they have nothing to report. DHHS testified that it has no authority under current law to exempt retired practitioners from the reporting requirements. Reports are required four times a year and there is a \$25 a day fine imposed on late reports. So I urge you to support HB 1256 which just cleans up the law. Thank you.

Adopted.

Ordered to third reading.

HB 1337, repealing the New Hampshire foundation for mental health. Public Institutions, Health and Human Service Committee. Vote 5-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: The New Hampshire Foundation for Mental Health, the creation of it, was the result of the first study committee I ever served on in the legislature. I can't tell you with what excitement I greeted being appointed to that committee, and how thrilled I was to go to meetings. Times have changed. But in any event. This was a good idea at the time, but actually now we don't need it at all. It hasn't met in nine years. It is time to get it off the books. So I urge the adoption of this bill. Thank you.

Adopted.

Ordered to third reading.

HB 1502, relative to lead paint abatement. Public Institutions, Health and Human Service Committee. Vote 3-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: I rise in support of HB 1502. DHHS testified in support of this legislation because it contains provisions that the department believes will improve its response to lead poisoning. Specifically, it has a new definition of the term 'risk assessor' and has a new certification called 'lead clearance testing technician'. Individuals receiving this certification will be trained specifically to collect samples of dust which would allow a lower cost to consumers to have the samples collected. I ask for your support of ought to pass.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Wheeler moved to have **SB 406**, clarifying water pollution control restrictions, taken off the table.

Adopted.

SB 406, clarifying water pollution control restrictions.

SENATOR WHEELER: I appreciate your allowing me to remove SB 406 from the table. It is for the purpose of offering a floor amendment. I have copies that will be passed out at a later time. To refresh your memory, SB 406 is the bill that deals with MTBE or reformulated gasoline on water supplies.

Question is on the adoption of the committee amendment (#3803).

Amendment failed.

Senator Wheeler offered a floor amendment.

2000-4044s

03/01

Floor Amendment to SB 406-FN-LOCAL

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

AN ACT prohibiting the use of reformulated gasoline with watercraft on or in bodies of water that provide public water supplies.

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

1 New Section; Water Management and Protection; New Hampshire Safe Drinking Water Act; Water Pollution Control; Use of Reformulated Gasoline on Certain Water Bodies Prohibited. Amend RSA 485 by inserting after section 17 the following new section:

485:17-a Use of Reformulated Gasoline Prohibited.

I. As of January 1, 2002, in Coos, Carroll, Grafton, Sullivan, Belknap, and Cheshire counties, reformulated gasoline shall not be used with any watercraft on or in any lake, pond, reservoir, or stream tributary thereto, from which the domestic water supply of a city, town, or village is taken.

II. As of January 1, 2002, in Strafford, Rockingham, Hillsborough, and Merrimack counties, reformulated gasoline shall not be used with any watercraft on or in any lake, pond, reservoir, or stream tributary thereto, from which the domestic water supply of a city, town, or village is taken if the waiver requested pursuant to 1999, 313:1; V(d) has been granted.

III. A person who violates any provision of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

2 Contingent Repeal. RSA 485:17-a, III, relative to prohibiting the use of reformulated gasoline in certain counties, is repealed.

3 Applicability of Contingent Repeal. The repeal of RSA 485:17-a, III pursuant to section 2 of this act shall take effect on the date that the waiver requested pursuant to section 1 of this act from the administrator of the Environmental Protection Agency is denied; provided, however, that such repeal shall not take effect after January 1, 2002. The commissioner of environmental services shall certify to the secretary of state that the waiver from the Environmental Protection Agency has been denied.

4 Effective Date.

I. Section 2 of this act shall take effect as provided in section 3 of this act.

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

2000-4044s

AMENDED ANALYSIS

This bill prohibits, as of January 1, 2002, the use of reformulated gasoline with any watercraft on or in any body of water that provides the domestic water supply of a city, town, or village. This bill also provides penalty provisions.

SENATOR WHEELER: The floor amendment removes any reference to two-cycle engines and simply says that the use of reformulated gasoline on drinking water supplies shall be prohibited as of January 1, 2002. It adds a part that says that if the waiver, which our Department of Environmental Services has already requested from EPA is not granted by 2002, for Strafford, Rockingham, Hillsborough, Merrimack counties, to allow us to stop using the formulated gasoline in those counties, if the

waiver is not granted, then this law will not go into effect. So I think that it protects the boatowners from the fear that non-reformulated gasoline may not be available while still making a statement about the need to protect the purity of our drinking water supply.

Floor Amendment adopted.

Ordered to third reading.

MOTION TO VACATE

Senator Larsen moved to vacate **HB 1210-L**, relative to capital reserve funds from the Capital Budget Committee to the Public Affairs Committee.

Adopted.

HOUSE MESSAGE

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

SB 170-FN-A, establishing a Parents as Teachers Program in Sullivan county and making an appropriation therefor.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 170-FN-A, establishing a Parents as Teachers Program in Sullivan county and making an appropriation therefor.

Senator McCarley moved to concur.

Adopted.

HOUSE MESSAGE

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

SB 76-L, allowing certain municipalities to offer tax exemptions to foster commercial and industrial construction.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 76-L, allowing certain municipalities to offer tax exemptions to foster commercial and industrial construction.

Senator Below moved to concur.

Adopted.

2000-4028-EBA

08/01

Enrolled Bill Amendment to HB 699-FN-A

The Committee on Enrolled Bills to which was referred **HB 699-FN-A AN ACT** establishing the granite state scholars program and making an appropriation therefor.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 699-FN-A

This enrolled bill amendment makes a technical correction in section 2 of the bill.

Enrolled Bill Amendment to HB 699-FN-A

Amend RSA 188-D:42 as inserted by section 2 of the bill by replacing lines 1-7 with the following:

188-D:42 Investment of State Matching Funds. A participating institution shall invest all funds in the endowment fund provided that:

I. All earnings including interest, dividends, equity appreciation, and any other form of increased value shall be reinvested in the endowment fund or distributed to granite state scholars.

II. The historic dollar value of the endowment fund as defined in RSA 292-B:1-a, V shall not be invaded, transferred, or used for any purpose other than the program.

III. The funds are invested consistent with the provisions of RSA 292-B.

Senator Trombly moved adoption.

Adopted.

2000-3999-EBA

08/10

Enrolled Bill Amendment to HB 1175

The Committee on Enrolled Bills to which was referred HB 1175 AN ACT relative to license renewal for dental hygienists.

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

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to HB 1175**

This enrolled bill amendment eliminates a repeal that is a duplicate of a repeal enacted in 2000, 5:29 (HB 448), and changes the effective date to avoid a conflict with 2000, 5:14 (HB 448).

Enrolled Bill Amendment to HB 1175

Amend the bill by replacing sections 3 and 4 with the following:

3 Effective Date. This act shall take effect July 1, 2000 at 12:01 a.m.

Senator Trombly moved adoption.

Adopted.

HOUSE MESSAGE

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

SB 331, requiring a report from the public utilities commission and the department of environmental services evaluating whether existing regulatory structures encourage or discourage regional cooperation for water resources management and water conservation.

SB 333, relative to signs for churches.

SB 336, relative to the issuance of fire permits.

SB 381-FN, relative to registration fees for off-highway recreation vehicles.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 449, requiring boating safety education.

HB 569, relative to the tax credit for service-connected total disability.

HB 1318, establishing a committee to study the instability of kerosene, gasoline, diesel fuel, and home heating fuel prices.

HB 1594, relative to the allocation of moneys in the tobacco use prevention fund.

SB 331, requiring a report from the public utilities commission and the department of environmental services evaluating whether existing regulatory structures encourage or discourage regional cooperation for water resources management and water conservation.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 568, establishing a program for performance evaluations of judges.

HB 617, relative to funding and monitoring seacoast harbor issues.

HB 630, relative to the Skyhaven airport transfer plan.

HB 1179, relative to final orders of the public utilities commission.

HB 1362, relative to the reconsideration of cost apportionment within a cooperative school district.

HB 1435, establishing a committee to study the immediate and long-term impact of changing methodology of communications and information technology as it applies to the right-to-know law.

HB 1462, extending the report date and changing the membership and duties of the committee to study methods to promote the use of renewable energy sources.

HB 1613, exempting police officers on bicycles from certain motor vehicle laws and rules.

SB 333, relative to signs for churches.

SB 336, relative to the issuance of fire permits.

SB 357, extending the reporting date of the study committee reviewing field activities conducted by the department of health and human services in investigating reports of abuse and neglect.

Senator D'Allesandro moved adoption.

Adopted.

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

ANNOUNCEMENTS

SENATOR D'ALLESANDRO (RULE #44): I will be brief as the hour is getting late. First I would like to take this opportunity to thank you for the way that you handled the debate in allowing us to bring our amendment forward. I would like to thank each and every member of the Senate for the thoughtfulness of the debate. I think that it is very, very difficult in these times to hold public office. But people who do hold public office owe something to the people who put them in public office. I am proud to hold public office, and I am proud to be here and be involved in the debate. Each and every one of us has our own concerns and our own opinions. But the respect of a person's opinion and the ability to move on to the next issue after that has been settled, is incumbent upon the preservation of democracy. Without that, and without that ability to move forward, none of us can be effective in our role. I have been proud to be part of the discussion and debate in this session and in this body. I owe a debt of gratitude to everyone in this audience who participates in that debate. It is thoughtful debate and it is well done, and it is certainly in the best interest of the people of New Hampshire. So I thank all of you for giving me the privilege to participate in the debate, and I thank the President for formulating that debate in a way that was consistent with good government. Thank you.

SENATOR BROWN (RULE #44): Every year our writers group, the Chichester Writers Group produces a book. I have copies, and unfortunately, I just have one left with me today, but I have them in my office if anybody would like a copy, we would like you to have one because part of the joy of writing is having other people read what we write. I just wanted to let you know that.

RESOLUTION

Senator Cohen moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings, House messages and enrolled bills and amendments and that when we adjourn we adjourn to Thursday, April 13, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

HB 51, providing for the voluntary registration of commercial maple producers and maple packers.

SB 132, requiring a review of public safety communications requirements regarding the summit of Mount Kearsarge, establishing an advisory committee regarding the review, and placing a moratorium until July 1, 2001 on new leases, use permits, or extensions of lease or permit terms for telecommunication facilities on the summit of Mount Kearsarge.

HB 279-FN-A, relative to refinancing the cost and rehabilitation of the Cheshire Bridge.

HB 305-A, relative to a lease-purchase agreement between Cheshire county and the state for construction of a new district courthouse to be located in the town of Jaffrey.

SB 359, establishing a committee to study the issues relative to manufactured housing parks in New Hampshire.

SB 401-FN-A-L, establishing the New Hampshire land and community heritage investment program and making an appropriation therefor.

SB 406, clarifying water pollution control restrictions.

SB 413-FN, relative to confidentiality of addresses for victims of domestic violence, stalking or sexual assault.

SB 436-FN, relative to permanent revocation of drivers' licenses for causing a fatality or serious bodily injury while driving intoxicated.

HB 521-L, allowing municipalities that have adopted the municipal budget act to override the 10 percent limitation on exceeding appropriations recommended by the budget committee.

HB 542-FN-A, repealing the legacies and succession tax.

HB 1110, establishing a committee to study landlord-tenant issues.

HB 1124-L, relative to local building codes.

HB 1172, providing staggered terms for agricultural advisory board members.

HB 1199, establishing a study committee on funding for affordable housing.

HB 1212, relative to extending the reporting date of the open adoption study committee.

HB 1234, relative to special commissions to perform marriages in New Hampshire.

HB 1235, relative to defining surface waters.

HB 1256, clarifying certain health care laws.

HB 1258-FN, relative to invasive plant, insect, and fungal species.

HB 1282, establishing a committee to study the possibility of self-insuring state employees.

HB 1311, relative to payment of employer contributions for unemployment compensation.

HB 1321, relative to certain funds collected by order of the public utilities commission.

HB 1326, relative to managed care programs under workers' compensation.

HB 1337, repealing the New Hampshire foundation for mental health.

HB 1416-FN, establishing a brownfields cleanup revolving loan fund.

HB 1502, relative to lead paint abatement.

HB 1512-FN, establishing a committee to study the feasibility of implementing a paid family and medical leave insurance program and potential funding sources to support it.

HB 1583, increasing the education requirement for estheticians and manicurists and relative to the board of barbering, cosmetology, and esthetics.

HCR 31, urging the New Hampshire congressional delegation to take action to keep the international border crossing between the United States and Canada, in the town of Pittsburg, New Hampshire, open 24 hours a day.

In recess.

Out of Recess.

INTRODUCTION OF SENATE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered 469-SCR 7 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

SB 469, relative to mutual insurance holding companies. (Sponsors: Sen. Fraser, Dist 4; Rep. McGough, Hills 18; Rep. Francoeur, Rock 22; Rep. T. Reardon, Merr 23) **Insurance**

SB 470, relative to the administrative authority of the board of trustees for the regional community-technical colleges. (Sponsors: Sen. Johnson, Dist 3; Sen. D'Allesandro, Dist 20; Rep. Turner, Belk 7) **Education**

SB 471, relative to authorizing the town of Seabrook to establish a reserve fund for tax stabilization related to the decommissioning of the Seabrook nuclear plant and ratifying article 12 of the 1999 Seabrook annual town meeting. (Sponsors: Sen. Hollingworth, Dist 23; Rep. O'Keefe, Rock 21)

Executive Departments and Administration

SCR 7, urging the federal government to consider the impacts on New Hampshire and the smaller states of interstate waste legislation. (Sponsors: Sen. Russman, Dist 19; Sen. Johnson, Dist 3; Sen. Pignatelli, Dist 13; Sen. Cohen, Dist 24; Sen. Below, Dist 5; Rep. Musler, Straf 6; Rep. Patten, Carr 9; Rep. Hess, Merr 11; Rep. Bradley, Carr 8; Rep. M. Fuller Clark, Rock 36) **Environment**

HOUSE MESSAGE

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

HB 417-FN-A, relative to the rehabilitation of the Walker building at New Hampshire hospital and making an appropriation therefor.

HB 1107, relative to the duties of the oversight committee on telecommunications concerning telephone utility line use congestion.

HB 1144-L, establishing a committee to study the exemption from property taxes for not-for-profit hospitals.

HB 1145, limiting the liability of state certified fire instructors.

HB 1177, relative to the effective date of legislation establishing a chartered or statutory legislative committee.

HB 1183, relative to consumer access to providers for the term of the consumer's health benefit plan and relative to the committee studying certain financial arrangements.

HB 1188-FN-L, relative to alternative kindergarten programs.

HB 1195, making technical changes to the law regulating acupuncture.

HB 1203-L, relative to the adoption of rules by the commissioner of cultural resources regarding public libraries.

HB 1209, relative to the construction and reconstruction of class B and class C dams.

- HB 1224**, relative to the process for nonrenewal of teacher contracts.
- HB 1236**, relative to an informed jury.
- HB 1259-FN**, establishing a coordinated and comprehensive effort by state agencies for economic growth, resource protection, and planning policy to encourage smart growth.
- HB 1270-FN-L**, relative to charter schools and open enrollment districts.
- HB 1281**, relative to disqualification of public utility commissioners.
- HB 1294-L**, relative to regional planning commissions.
- HB 1308**, relative to nomination paper requirements.
- HB 1309**, relative to wood-to-energy rate order buydowns.
- HB 1329**, relative to the termination of residential electric or gas utility service, the public utility commission's rulemaking authority, and the establishment of a gas utility restructuring oversight committee.
- HB 1335**, requiring hospitals to disclose certain information to the attorney general.
- HB 1338**, increasing the membership of the American and Canadian French cultural exchange commission.
- HB 1342-FN**, directing the department of environmental services to adopt concentration limits for certain compounds in land applied sludge.
- HB 1371**, relative to allocation and distribution of funds for community-based prevention and diversion programs for children and juveniles.
- HB 1410**, relative to the joint health council.
- HB 1412**, relative to electric customer-generators.
- HB 1414**, authorizing the department of environmental services to discuss with other states the use of a regional gasoline containing less or no MTBE, promoting the use of less polluting marine engines by the state and others, extending the reporting date of the committee to study the requirements for usage of MTBE, requiring a certification of understanding by certain municipal electric utilities, and relative to ambient groundwater quality standards.
- HB 1418-FN-L**, relative to mercury-containing products.
- HB 1431**, relative to protective orders in domestic violence cases.
- HB 1459**, requiring the state police to record and update information relative to the charges of criminal and civil non-support.
- HB 1467-FN**, relative to the registration of mail-order pharmacies.
- HB 1468-FN**, relative the registration of pharmacy technicians.
- HB 1506**, extending the reporting date of the committee studying ambulatory surgical facilities and relative to the threshold limit for certain new health facilities under RSA 151-C.
- HB 1525**, establishing a legislative oversight committee to review the procedures of the health services planning and review board.
- HB 1552-FN-A**, establishing a telecommunications development initiative in New Hampshire and making an appropriation therefore.
- HB 1563-FN-L**, establishing the Wolfeboro Airport Authority.
- HB 1589**, prohibiting the use of genetic testing for certain insurance policies.

HB 1606, establishing the governor's commission on alcohol and drug abuse prevention, intervention, and treatment.

HB 1611, recodifying the state's DWI laws.

HB 1619-FN, relative to school employee and volunteer background investigations.

HB 1620-FN, relative to driver record information.

HB 1621-FN, allowing administrative home confinement for habitual offenders.

HB 1622-L, eliminating the requirement that a deputy town clerk have his or her domicile within the town.

HCR 27, requesting Congress to propose an amendment to the U.S. Constitution to prevent federal courts from instructing states or political subdivisions of states to levy or increase taxes and urging the federal government to allow states to exercise greater control over state-specific banking interests.

HCR 34, urging Congress to investigate the rising prices of gasoline and diesel fuel and take appropriate action to decrease prices to consumers.

HJR 22, relative to the unintended consequences of the Balanced Budget Act of 1997.

INTRODUCTION OF HOUSE BILLS

Senator Cohen offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House Bills numbered 417-HJR 22 shall be by this resolution read a first and second time by the therein listed titles, and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

HB 417-FN-A, relative to the rehabilitation of the Walker building at New Hampshire hospital and making an appropriation therefor. **Capital Budget**

HB 1107, relative to the duties of the oversight committee on telecommunications concerning telephone utility line use congestion. **Executive Departments and Administration**

HB 1144-L, establishing a committee to study the exemption from property taxes for not-for-profit hospitals. **Ways and Means**

HB 1145, limiting the liability of state certified fire instructors. **Executive Departments and Administration**

HB 1177, relative to the effective date of legislation establishing a chartered or statutory legislative committee. **Internal Affairs**

HB 1183, relative to consumer access to providers for the term of the consumer's health benefit plan and relative to the committee studying certain financial arrangements. **Insurance**

HB 1188-FN-L, relative to alternative kindergarten programs. **Education**

HB 1195, making technical changes to the law regulating acupuncture. **Public Institutions, Health and Human Services**

HB 1203-L, relative to the adoption of rules by the commissioner of cultural resources regarding public libraries. **Executive Departments and Administration**

HB 1209, relative to the construction and reconstruction of class B and class C dams. **Energy and Economic Development**

HB 1224, relative to the process for nonrenewal of teacher contracts. **Education**

HB 1236, relative to an informed jury. **Judiciary**

HB 1259-FN, establishing a coordinated and comprehensive effort by state agencies for economic growth, resource protection, and planning policy to encourage smart growth. **Energy and Economic Development**

HB 1270-FN-L, relative to charter schools and open enrollment districts. **Education**

HB 1281, relative to disqualification of public utility commissioners. **Executive Departments and Administration**

HB 1294-L, relative to regional planning commissions. **Public Affairs**

HB 1308, relative to nomination paper requirements. **Public Affairs**

HB 1309, relative to wood-to-energy rate order buydowns. **Energy and Economic Development**

HB 1329, relative to the termination of residential electric or gas utility service, the public utility commission's rulemaking authority, and the establishment of a gas utility restructuring oversight committee. **Energy and Economic Development**

HB 1335, requiring hospitals to disclose certain information to the attorney general. **Public Institutions, Health and Human Services**

HB 1338, increasing the membership of the American and Canadian French cultural exchange commission. **Interstate Cooperation**

HB 1342-FN, directing the department of environmental services to adopt concentration limits for certain compounds in land applied sludge. **Environment**

HB 1371, relative to allocation and distribution of funds for community-based prevention and diversion programs for children and juveniles. **Judiciary**

HB 1410, relative to the joint health council. **Public Institutions, Health and Human Services**

HB 1412, relative to electric customer-generators. **Energy and Economic Development**

HB 1414, authorizing the department of environmental services to discuss with other states the use of a regional gasoline containing less or no MTBE, promoting the use of less polluting marine engines by the state and others, extending the reporting date of the committee to study the requirements for usage of MTBE, requiring a certification of understanding by certain municipal electric utilities, and relative to ambient groundwater quality standards. **Environment**

HB 1418-FN-L, relative to mercury-containing products. **Environment**

HB 1431, relative to protective orders in domestic violence cases. **Judiciary**

HB 1459, requiring the state police to record and update information relative to the charges of criminal and civil non-support. **Judiciary**

HB 1467-FN, relative to the registration of mail-order pharmacies. **Executive Departments and Administration**

HB 1468-FN, relative to the registration of pharmacy technicians. **Executive Departments and Administration**

HB 1506, extending the reporting date of the committee studying ambulatory surgical facilities and relative to the threshold limit for certain new health facilities under RSA 151-C. **Public Institutions, Health and Human Services**

HB 1525, establishing a legislative oversight committee to review the procedures of the health services planning and review board. **Public Institutions, Health and Human Services**

HB 1552-FN-A, establishing a telecommunications development initiative in New Hampshire and making an appropriation therefore. **Executive Departments and Administration**

HB 1563-FN-L, establishing the Wolfeboro Airport Authority. **Transportation**

HB 1589, prohibiting the use of genetic testing for certain insurance policies. **Insurance**

HB 1606, establishing the governor's commission on alcohol and drug abuse prevention, intervention, and treatment. **Executive Departments and Administration**

HB 1611, recodifying the state's DWI laws. **Judiciary**

HB 1619-FN, relative to school employee and volunteer background investigations. **Education**

HB 1620-FN, relative to driver record information. **Transportation**

HB 1621-FN, allowing administrative home confinement for habitual offenders. **Judiciary**

HB 1622-L, eliminating the requirement that a deputy town clerk have his or her domicile within the town. **Public Affairs**

HCR 27, requesting Congress to propose an amendment to the U.S. Constitution to prevent federal courts from instructing states or political subdivisions of states to levy or increase taxes and urging the federal government to allow states to exercise greater control over state-specific banking interests. **Banks**

HCR 34, urging Congress to investigate the rising prices of gasoline and diesel fuel and take appropriate action to decrease prices to consumers. **Energy and Economic Development**

HJR 22, relative to the unintended consequences of the Balanced Budget Act of 1997. **Executive Departments and Administration**

2000-3998-EBA

03/10

Enrolled Bill Amendment to SB 381-FN

The Committee on Enrolled Bills to which was referred SB 381-FN

AN ACT relative to registration fees for off-highway recreation vehicles.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 381-FN

This enrolled bill amendment corrects the title of the bill and makes a technical correction in the amending language in section 4 of the bill.

Enrolled Bill Amendment to SB 381-FN

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

AN ACT relative to registration fees for off-highway recreational vehicles.

Amend section 4 of the bill by replacing line 2 with the following: by inserting after paragraph X the following new paragraph:

Senator Trombly moved adoption.

Adopted.

2000-4061-EBA

08/10

Enrolled Bill Amendment to HB 1282

The Committee on Enrolled Bills to which was referred HB 1282

AN ACT establishing a committee to study the possibility of self-insuring state employees.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1282

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to HB 1282

Amend section 1 of the bill by replacing line 1 with the following:

1 Committee Established. There is established a committee to study the possibility of self-insuring

Senator Trombly moved adoption.

Adopted.

2000-4073-EBA

04/09

Enrolled Bill Amendment to HB 1110

The Committee on Enrolled Bills to which was referred HB 1110

AN ACT establishing a committee to study landlord-tenant issues.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1110

This enrolled bill amendment makes a technical correction to section 3 of the bill.

Enrolled Bill Amendment to HB 1110

Amend section 3 of the bill by replacing subparagraph I (d) with the following:

(d) Hotels, motels, lodges, inns, bed and breakfasts.

Senator Trombly moved adoption.

Adopted.

INTRODUCTION OF SENATE BILLS

Senator F. King offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, Senate Bills numbered SJR 1 shall be by this resolution read a first and second time by the therein listed titles, laid on the table for printing and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

SJR 1, concerning the status of the White Mountain National Forest within the U. S. Forest Service's forest management plan. (Sponsors: F. King, Dist 1; Sen. Gordon, Dist 2; Sen. Johnson, Dist 3; Sen. Disnard, Dist 8; Rep. Chandler, Carr 1; Sen. Whalley, Merr 5; Rep. Foster, Hills 10) **Energy & Economic Development**

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, April 13, 2000 at 10:00 a.m.

Adopted.

Adjournment.

April 13, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

There is a sign out in front of Concord High School right now that says, "At CHS we speak 25 languages. How many do you speak?" That message is not referring to the breadth of the school's language curriculum, but rather to the fact that among the student body of Concord High are represented homes with 25 different native tongues spoken in them. Most people, in what feels like a fairly homogeneous community like this one, are surprised to realize there is such diversity and variety. One of the great challenges of leadership, especially moral political leadership, is learning to see the great breadth and variety that exists in the people who are right around us. It is something to which our own strong opinions and preoccupations can all too easily make us oblivious. And once you have seen those differences, it is no easy task to find appropriate and authentic ways to honor, respect and celebrate them without segmenting us all up into the like minded camps of selfish interest. But that is the leader's task. Beware of becoming a politician who can only hear and understand one language, for there are a lot of native tongues out there.

Lord, You obviously love variety for there is so much of it in Your creation. Preserve us all from becoming moral mono-linguists, political tribalists, or lobbyists for one authentic language at the expense of another authentic one. May these good leaders be nurtured and challenged by the rich diversity of opinions, experiences and passions found in those different people whom they represent, today and always.

Amen.

Senator Russman led the Pledge of Allegiance.

INTRODUCTION OF GUESTS NOTICE OF RECONSIDERATION

Senator D'Allesandro served notice of reconsideration on **HB 542-FN-A**, repealing the legacies and succession tax.

Recess.

Out of Recess.

SUSPENSION OF THE RULES

Senator Pignatelli moved that the Rules of the Senate be so far suspended as to allow a committee report not previously advertised in the calendar.

Adopted by the necessary 2/3 vote.

SB 468, relative to the family division of the courts. Judiciary Committee. Ought to pass with amendment.

2000-4119s

09/01

Amendment to SB 468

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

AN ACT relative to the family division of the courts and relative to the jurisdiction of the family division in Rockingham county.

Amend RSA 490:32, II as inserted by section 2 of the bill by replacing it with the following:

II. The supreme court shall expand the family division to 2 counties of the supreme court's choice during the biennium beginning July 1, 2001.

Amend RSA 490:33, VI as inserted by section 2 of the bill by replacing it with the following:

VI. Actions under RSA 173-B, relating to protection of persons from domestic violence except for concurrent jurisdiction with the superior and district and municipal courts to enter temporary protective orders under RSA 173-B:4.

Amend RSA 490:34 as inserted by section 2 of the bill by replacing it with the following:

490:34 Equity Jurisdiction. Notwithstanding any law to the contrary and for each county in which the family division is established, the family division shall have the powers of a court of equity in cases where subject matter jurisdiction lies with the family division. Suits in equity where subject matter jurisdiction lies with the family division including, but not limited to, petitions and libels of divorce, and petition of nullity of marriage, alimony, custody of children, support, and other similar proceedings may be heard upon oral testimony or depositions, or both, or when both parties consent, or service having been made and a notice of the time and place of the hearing having been given, when both parties appear. Such suits may be heard by any justice or marital master of the family division

at any time, but nothing contained in this section shall be construed as limiting the power of the family division to have issues of fact framed and tried by a jury, unless federal law preempts a jury trial, according to the rules in equity, or the course of such proceedings at common law.

Amend the bill by replacing section 7 with the following:

7 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before January 1, 2001.

Amend the bill by replacing all after section 8 with the following:

9 Jurisdiction; Family Division in Rockingham County. Amend 1995, 152:4, IV as amended by 1996, 265:14 to read as follows:

IV. The courthouses in Rockingham county which will house the program shall be the Rockingham county courthouse, the Portsmouth district court, the Salem district court, and the Auburn district court. In the case of the Auburn district court, the supreme court shall have discretion to designate such other facility within the Auburn or Derry district as it deems appropriate.

(a) Matters arising in municipalities located within the Portsmouth district and the Hampton district shall be heard in the Portsmouth district court *or such other location within the Portsmouth or Hampton district as the supreme court may designate*.

(b) Matters arising in municipalities located within the Salem district shall be heard in the Salem district court.

(c) Matters arising in municipalities located within the Auburn district, *except for the towns of Deerfield, Northwood, and Nottingham*, and the Derry district shall be heard in the Auburn district court or such other location within the Auburn or Derry district as the supreme court may designate.

(d) Matters arising in municipalities located within the Exeter district and Plaistow district, *as well as the towns of Deerfield, Northwood, and Nottingham*, shall be heard in the Rockingham county courthouse.

10 Effective Date.

I. Sections 3-7 of this act shall take effect 60 days after its passage.

II. Section 9 of this act shall take effect upon its passage.

III. The remainder of this act shall take effect July 1, 2000.

2000-4119s

AMENDED ANALYSIS

This bill establishes a family division of the courts in Rockingham and Grafton counties and requires the supreme court to expand the family division to 2 other counties during the biennium beginning July 1, 2001. The bill also establishes a committee to study implementation of a state-wide family division.

The bill also provides that family division matters arising in the towns of Deerfield, Northwood and Nottingham shall be heard in the Rockingham county courthouse in Brentwood. Currently, such matters arising in those towns are heard in the Auburn district court. The bill allows the supreme court to designate a location other than the Portsmouth district court within the Portsmouth or Hampton district for the hearing of family division matters.

SENATOR PIGNATLELLI: I was given permission by the Rules Committee to introduce this bill because we had had the House bill passed last year, and come to the Senate and pass Judiciary and go to Finance,

not come out of Finance, and so we wanted to bring it forward again, so I did that in the form of this bill. We had the hearing yesterday, a very positive hearing on this bill, and it was unanimously voted by the Judiciary Committee. I would like to read my report. In 1995, the legislature passed a bill establishing a family pilot court program in the counties of Rockingham and Grafton. This was done after a study determined that judicial matters pertaining to families, divorce, custody, child abuse and neglect, guardianship and child delinquency would be better handled through a family court system rather than split among superior, district and municipal courts. Four years later we have a family court system, a pilot project in these two counties, which receive praise for its comprehensive integration of family issues. All the professional personnel in the Family Court have chosen to work exclusively on family issues. A case manager oversees all cases involving a particular family and works to move its docket along expeditiously. Generally, the same judge hears all matters pertaining to a particular family, and so has the background knowledge necessary to make decisions that truly are in the best interest of the family members. The Family Court system streamlines the judicial experience for families who might otherwise have to travel between various courts spread throughout the county, and deal with the confusing array of requirements, locations, rules and court personnel. This bill, if passed, will go to the Finance Committee, but as a statement of policy, the unanimous Judiciary Committee vote reflects the fact that we believe in the merits of the Family Court system and would like to see it expanded to two additional counties and ceased to be a pilot program. The committee amendment to SB 468 enables the Family Division of Rockingham County to address some concerns which have been raised. Because of the travel time for constituents, law enforcement personnel and school officials, service can be better given to the communities if more flexibility were afforded. The amendment therefore allows the Supreme Court authority to designate which locations within the Portsmouth or Hampton District Court they deem most appropriate. The amendment also allows for the towns of Deerfield, Northwood and Nottingham to be heard in the Rockingham County Courthouse. The other provisions of the committee amendment correct citations and give the study committee more time to complete its work by changing their reporting date to January 1, 2001. The family court system is not perfect, but it is working well for the majority of people. As experience allows the system to be improved, I believe that expanding it to two additional counties is a good step toward making the judicial system more accessible, more convenient, more efficient and less adversarial to more New Hampshire families. Please support the unanimous Judiciary Committee report. Thank you.

SENATOR GORDON: I just wanted to comment because I am familiar with the Family Division in Grafton county which is one of the two counties where the prototype where the pilot program has been operating. There have been some problems, as I understand in Rockingham county, particularly in regard to court assignment and where the Family Division is being held. In Grafton county, we assigned the Family Division to everyone of the district court locations. As a result of doing that, we avoided, I think, many of the problems which have occurred down in Rockingham county. I would hope that when this goes forward, that the court can look at redefining the locations for the Family Division to make it more convenient for everyone. The one thing that I want to say is that before the Family Division pilot came along, we were...those people who

practiced family law were advocating for change in this state. We were going to the superior court and saying, "why is it that you call 30 hearings all at 9 o'clock in the morning and have everybody show up at the courthouse and wait one at a time until they are heard? Why is it, that in a divorce case, you may have four or five hearings, and every time that you go to a hearing in the same divorce, you get a different judge? Why is that we have these old archaic forms that make it look like a court case as opposed to a marital matter where you are trying to resolve problems involving children? Why is that a sheriff has to show up at the house or at your place of employment with blue lights on on their vehicle in order to serve you in every single case?" Why is that necessary? The response that we were getting five, six and seven years ago was that we can't change, that is the way that it has always been, we don't have enough money, we don't have enough personnel. So, we put together the pilot. The pilot has been operating now for four to five years now, at least in Grafton county. What has happened is that the sheriff...you go and pick up the papers at the courthouse, you have one judge through your case. Your case gets scheduled for a specific time. The forms have been developed so that they are easy so that an ordinary person can understand them. The majority of divorces right now are being done by pro se people, people without attorneys. They have case managers that help the people do the case. These are all things that have been improved by the ability of the court system to serve the people of this state. Of course, what has happened as a result of this? The Superior Court now, who had this jurisdiction before, says, "we can do that". And they have started to change as well. The only reason that I point that out is that is what competition does sometimes, okay? In any event, this has been a great improvement. I will tell you, if it did nothing else in Grafton county, if you happened to live in the town of Bristol or Alexandria or Grafton and you have to drive to Woodsville, which is the county seat to get a divorce, you have a 150-mile round trip every time you have a hearing, where right now you can go to a local courthouse and have your process done there. It saves time, it is more convenient and it has been a real improvement in Grafton county. I certainly support the legislation and hope that the concept behind the family division will be expanded state-wide.

Amendment adopted.

Referred to the Finance Committee (Rule #24).

COMMITTEE REPORTS

HB 1127, establishing a committee to study the application and appeal procedures for excavating and dredging permits. Environment Committee. Vote 3-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-4020s

03/09

Amendment to HB 1127

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

I. The members of the committee shall be 5 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.

Amend the bill by replacing section 4 with the following:

4 Chairperson. The first-named member shall serve as chairperson. The first meeting of the committee shall be held within 45 days of the effective date of this section.

SENATOR PIGNATELLI: I rise in support of the committee recommendation of ought to pass with amendment. House Bill 1127 establishes a committee to study wetlands applications and appeals. This legislation allows the legislature to work with DES to identify issues and changes needed in the wetlands permitting process. The Department of Environmental Services supports this bill. The members of the Senate Environment Committee amended the bill, to remove the Senate members from the committee, and to increase the number of House members from 3 to 5. The committee also removed the requirement for a quorum. I understand from the discussions in caucus that there are some Senate members who are dying to serve on this committee and would like the bill to go back to the way that it was with Senate members, and I am perfectly willing to do that as the person reporting this bill out. If you would like to do that, vote against the amendment and for the bill. I hope that you will support HB 1127, and vote ought to pass with amendment. Thank you.

Amendment failed.

Question is on the motion of ought to pass.

Adopted.

Ordered to third reading.

HB 1185, extending the report date of the committee established to study mercury source reduction and recycling issues to November 1, 2000. Environment Committee. Vote 2-0. Ought to Pass, Senator Eaton for the committee.

SENATOR EATON: I rise in support of the committee recommendation of ought to pass. As you have all heard many times, mercury is a highly toxic and persistent pollutant that poses a threat to human health and the environment. The Department of Environmental Services has identified mercury reduction as one of its top priorities. DES has worked closely with the legislative Mercury Study Committee to develop efficient and cost-effective ways of eliminating mercury in the solid waste stream. The department believes that additional time to work on the many issues associated with mercury reduction in the waste stream is certainly warranted, and recommends passage of HB 1185. I urge you to support the committee recommendation and vote HB 1185 ought to pass. Thank you.

Adopted.

Ordered to third reading.

HJR 25, urging the United States Secretary of Agriculture, the Director of the Drug Enforcement Administration, and the Director of the Office of National Drug Control Policy to revise regulations to permit the controlled, experimental cultivation of industrial hemp in New Hampshire. Environment Committee. Vote 3-0. Ought to Pass, Senator Eaton for the committee.

SENATOR EATON: Hemp is technically legal in the United States. However, the DEA refuses to grant licenses to grow hemp. This resolution urges the USDA, the DEA, and the office of National Drug Control Policy

to revise their regulations to permit the controlled, experimental cultivation of industrial hemp in New Hampshire. In a random polling of New Hampshire farmers, over 300 farmers indicated that they have an interest in growing industrial hemp. Hemp is a viable cash crop that could help New Hampshire maintain its open spaces and farmlands, while providing an economic opportunity for New Hampshire farmers. It is used to make a number of commercial products such as beer, oils, hand lotions, shampoo, clothing, such as suits, shoes, handbags, belts, jewelry, rugs, paper, **TAPE CHANGE** construction materials, clean-burning diesel fuel, biodegradable plastics, and hemp fibers are even used in the trunk and door panels of the 5 and 7 series BMW. Hemp has enormous appeal to those committed to the protection and restoration of the planet. It requires no herbicides, it reinvigorates the soil, matures in three to four months time, and can potentially yield four times as much paper per acre as trees. Other states, including Arkansas, Illinois, Maryland, and Virginia have passed laws allowing industrial hemp research and experimentation. Growing industrial hemp is legal in Hawaii, Indiana, and North Dakota. Hemp is grown in 32 nations around the world including Canada, Hungary, England, China, and France, and in the European Union, it is a subsidized crop. These other hemp producing countries have reported virtually no drug-related problems, as they strictly regulate hemp production to guard against even the most remote possibility of illicit marijuana production. While industrial hemp does belong to the same species as marijuana, it is of a different variety, with a very low THC content. Smoking hemp will definitely not give you a high, it will give you a headache. Commissioner Taylor of the New Hampshire Department of Agriculture supports this resolution. He believes that growing hemp would provide an economic opportunity for New Hampshire farmers to produce a high value crop. There has never been a federal statute outlawing the cultivation of hemp, just the DEA's insistence that hemp is an illegal drug. Resolutions such as HJR 25 are necessary to encourage changes in federal policies. New Hampshire needs to urge Congress to change the federal laws relative to this issue. I urge you to vote HJR 25 ought to pass. Thank you.

SENATOR D'ALLESANDRO: Senator Eaton, would you believe that the cordage on the United States Ship Constitution, the oldest commissioned ship in the United States Navy, was made of hemp?

SENATOR EATON: Yes, I would believe that, Senator D'Allesandro. I also believe that one of our first American flags was made of hemp also.

SENATOR JOHNSON: Senator Eaton, we currently have four states that are doing the research, why do we need another state like New Hampshire to do it?

SENATOR EATON: I would have to defer that to the Representative in the House, but there has been a lot of interest apparently, with the New Hampshire farmers as they have to sell their farms because their cash crops do not support them. From what I understand in her testimony the other day, was that a regular grain crop raises about \$125 per acre versus \$300 per acre for this. The other part that she had mentioned in this was that if regular marijuana was grown with the hemp, the hemp would reduce the THC in the regular marijuana. We also thought that where we are trying to upgrade the name of sludge into biosolids, that we could call this bioawana.

SENATOR KRUEGER: Senator Eaton, that was just lovely. I just think that it is wonderful to hear all of these horrific uses of this marvelous crop; however, you must know by my tone that I am not too much in

support of this. I would have to agree with the chief of police. I think that it is hard enough to enforce drug laws. I think that it is hard enough to discourage people from getting to use Senator Eaton's word "high" and even the joke about bioawana, I don't think that it is so light. I think that it is important. I think that when the chief of police and officers tell us that it is very hard to distinguish the crops, I think that is true. I think that to encourage the national drug enforcement administration to allow something to be grown in the state of New Hampshire, I just find that they probably have more research than we do, with all due respect to the Representative who can come in and show us. I thought, quite frankly, that the hand products smelled fairly gross, so I wouldn't be interested in it too much, and the fabric was awfully scratchy, but nonetheless, I just wanted to go on the record as saying that I would want always to support law enforcement, and I think that their concerns are well founded. Thank you.

SENATOR COHEN: Very briefly. I also rise in support of HJR 25. As most of us know hemp has a long history in the United States. The US Declaration of Independence and the Constitution were drafted on hemp and paper. During the Revolutionary War Old Ironsides as has been mentioned, carried aside from the part of the ship that Senator D'Allesandro mentioned, it carried 60 tons of hemp and sailing rope. Betsy Ross made the first American flag out of hemp and canvas. The word itself is derived from Cannabis, which is what hemp is. George Washington, in 1794 said, "make the most of hemp seed and sow it everywhere." I wasn't there then, maybe somebody could enlighten me...I am not saying that history is always right or that we should react every law passed by our founding fathers, but what I am saying is that we can learn a lot from history. In this case, we should learn that hemp is a valuable plant. It is very distinct from its cousins. It is beneficial to our environment and can be used commercially in the production of a variety of goods, and it will be good for the agriculture segment of New Hampshire's economy which has been hurting a lot lately, so I urge its support.

SENATOR SQUIRES: I must take a slight exception to the historical depiction that you have heard here. The Constitution was engaged in the War of 1812, not the Revolutionary War. It is small point, but we must be precise. I also second the issue here about law enforcement. We have been asked to vote for this bill because it is legal in five-states, which means that it is illegal in 45. There is no shortage, so far as I am aware, of cordage, certainly clothes. I think that it is pretty scratchy, actually. Finally, I think that the sending of this type of message as it were to the federal government is a practice with which, for the most part, I do not agree. They too have their level of responsibilities. We are looking at it from a narrow perspective of the state, and they are trying to look at it from the point of view of the United States as a whole. So I am going to vote against this for those reasons. I think that it is ill founded. I had no idea that this had the attributes as my colleague from Keene elaborated. It is hard to imagine how in fact we have survived all of these years without producing this in large quantities. Nevertheless, it is a bad idea and I think that we should not support it, and I will not support the bill.

SENATOR RUSSMAN: Again, we have an opportunity to show that New Hampshire does things differently by being one of the only few states to allow this. I think that is the New Hampshire way. So I think that it is important to do that. The other thing is that I know that there are a lot of botanists from the university, and this would give them all

jobs at the local law enforcement agency in terms of deciding what was what and so on and so forth. I would certainly urge support of the measure.

SENATOR WHEELER: I just want to make sure that you all understand that we are not voting to legalize it in New Hampshire. This is a resolution asking the federal agencies to change their position. So just don't be confused about that.

SENATOR JOHNSON: Senator Russman, if we apparently don't have a problem with growing hemp, why is it so tightly controlled for the growth in this country?

SENATOR RUSSMAN: Well I think in all honesty, that there are certain groups that are somewhat paranoid over some things that perhaps they ought not to be. I think that our agricultural market is in decline in many respects in New Hampshire. I think that this is an opportunity to give it a boost, and I certainly think that I have a lot of faith in the commissioner of agriculture. I think that we ought to support their wishes so that the farming community can do this and do it right.

SENATOR JOHNSON: So are you saying that law enforcement is paranoid over this issue?

SENATOR RUSSMAN: I think that in this particular area, industrial hemp, I think they are.

Question is on the motion of ought to pass.

A roll call was requested by Senator Francoeur.

Seconded by Senator Krueger.

The following Senators voted Yes: Disnard, Eaton, Fernald, Pignatelli, J. King, Russman, D'Allesandro, Wheeler, Cohen.

The following Senators voted No: F. King, Gordon, Johnson, Fraser, McCarley, Trombly, Roberge, Squires, Francoeur, Krueger, Brown, Klemm.

Yeas: 9 - Nays: 12

Motion failed.

Senator Francoeur moved inexpedient to legislate.

Adopted.

HJR 25 is inexpedient to legislate.

SB 459, relative to underinsured motorists. Insurance Committee.

MAJORITY REPORT: Inexpedient to Legislate, Senator Fraser for the committee. Vote 5-2

MINORITY REPORT: Ought to Pass, Senator J. King for the committee. Vote 2-5

SENATOR FRASER: Madame President, the majority of the committee is reporting this bill out of committee as inexpedient to legislate. As the bill would provide no real consumer benefit but would create some potential for harm to consumers in the form of increased litigation and higher insurance rates. The bill involves underinsured motorist coverage, which New Hampshire law requires to be part of an automobile liability policy. Underinsured motorists coverage provides a way for a person to recover additional money from their own insurance company, if the amount available for the wrong doer's insurance is not enough to

compensate a person for their injuries. A key part of this arrangement is allowing the policyholder's own insurance company an opportunity to recoup its losses from the wrongdoer, to go after their assets to cover what they have paid. When an insurer pays an uninsured motorist's benefits, they take over the policyholder's legal rights against the wrongdoer, this is called "subrogation." Subrogation is very important to the uninsured motorist carrier in a mechanism for two reasons. 1) it allows the insurance company a chance to put the loss where it belongs, on the shoulders of the wrongdoer. 2) Subrogation keeps the costs of uninsured motorist's coverage down. Insurance companies require people that get the company's consent before a settlement is made because settlement eliminates the insurer's right to subrogation, all rights to recover from the wrongdoer. This bill effectively nullifies the requirement for getting the insurance company's consent to settle. The bill would require that in order to enforce the consent requirement, the company would have to prove that the failure to obtain consent was negligent or prejudicial. This is the part where, my colleagues in the Senate, would probably initiate litigation, it doesn't appear today. It impairs a company's subrogation rights, denying the company the ability to protect itself. The majority of the committee recommends this bill as inexpedient to legislate.

SENATOR J. KING: This bill deals with uninsured and underinsured motorist's insurance. In cases when the person who has caused an accident has a lower level of insurance than the victim, the victim may make a claim against their own insurance company under uninsured or underinsured insurance coverage. The victim, however, needs to receive consent from their insurance company before settling any claim with the person responsible for the accident, the one who has paid for the coverage, otherwise the victim's insurance company can deny uninsured or underinsured claims by the victim. This bill eliminates the requirement to seek consent from the insurer, and instead only allows an insurance company to deny claims if the victim failed to notify the company negligently or with prejudice. This provision will allow people to justly receive insurance benefits that they have paid premiums to receive. It is a people's protection bill. The minority recommends this bill ought to pass.

SENATOR RUSSMAN: I guess I would like to speak. This is a bill that I put in. I think that it is not a rocket science bill. It is a bill that really gives you an opportunity to protect your constituency, and it is a consumer bill through and through. In all of the talk that you have heard, while it is somewhat technical, this is what it boils down to is, if somebody else hurts you or a member of your family, and it is a fairly serious injury and the other insurance company, the other person's insurance company shows up at your door and tells you that they know that they are wrong and that they are sorry, and then they offer you a check for \$25,000, and they need your signature on it to sign off. This is the policy and they show it to you, and they show you that the policy limits are \$25,000. The person signs off. They are then, at this point, out, even though they have paid premiums to have \$300,000 of coverage, they are out. They are done. They don't recover. It is as simple as that because they haven't gotten permission. That is in your policy. I dare say that anybody on Judiciary, maybe one or two, perhaps with a lawyer involved or so, might have known about that, but I dare say that none of you knew that before, and we are all somewhat educated people here, knew that that provision was even in your policy. That you had to get permission

before you settle the case. Now, if you settle it...and the idea is that if that person that it happens to...the example that I just stated to you... the insurance company showing up at your door with the \$25,000 check, and them stating that you must sign a release, if that person had a lot of assets, and it turns out that your own company, that you paid the premiums to is hurt, if they were prejudice, if they can show that they were harmed, they still don't have to pay it. Okay? But at least you are protected. You have the opportunity at least, as opposed to what you don't have right now. If that isn't consumer protection, I don't know what is. So I mean, why would the insurance industry be opposed to this bill if that were not the case, okay? It does happen. It is not often, but it does happen and somebody gets left out and it is not fair, because you have paid the premiums for your own and because of the time when you are probably worried about somebody that is in your home that is hurt, or you are not thinking the way that you should, you can get in trouble and lose a lot of money that you paid the premiums for. Is that fair? I don't think so. I think that it is absolutely a consumer bill, and I think that we ought to support it and send it on to the House showing that the Senate supports the rights of the little guy, if you will.

SENATOR FRASER: A lot of what Senator Russman has said is true, but you have to understand one thing. You are dealing with your own insurance company. All that they are asking under the terms of the contract as it currently exists, and the language has been there for many, many, many years. I think that the language is probably national in scope, so far as having that little piece in there. All that the company is saying, the insurance is saying, that just tell us that you are going to settle the claim and we will give you permission. That protects their rights to subrogate, and that is what this is all about. It allows them for the opportunity to subrogate against the wrongdoers. If the wrongdoers don't have any assets, then it is dead. The other thing that Senator Russman spoke about was the poor ill informed claimant who the company walks in and offers them a \$25,000 check and shows them the coverage...as a practical matter, I don't think that happens too often. My whole background, as many of you know, is in the area of insurance claims. I don't do it anymore, but for over 40 years, I adjusted claims for insurance companies. Usually when you get that kind of a case, with that kind of injuries involved, there is always an attorney. What promulgated this very bill that we are dealing with today was a mistake that was made by an attorney. He took the matter to Supreme Court and the Supreme Court said that the insurance carrier was correct and that he did not comply with the requirements under the policy and he was not able to pursue or prosecute a claim on the uninsured motorists. That is what this bill is trying to address. I think that it is wrong to have, I don't know how many policies in the state of New Hampshire, and obviously auto policies run into the hundreds and thousands, to have every policy corrected to address one mistake that was made. I urge you to support the committee report of inexpedient to legislate.

SENATOR GORDON: Senator Russman, I am trying to figure this out in my own mind, but, if I am involved in an automobile accident and I have some injuries, the person who ran into me has a \$100,000 worth of insurance. My injuries turn out to be more than \$100,000. I go and I make a settlement with the other party who is insured. I settle for \$50,000. Would I then...if this bill passes, under those circumstances, would I then be able to go back to my carrier, after I have settled for the \$50,000?

SENATOR RUSSMAN: No. It only works if they have a lower policy limit. In all honesty, most people that are of some substance, have higher policy limits, but there are people, that perhaps, would not. A lot of people don't have high policy limits, especially young drivers and things of that nature. That wouldn't affect you one way or the other in your scenario.

SENATOR GORDON: So if my injury was more than \$100,000 in that particular case, would I be able to make a claim against my carrier for an amount over the \$100,000 if the other party had \$100,000 worth of insurance?

SENATOR RUSSMAN: Let's suppose that you had \$300,000. If you sign off on the \$100,000 you won't be able to do that, because you didn't get permission. This bill would allow you to do that. As long as it wasn't done negligently, carelessly, to affect their subrogation rights, you would be okay.

SENATOR GORDON: My question is, if I settle for the \$50,000 and I don't settle for their policy limits, can I then go back to my carrier and make a claim for something over and above the \$100,000?

SENATOR RUSSMAN: No, because it isn't applicable to this law that we are trying to pass now. It is a different type of situation.

SENATOR RUSSMAN: I rise to speak for a second time, just briefly. When you are talking about changing a contract, all that it does is to negate that one sentence that "you have to get written permission". It wouldn't be like suddenly the whole industry is going to be transformed here. This is not in big letters on the front of your policy. It is towards the back of it, under the uninsured motorist provisions. It is something that I venture that not a soul here has ever sat down and read in terms of bedtime reading, if you will.

Question is on the motion of ought to pass.

Adopted.

Question is on the ordering to third reading.

A roll call was requested by Senator Francoeur.

Seconded by Senator Fraser.

The following Senators voted Yes: Gordon, McCarley, Trombly, Disnard, Roberge, Fernald, J. King, Russman, D'Allesandro, Hollingworth, Cohen.

The following Senators voted No: F. King, Johnson, Fraser, Eaton, Squires, Pignatelli, Francoeur, Krueger, Brown, Wheeler, Klemm.

Yeas: 11 - Nays: 11

Motion failed.

Senator Russman moved to have **SB 459**, relative to underinsured motorists, laid on the table.

A division vote was requested.

Yeas: 11 - Nays: 11

Motion failed.

Senator Fraser moved inexpedient to legislate.

A division vote was requested.

Yeas: 10 - Nays: 12

Motion failed.

Francoeur moved to have **SB 459**, relative to underinsured motorists, laid on the table.

Adopted.

LAID ON THE TABLE

SB 459, relative to underinsured motorists.

HB 1368-FN, establishing a Civil War memorials commission for the construction and maintenance of New Hampshire Civil War monuments and memorials. Internal Affairs Committee. Vote 3-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: This bill establishes a Civil War Memorials Commission for the construction and maintenance of New Hampshire monuments and memorials at certain Civil War battlesites. The committee recommends this bill Ought to Pass.

Adopted.

Ordered to third reading.

HB 522, relative to the public's access to sex offender registry information. Judiciary Committee. Vote 4-0. Ought to pass with amendment, Senator Gordon for the committee.

2000-4032s

05/10

Amendment to HB 522

Amend the bill by replacing section 3 with the following:

3 Updates. Amend RSA 651-B:7, IV as follows:

IV. The division shall ~~[forward]~~ **provide** a copy of the list described in this section to each local law enforcement agency at periodic intervals, but in no event less frequently than once each month. The list shall be made available to interested members of the public upon request to the local law enforcement agency. The department shall adopt rules, pursuant to RSA 541-A, establishing procedures for the collection of information described in this section, the transmission of the information from the division to the local law enforcement agencies, and the conditions under which the list shall be made available to the public. These rules shall enable the public to request information about a named individual or about all listed individuals residing or confined in ~~[a specified city or town]~~ **the state**. The rules shall also include provisions for identifying and maintaining a record of the parties to whom information from the list has been disclosed, and may also provide for the imposition of a reasonable fee to defray the administrative costs of collecting the information and making the information available to the public.

SENATOR GORDON: House Bill 522 allows public access to information regarding all convicted sex offenders residing in the state, and broadens the registry information available to include all felonious sexual assaults and aggravated felonious sexual assaults. This is viewed as a sincere effort to make the registry more accessible and to help it work for the people. House Bill 522 enables the Department of Safety to make the registry available on the internet and to electronically transfer the information. Previously, hundreds of dollars were being spent in postage mailing the list. One of the most important aspects corrected in HB 522 is the date of re-registration. Currently, offenders must register on the anniversary date of their release from prison. Many don't remember this date. House Bill 522 requires that an offender must register within 30 days of their release

and then re-register annually on their birthday. Lastly, HB 522 makes subsequent failure to re-register a Class B felony. The Judiciary Committee recommends that HB 522 be ought to pass as amended. Thank you.

Amendment adopted.

SENATOR WHEELER: My concern with the bill is that we've made the failure to comply with the law for the second time, a class B felony. I really think that we ought to be careful about upping the ante and putting more people in prison. We are having enough trouble with space in prison right now. We have had to build a new prison. I don't think that it is responsible for us to keep elevating the things that people do to felony status.

Senator Cohen moved to have **HB 522**, relative to the public's access to sex offender registry information, laid on the table.

Motion failed.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Francoeur.

Seconded by Senator Krueger.

TAPE CHANGE

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Roberge, Fernald, Squires, Pignatelli, Francoeur, Krueger, Brown, Russman, Klemm.

The following Senators voted No: McCarley, Disnard, J. King, D'Allesandro, Wheeler, Cohen.

Yeas: 13 - Nays: 6

Adopted.

Ordered to third reading.

Senator Eaton is in support of HB 522.

HB 405, relative to the annual funding of placement costs for juvenile diversion and alternative disposition programs and relative to an effectiveness study of such programs. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: I rise in support of HB 405 which increases the amount of the annual appropriation for diversions. This program is funded through the DCYF budget. Funds flow down to counties. The idea here is to divert children from out of...from being in effect "institutionalized". We are talking about children that end up at the YDC or other residential treatment facilities. This is an opportunity to engage in an alternative program. It is evident that these programs have substantially helped reduce the number of children and adolescents being sent out of home placements. You will notice that the bill takes effect in 2001. It doesn't have an impact on the current budget year. It was unanimous support for this bill, particularly among the juvenile officers and the court system that find this a far better alternative than incarceration or assignment to a residential facility. Thank you.

SENATOR J. KING: I think highly of the bill, I agree with it, but I am not going to vote for it because I don't agree with postponing it until the year from now to pay the debt.

Adopted.

Referred to the Finance Committee (Rule #24).

HB 1272, allowing school nurses to possess and administer epinephrine for certain emergency treatment. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: This bill allows the school nurse to administer epinephrine, which is the pharmaceutical name for adrenaline. Occasionally a child in a school will sustain a significant allergic reaction, not commonly, thank goodness, but there are children for example, that are very sensitive, let's say, to peanuts. And inadvertently, they may have a peanut butter sandwich and forget, and have something that has an allergen in it and have a reaction, and the form of some of these reactions is intense. Bronchial constriction, difficulty to breathe, swelling of the larynx and throat. And, the treatment of choice for that is immediate administration of epinephrine or adrenaline. The problem has been that the nurse may possess this medication in their office because it has been made available to them for use on a specific child. But if one of these random events occur, they can't give it, which makes no sense. This is not a controversial treatment. In fact, a life-saving treatment. It is a small bill, but it may, may, at some point, save a child's life or certainly avoid a major catastrophe, so I urge you to pass it.

SENATOR RUSSMAN: Yes, I probably will vote this. I guess that the only question that I would have in terms of concerns is, if you look at the bill, it originally was "possession, administration, with written parental authorization" in case some child was known to be allergic. What it does now is to strike that out so that they can do it. What it allows is licensed practical nurses or registered nurses, registered nurses being added, to the mix. So the issue really is...and perhaps Senator Squires or somebody else will talk to the issue of whether or not they feel comfortable that a licensed practical nurse would recognize anaphylactic shock; that they would perhaps go into and adequately so, to be sufficiently talented to recognize that as opposed to a registered nurse. This is a concern that I have, if the Senator wishes to speak to it.

SENATOR SQUIRES: It is easily recognizable. I think that every one of you in this room would recognize it. In its severest form, the child, in this case, would collapse and couldn't breathe. You couldn't resuscitate them, you couldn't give them mouth to mouth respiration. Epinephrine is a common, widespread, and readily available in health care institutions, and certainly an LPN and a registered nurse would be qualified to administer it. It is a small dose. Usually a 1/10 of a cc or so. You don't have to look around and find a specific spot as in an intermuscular injection. So in answer to the question, yes, it is recognizable and it is safe, and these individuals are qualified to give it.

SENATOR MCCARLEY: I rise to speak very briefly, specifically to respond to Senator Russman's issue. Oddly enough in the discussion by the committee, one of the things that came up is that unfortunately, we have lots of schools around this state, particularly elementary schools, that share their nurses. The reality is, that this bill does not actually provide for the ability of a school principal when there is no school nurse in the building to actually use epinephrine in the situation of a life-saving service. So to some degree, I am more concerned on the other side of it, relative to what can happen, because on a personal note, have one of those children for whom, if he ate a peanut, he would never get to the hospital in terms of

what a high degree this can be. So it is a real concern and because we are not able to fund our elementary schools with nurses in every building, I think that allowing an LPN, which sometimes you can fund more easily, to make sure that there are more nurses, is important.

Adopted.

Ordered to third reading.

HB 505-FN, establishing a special license plate for veterans. Transportation Committee. Vote 4-0. Ought to pass with amendment, Senator Pignatelli for the committee.

2000-4057s

03/01

Amendment to HB 505-FN

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

1 New Section; Special Number Plates for Veterans. Amend RSA 261 by inserting after section 87-a the following new section:

261:87-b Special Number Plates for Veterans. The director is hereby authorized to issue special number plates to be used on motor vehicles owned by veterans of the United States armed services, in lieu of other number plates. The design of these special plates shall be determined by the commissioner, and shall be distinct from the design or designs of those plates issued under RSA 261:86. Such plates shall be issued only upon application and proof of honorable discharge from the armed services, as evidenced by submission of a copy of the applicant's DD214 verification of service form, and upon payment of a one time \$25 fee to recover production and administrative costs that shall be in addition to the regular motor vehicle registration fee and any other number plates fees otherwise required. Renewals of such special number plates shall be charged the fee assessed for standard motor vehicles as prescribed under RSA 261:141. The plates furnished pursuant to this section are non-transferable and shall expire upon the death of the veteran.

2 Effective Date. This act shall take effect July 1, 2000.

SENATOR PIGNATELLI: House Bill 505 provides for special number plates for vehicles driven by veterans. Currently, there are over 125,000 veterans in New Hampshire. The state already recognizes the important service and sacrifice of those veterans who earned the Purple Heart, those who were POWs, and those who were survivors of Pearl Harbor. Until now, we had no symbol of respect for our other veterans. The special veteran's license plate would have no financial impact on the general fund as those ordering the plates would have to pay a one time \$25 fee to cover production and administrative costs. The committee amendment clarifies that the plate is non-transferable, and that it reverts to ownership by the state upon the death of the veteran. The Transportation Committee recommends that HB 505 be ought to pass as amended and we welcome your support. Thank you.

Amendment adopted.

Ordered to third reading.

HB 1268-FN, relative to certain vehicle registrations. Transportation Committee. Vote 3-0. Ought to Pass, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: House Bill 1268 requires that persons claiming the exemption from certification of title for an older motor vehicle provide proof of a previously issued title for that vehicle in order to register the vehicle. House Bill 1268 was filed at the request of the Department of Safety. Currently, there are companies which for a fee, will "wash" the motor vehicle title through the state of New Hampshire. Because of a loophole in our motor vehicle registration laws, these companies are making a lot of money with these title schemes. Vehicles over 12-years-old are not required to have titles. This is being phased-in to include vehicles over 15-years-old. New Hampshire statute allows for older vehicles to be registered if you have a bill of sale. Most of the vehicles involved in these scams are motorcycles. For a fee of between \$100 and \$350, someone can obtain a New Hampshire registration for the vehicle, a notarized bill of sale made out to the purchaser and a copy of the New Hampshire Title Law – all within 10 business days. (Discounts are available if you're processing three or more vehicles.) All of this is accomplished without either the vehicle or owner ever crossing into the state. The Transportation Committee recommends that HB 1268 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1334-L, relative to posting municipal roads. Transportation Committee. Vote 2-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: In this state, we have a practice of posting maximum weight limits for Class IV, V and VI highways in the spring when the frost is still in the road, and we are concerned about the damage being done to the road. The vast majority of communities in our state, they have no problems with the posting of roads. There is good cooperation, communication and respect among the parties involved; however, in a few communities, that cooperation and communication doesn't appear to exist. The town officials and businesses sometimes come into conflict over the posting of roads. HB 1334 provides a mechanism to provide for a hearing process within local communities when somebody feels aggrieved by the town's practices. The Transportation Committee recommends that HB 1334 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1405, exempting 50/50 raffles from the laws regulating games of chance. Ways and Means Committee. Vote 6-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, currently, every time a 50/50 raffle is run, a license is needed from the local police department. As a result, many of the organizations holding these games are in violation. The attorney general's office testified that it was an unintended consequence to include 50/50 raffles in the statute that regulates games of chance. The Senate Ways and Means Committee was unanimous in reporting this bill out as ought to pass.

Adopted.

Ordered to third reading.

Senator Roberge in opposition to HB 1405.

MOTION TO VACATE

Senator D'Allesandro moved to vacate **HB 1573**, relative to the funding of the salary of the director of emergency medical services and making an appropriation therefor, from the Internal Affairs Committee to the Finance Committee.

Adopted.

HB 1573-FN has been vacated to the Finance Committee.

SUSPENSION OF THE RULES

Senator Russman moved that the Rules of the Senate be so far suspended as to allow a report not previously advertised in the calendar, and that they further be suspended to dispense with the holding of a hearing, and the advertising of such hearing with 5 days notice in the calendar.

Adopted by the necessary 2/3 vote.

SCR 7, urging the federal government to consider the impacts on New Hampshire and the smaller states of interstate waste legislation. Environment.

Senator Russman moved ought to pass.

SENATOR RUSSMAN: This bill urges the federal government and New Hampshire's congressional delegation to consider the impacts on New Hampshire and the smaller states of interstate waste legislation and to support federal authorization of state and local governments authority to prohibit or limit the receipt of out-of-state municipal solid waste.

Recess.

Out of Recess.

Adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Francoeur moved to have **HB 312**, relative to the carrying of firearms in courthouses, taken off the table.

Adopted.

HB 312, relative to the carrying of firearms in courthouses.

Question is on the committee report of ought to pass.

SENATOR FRANCOEUR: This bill was tabled a couple of weeks ago so that I could bring forth an amendment. The amendment, if you vote ought to pass, will be out in 30 seconds.

Adopted.

Senator Francoeur offered a floor amendment.

2000-4131s

09/01

Floor Amendment to HB 312

Amend RSA 159:19 as inserted by section 1 of the bill by replacing it with the following:

159:19 [~~Courtroom~~] *Courthouse* Security.

I. No person shall knowingly carry a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, whether open or concealed or whether licensed or unlicensed, upon [~~his~~] *the* person

or within any of [his] *the person's* possessions owned or within [his] *the person's* control in a courtroom or area used by a court. Whoever violates the provisions of this paragraph shall be guilty of a class B felony.

II. Firearms may be secured at the entrance to a courthouse by courthouse security personnel. A person who knowingly carries a loaded or unloaded pistol, revolver, or firearm, or any other deadly weapon as defined in RSA 625:11, V past a screening device at an entrance to a courthouse shall be guilty of a violation.

III. ~~[The supreme court shall adopt rules defining "a courtroom or area used by a court"]~~ For purposes of paragraph I, *"area used by a court" means:*

(a) *In a building dedicated exclusively to court use, the entire building.*

(b) *In any other building which includes a court facility, courtrooms, jury assembly rooms, deliberation rooms, conference and interview rooms, the judge's chambers, other court staff facilities, holding facilities, and corridors, stairways, waiting areas, and elevators directly connecting these rooms and facilities.*

IV. The provisions of this section shall not apply to marshals, sheriffs, ~~[policemen]~~ *deputy sheriffs, police* or other duly appointed or elected law enforcement officers, bailiffs and court security officers, or persons with prior authorization of the court for the purpose of introducing weapons into evidence *and as otherwise provided for in RSA 159:5.*

V. It shall be an affirmative defense to any prosecution under paragraph I that there was no notice of the provisions of paragraph I posted in a conspicuous place at each public entrance to the court building.

SENATOR FRANCOEUR: What the amendment does is to restore on the original bill, lines 8-11, which allows the courthouse to have lock boxes for firearms. Since we heard in the Senate, over the last couple of weeks, about safe storage of firearms, it seems more prudent and correct, I think, for everybody, that if you bring a loaded weapon, leave it with the officer as you are entering the court, so that it is stored in a lock box instead of leaving it in your car where you could create a lot more problems if the car was either broken into or stolen. There is one other thing that the bill does. It also adds "deputy sheriffs" in line 21, which had been left out. It was debatable whether it was included in the rest of the line, but that was added in also.

SENATOR COHEN: I wasn't sure what you said. Did you say that this enables the court to have a lock box, or does it require the court to have a lock box?

SENATOR FRANCOEUR: It does not require the court to have lock boxes, it says on line 9, "firearms may be". So in the past, two years ago, the Senate had passed a version saying that the court had to have "a lock box and that part got battled down in Finance in the House. Next year I would like to bring in some legislation that will allow the courts to maybe take some donations or grants to have lock boxes at the court. I think it would be a lot better safety feature than leaving a loaded firearm in your car.

SENATOR TROMBLY: **TAPE INAUDIBLE** hallway with Representative Welch about this bill. I don't know whether this bill upsets the arrangements that the House made with law enforcement or not. But there is just one problem that I have with this amendment and the old language that I think that all Senator Francoeur is seeking to do is to restore the old language that was stricken. So I don't think that it was the language in which he came up. It says "a person who knowingly carries

a loaded or unloaded revolver or pistol or firearm or other deadly weapon past the screening device in an entrance to a courthouse shall be guilty of a violation.” Now I don’t want anybody “knowingly” carrying those things past the very security device intended to pick them up and receive only a \$100 fine. That is what that section does if you add it back in. So if I take a gun into court and knowingly carry it past the screening device...I will tell you, we ought not to allow that, otherwise take them down and save us some time...and then they are only guilty of a violation. That is what this amendment does. We just made it a felony for a sex offender who doesn’t report where they live, and we are going to call it a \$100 violation if somebody...and this statute requires, knowingly carries that revolver past the very device that is supposed to screen against that. Again, I don’t think that it is Senator Francoeur’s language, he is just adding what is in there, but it was a foolish thing to have in there in the prior law. I am not going to vote for the amendment because that is there.

SENATOR FRANCOEUR: Senator Trombly, with you being an attorney and knowing the definition between “knowingly” and “purposely” and all of those...I know that a lot of times, sometimes you forget your wallet because you don’t know what is on you. If this was my wallet and I knowingly put it on me in the morning and walked past it, does that mean that I forgot it even though as I got to the metal detector the metal detector went off? I didn’t carry it into the courtroom, I just forgot it was on me.

SENATOR TROMBLY: Well it says that a “person who knowingly carries a ...” “past the screening device in an entrance of the courthouse shall be guilty of a violation”. Knowingly, means that you know it.

SENATOR FRANCOEUR: If I forgot it on me...

SENATOR TROMBLY: What you have is probably negligently.

SENATOR FRANCOEUR: That is what I am asking...what is the definition?

SENATOR TROMBLY: Oh, negligently is when you don’t remember that you have it on you, but knowingly is when you know you do. Once in a while, Senator Francoeur, words do make sense in the law and knowingly means knowingly. I don’t do a lot of criminal law, so I couldn’t tell you what purposely means because I just don’t do a lot of criminal law. But I know that knowingly means that you are knowing what you are doing. That you do it for the purpose in which you do it.

SENATOR FRANCOEUR: Would you feel more comfortable, if instead of it saying “knowingly” it said, what was the other thing that you said?

SENATOR TROMBLY: Oh, Senator Francoeur, let me make myself very clear. People should not have guns in courtrooms. Period. I know where you are headed, because sometimes, risks can be if you leave it in the car. But people shouldn’t be on the court grounds with a gun. I think that is where the bill, as amended by the committee, was headed. That you just don’t have them there. We can’t take care of every contingency because somebody can sit outside a courthouse and shoot somebody. The purpose of the bill was don’t let anyone on court property carry a gun. There is no reason for anyone to carry a gun to court. I know that you disagree with me on that, but as far as I am concerned, my personal philosophy is that people should be allowed to carry guns, but there is no purpose to carry a gun to court because you are protected by bailiffs.

SENATOR FRANCOEUR: Senator Trombly, I have talked to all of the members on the committee whether cases by where girlfriend, boyfriend, they get separated, and they end up in court. The boyfriend is mad at the new boyfriend. He is threatened. I know an individual in Concord that this has happened to. He has a permit to carry to defend himself. He is just going to the court for the hearing. Should he leave his gun in the car? Do you think that he would feel safe between his car and the courthouse? The sheriff is not out there?

SENATOR TROMBLY: I agree with you on that. That is the first part of your sentence. I think that I can probably skate with a lock box, but the other problem that you have, in terms of people carrying guns on court property...domestic violence petitions many times, are heard in district courts, and not all district courts have metal detectors. I know that it is off what I am saying, but if you allow a gun to be carried, then it is more likely sometimes that that type of violence is going to occur in a place where you don't have the device. But the problem that I had with the old law is that it said that if you "knowingly" carry a gun past the metal detector, you are guilty of a \$100 fine and that is it. I just don't think that...I can't support that.

SENATOR FRANCOEUR: What was the other word that you said instead of knowingly?

SENATOR TROMBLY: Well "negligently" is where if you forget that you have it, but it should be picked up through the metal detector. I just don't think that people should be carrying guns to court.

SENATOR BROWN: Senator Trombly, I am trying to read paragraph one and two to understand your objection. It seems as though paragraph one is dealing with the carrying of the weapon, but in paragraph two, it is the person who is going into the door and goes through the screening device and then finds out that the gun triggers it off. That person is fined \$100 for a violation. Isn't there a distinction and difference between paragraph one and two so that you wouldn't necessarily want to make it a felony just because you went through the screening device? Would you or am I misunderstand?

SENATOR TROMBLY: The problem that I have with the amendment, because in the committee's amendment, it struck paragraph two. So what I was reading, it was what added in, the amendment, and whether or not I could vote for that that way. The problem that I have is that in reading it, it says the "person who knowingly carries a loaded..." "past a screening device is guilty of a violation". I don't support that.

SENATOR BROWN: Thank you.

SENATOR GORDON: Senator Trombly, I gather from what Senator Francoeur indicated, that he is mostly concerned on paragraph two, that part in which he wants to put back in with the firearms being secured at the entrance. So if he were to amend it so that it was just that first sentence, "firearms may be secured at the entrance to a courthouse by courthouse security personnel" that would satisfy your concern by taking out the remainder of that, and, I think, satisfy his concern. Would that be acceptable to you?

SENATOR TROMBLY: I can live with that. I think that where my personal comfort on bringing guns to the courthouse and where the reality of the age in which we live, I think that Senator Francoeur makes a point. It might not just be the new boyfriend, it could be that the vic-

tim of the domestic violence is afraid of the perpetrator and gets a license to protect him or herself, and they want to bring it to court. So the first sentence, Senator Gordon, yes, I could live with that. It is the remainder of that paragraph that is causing me some trouble.

Senator Fraser moved to have **HB 312**, relative to the carrying of firearms in courthouses, laid on the table.

Adopted.

LAID ON THE TABLE

HB 312, relative to the carrying of firearms in courthouses.

2000-4094-EBA

05/10

Enrolled Bill Amendment to HB 1321

The Committee on Enrolled Bills to which was referred HB 1321

AN ACT relative to certain funds collected by order of the public utilities commission.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1321

This enrolled bill amendment inserts a contingency.

Enrolled Bill Amendment to HB 1321

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Authorization for Contingent Renumbering. If any other act of the 2000 regular session of the general court which contains an amendment to RSA 6:12, I which inserts any new subparagraph into paragraph I of such section becomes law, the director of legislative services is authorized to make any technical changes to the numbering in any RSA sections inserted by this or any other act as necessary to conform said sections to proper RSA format. The authority granted under this section shall not include the power to make any substantive changes and shall expire upon printing of the 2000 session laws.

Senator Trombly moved adoption.

Adopted.

HOUSE MESSAGE

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

HB 305-A, relative to a lease-purchase agreement between Cheshire county and the state for construction of a new district courthouse to be located in the town of Jaffrey and increasing a capital appropriation to the department of safety.

HB 1161, making technical changes to the New Hampshire Aeronautics Act and establishing a committee to study revisions to the state aeronautics laws.

HB 1264-FN, relative to the unlawful use of theft detection shielding devices.

HB 1301, relative to regional appointments to the state committee on aging.

HB 1413, relative to the rights of ownership of cemetery plots or burial spaces.

HB 1583, increasing the education requirement for estheticians and manicurists and relative to the boards of barbering, cosmetology, and esthetics.

HB 1588, relative to the authority of the department of transportation regarding rail safety inspections.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 699, establishing the granite state scholars program and making an appropriation therefor.

HB 1199, establishing a study committee on funding for affordable housing.

HB 1374, extending the reporting date for the sex offender issues study committee.

HB 1512, establishing a committee to study the feasibility of implementing a paid family and medical leave insurance program and potential funding sources to support it.

SB 76, establishing a pilot program allowing certain economically depressed municipalities to offer tax exemptions to foster public accommodation and industrial construction.

Senator D'Allesandro moved adoption.

Adopted.

2000-4133-EBA

03/09

Enrolled Bill Amendment to HB 1502

The Committee on Enrolled Bills to which was referred HB 1502 AN ACT relative to lead paint abatement.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1502

This enrolled bill amendment corrects a reference.

Enrolled Bill Amendment to HB 1502

Amend RSA 130-A:1, XVI-b as inserted by section 2 of the bill by replacing line 2 with the following:

In HE-P 1602.44, develops lead hazard reduction plans, as defined in paragraph XVI-a, and issues

Senator Trombly moved adoption.

Adopted.

2000-4134-EBA

03/09

Enrolled Bill Amendment to HB 1258

The Committee on Enrolled Bills to which was referred HB 1258 AN ACT relative to invasive plant, insect, and fungal species.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1258

This enrolled bill amendment makes technical corrections.

Enrolled Bill Amendment to HB 1258

Amend RSA 430:53, III as inserted by section 1 of the bill by replacing line 3 with the following:
health of native species, to the environment, to commercial agricultural or forest crop production, or to

Amend RSA 430:54, I(g) as inserted by section 1 of the bill by replacing line 2 with the following:
council who shall each serve for a term of 3 years. One shall represent horticultural interests,

Senator Trombly moved adoption.

Adopted.

RESOLUTION

Senator Cohen moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that the bills ordered to third reading be read a third time by this resolution, all titles be the same as adopted and that they be passed at the present time.

Adopted.

LATE SESSION

ANNOUNCEMENTS

SENATOR TROMBLY (RULE #44): I just wanted to remind the Senate that today is National Holocaust Remembrance Day. I think that it is entirely fitting that at least it be inserted into the record that the members of the New Hampshire Senate were aware of that and were thinking of the millions of lives lost in the concentration camps in Nazi Germany in the territories that they conquered as well as the millions of lives affected by World War II. The thousands of lives of American citizens lost in defeating Nazi Germany and imperial Japan. Madame President, I think that it is just appropriate, that in a Chamber where we cherish the people who did those things for us, and would mourn the loss of that life, that we remember that it is National Holocaust Remembrance Day. Thank you.

RESOLUTION

Senator Cohen moved that the Senate be in recess for the sole purpose of introducing legislation, referring bills to committee and scheduling hearings, house messages, enrolled bills and amendments and that when we adjourn we adjourn to Thursday, April 20, 2000 at 10:00 a.m.

Adopted.

Third Reading and Final Passage

HB 505-FN, establishing a special license plate for veterans.

HB 522, relative to the public's access to sex offender registry information.

HB 1127, establishing a committee to study the application and appeal procedures for excavating and dredging permits.

HB 1185, extending the report date of the committee established to study mercury source reduction and recycling issues to November 1, 2000.

HB 1268-FN, relative to certain vehicle registrations.

HB 1272, allowing school nurses to possess and administer epinephrine for certain emergency treatment.

HB 1334-L, relative to posting municipal roads.

HB 1368-FN, establishing a Civil War Memorials Commission for the construction and maintenance of New Hampshire Civil War monuments and memorials.

HB 1405, exempting 50/50 raffles from the laws regulating games of chance.

SCR 7, urging the federal government to consider the impacts on New Hampshire and the smaller states of interstate waste legislation.

In recess.

Out of Recess.

HOUSE MESSAGE

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

SB 313, establishing a commission to study the relationship between postsecondary education and recipients of temporary assistance to needy families.

SB 319, relative to interstate school districts.

SB 352, repealing the equipment challenge grant program within the New Hampshire community-technical colleges.

SB 377, relative to peer support programs within the department of health and human services.

SCR 4, urging the federal government to establish a new zip code for the town of Madbury.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 51, providing for the voluntary registration of commercial maple producers and maple packers.

HB 279, relative to refinancing the cost and rehabilitation of the Cheshire Bridge.

HB 1110, establishing a committee to study landlord-tenant issues.

HB 1172, providing staggered terms for agricultural advisory board members.

HB 1175, relative to license renewal for dental hygienists.

HB 1234, relative to special commissions to perform marriages in New Hampshire.

HB 1235, relative to defining surface waters.

HB 1256, clarifying certain health care laws.

HB 1311, relative to payment of employer contributions for unemployment compensation.

HB 1326, relative to managed care programs under workers' compensation.

HB 1337, repealing the New Hampshire foundation for mental health.

HB 1416, establishing a brownfields cleanup revolving loan fund.

SB 381, relative to registration fees for off-highway recreational vehicles.

Senator D'Allesandro moved adoption.

Adopted.

2000-4174-EBA

05/01

Enrolled Bill Amendment to HB 1334-LOCAL

The Committee on Enrolled Bills to which was referred HB 1334-LOCAL AN ACT relative to posting municipal roads.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1334-LOCAL

This enrolled bill amendment makes a technical correction to the bill.

Enrolled Bill Amendment to HB 1334-LOCAL

Amend section 2 of the bill by replacing line 4 with the following:

VII. The governing body of a municipality which establishes maximum weight limits more

Senator Trombly moved adoption.

Adopted.

2000-4175-EBA

05/01

Enrolled Bill Amendment to HB 305-A

The Committee on Enrolled Bills to which was referred HB 305-A

AN ACT relative to a lease-purchase agreement between Cheshire county and the state for construction of a new district courthouse to be located in the town of Jaffrey and increasing a capital appropriation to the department of safety.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 305-A

This enrolled bill amendment makes technical corrections to the bill.

Enrolled Bill Amendment to HB 305-A

Amend section 3 of the bill by replacing lines 3 and 4 with the following:

Total state appropriation paragraph II	[\$1,194,000] \$1,794,000
Total state appropriation section 4	[\$8,819,000] \$9,419,000

Amend section 4 of the bill by replacing it with the following:
4 Bonds Authorized Increased. Amend 1999, 226:8 to read as follows:

Senator Trombly moved adoption.

Adopted.

2000-4151-EBA

03/10

Enrolled Bill Amendment to HB 1583

The Committee on Enrolled Bills to which was referred HB 1583

AN ACT increasing the education requirement for estheticians and manicurists and relative to the board of barbering, cosmetology, and esthetics.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1583

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to HB 1583

Amend RSA 313-A:2, III as inserted by section 1 of the bill by replacing line 1 with the following:

III. Each public member shall be a person who is not, and never was, a member of the

Senator Trombly moved adoption.

Adopted.

2000-4146-EBA

04/10

Enrolled Bill Amendment to HB 1405

The Committee on Enrolled Bills to which was referred HB 1405

AN ACT exempting 50/50 raffles from the laws regulating games of chance.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1405

This enrolled bill amendment makes a technical correction in section 2 of the bill.

Enrolled Bill Amendment to HB 1405

Amend section 2 of the bill by replacing line 1 with the following:

2 Games of Chance; Definition of Games of Chance Amended. Amend RSA 287-D:1, II to read as follows:

Senator Trombly moved adoption.

Adopted.

2000-4147-EBA**03/10****Enrolled Bill Amendment to HB 1161**

The Committee on Enrolled Bills to which was referred HB 1161

AN ACT making technical changes to the New Hampshire Aeronautics Act and establishing a committee to study revisions to the state aeronautics laws.

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

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to HB 1161**

This enrolled bill amendment makes a technical correction to the study committee mileage compensation in section 4 of the bill.

Enrolled Bill Amendment to HB 1161

Amend paragraph III of section 4 of the bill by replacing line 1 with the following:

III. Legislative members of the committee shall receive mileage at the legislative rate when attending to

Senator Trombly moved adoption.

Adopted.

LATE SESSION

Senator Cohen moved that the business of the day being complete that the Senate now adjourn until Thursday, April 20, 2000 at 10:00 a.m.

Adopted.

Adjournment.

April 20, 2000

The Senate met at 10:00 a.m.

A quorum was present.

The prayer was offered by Father David P. Jones, Senate Chaplain.

From sundown yesterday till sunset tonight, the people of the Covenant are remembering the high price they have paid and are paying for being chosen – and are recalling the great responsibility that accompanies their destiny. It is Passover, and Jews around the world are today, asking on behalf of all of us, the ultimate questions of “why?” and “how much longer?” They are listening again to their old family story and in so doing, being reminded of the great gifts they have been given. And they are praying for that great and elusive gift of Shalom – Peace. Senators, staff, lobbyists, press members. Ask the right questions. Reflect on the unfolding story of this wide and diverse family. And be agents of that kind of peace that is not content with a mere absence of conflict, but one that imparts dignity and care to each one affected by your decisions. Do not let the power and the message of this great Festival, pass you over today. Let us pray:

Barukh atah adonai eloheyenu melekh ha'olam. (Blessed are You, O Lord God, Ruler of the Universe)

Shalom alechem. (Peace be to you).

Amen.

Senator Wheeler led the Pledge of Allegiance.

INTRODUCTION OF GUESTS NOTICE OF RECONSIDERATION

Senator Gordon served notice of reconsideration on **HB 505-FN**, establishing a special license plate for veterans.

COMMITTEE OF CONFERENCE REPORT

2000-4002-CofC

10/01

Committee of Conference Report on HB 1200-FN, an act relative to the application of education property tax hardship relief to estate planning trusts and relative to eligibility for hardship relief.

Recommendation:

That the House recede from its position of nonconcurrency with the Senate amendment, and concur with the Senate amendment, and

That the Senate and House adopt the following new amendment to the bill as amended by the Senate, and pass the bill as so amended:

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-4 to read as 3-5, respectively:

2 Eligibility; Hardship Relief. Amend RSA 198:51, III(b) to read as follows:

(b) [Has] Resided in such homestead for a period of one year *as of November 3, 1999*, except such persons as are on active duty in the United States armed forces or are temporarily away from such homestead but maintain the homestead as a primary domicile;

The signatures below attest to the authenticity of this Report on HB 1200-FN, an act relative to the application of education property tax hardship relief to estate planning trusts and relative to eligibility for hardship relief.

*Conferees on the Part
of the Senate*

Sen. McCarley, Dist. 6

Sen. Gordon, Dist. 2

Sen. Larsen, Dist. 15

*Conferees on the Part
of the House*

Rep. Major, Rock. 16

Rep. Anderson, Merr. 7

Rep. Nichols, Merr. 2

Rep. Wallin, Merr. 15

2000-4002-CofC

AMENDED ANALYSIS

This bill clarifies the application of education property tax hardship relief to estate planning trusts and changes a residence requirement for eligibility for hardship relief.

Senator McCarley moved adoption.

Adopted.

2000-4053-CofC

10/01

Committee of Conference Report on SB 186-FN, an act relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance.

Recommendation:

That the Senate recede from its position of nonconcurrency with the House amendment, and concur with the House amendment, and

That the Senate and House adopt the following new amendment to the bill as amended by the House, and pass the bill as so amended:

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

1 New Paragraph; Definition Added; Spousal Acknowledgment. Amend RSA 100-A:1 by inserting after paragraph XXX the following new paragraph:

XXXI. "Spousal acknowledgment" means a written recognition, signed by a member's spouse, of the benefit payment plan selected by the member under the provisions of RSA 100-A:5, RSA 100-A:6, RSA 100-A:10, or RSA 100-A:19-a - 19-h that is filed with the retirement system on a form prescribed by the board of trustees at the time of retirement and when the member elects a change in benefit payment as allowed under RSA 100-A:13.

2 Service Retirement; Group II; Minimum Allowance Increased. Amend RSA 100-A:5, II (c) (1) to read as follows:

(c)(1) Notwithstanding any provision of RSA 100-A to the contrary, any group II member who has retired on ~~[a full service retirement allowance]~~ **or after the effective date of this subparagraph after attaining the age of 45 with at least 20 years of creditable service** shall receive a minimum **annual** service retirement allowance of ~~[\$5,200]~~ **\$10,000**. ~~[In comparing the minimum service retirement allowance and the full service retirement allowance, the full service retirement allowance shall be the sum of the basic allowance plus COLA's. The provisions of this subparagraph shall not apply to a group II member who has retired on a reduced or on a vested deferred retirement allowance. In the case of a group II member who has retired on a full service retirement allowance, and who]~~ **If such group II member** has elected to convert the retirement allowance into an optional allowance for the surviving spouse under RSA 100-A:13, the surviving spouse shall be entitled to a proportional share of the ~~[\$5,200 which shall be based upon the optional allowance which the surviving spouse is receiving. Under no circumstances shall the provisions of this subparagraph be construed to reduce the retirement benefits being paid to a group II member as of the effective date of this subparagraph]~~ **\$10,000**.

3 Optional Allowances; Spousal Acknowledgment of Election. Amend RSA 100-A:13, I to read as follows:

I. Any member who has reached service retirement age as provided in RSA 100-A:5, I(a), or II(a), or RSA 100-A:19-b, or any retiree within 120 days after the effective date of retirement, may elect to receive, instead of the retirement allowance otherwise payable, a retirement allowance of equivalent actuarial value under one of the options named in paragraph III, or to redesignate any such option previously elected. When the member elects to receive an optional retirement allowance under paragraph

III, the beneficiary or beneficiaries whom the member nominates may include the member's spouse and/or children. The notice of *non-election*, election, or change of retirement option shall be on a form designated by the board, *which, if the member is married, shall include a spousal acknowledgment*. The optional allowance shall be effective upon retirement if the election is made before the effective date of retirement, and on the first day of the month following receipt by the board of the notice of election or change of option if made during the 120-day grace period. When an election or change of option is made during the 120-day grace period, no retroactive adjustments will be made in payments already received by the retiree. After expiration of the 120-day grace period no change in option selection shall be permitted except as provided in paragraph II. If a retiree dies after filing notice of election or change of option during the 120-day grace period but before the effective date, the election or change shall be effective as of the date of death. If a member dies after filing an election for a survivorship retirement option and before the effective date of retirement, whether or not the member has filed for retirement, the beneficiary who was nominated by the member in the election of the option may elect to receive either the optional survivor benefit which the member had elected or the ordinary death benefit provided under RSA 100-A:9, whichever is more advantageous to the beneficiary; provided that, in the case of the member's death before retirement, if the beneficiary named in the survivorship option election is not the same person as the beneficiary under RSA 100-A:9, then the death benefit under RSA 100-A:9, II, and not the survivorship option shall apply.

4 New Section; Supplemental Allowances for Certain Retired Group II Members. Amend RSA 100-A by inserting after section 41-a the following new section:

100-A:41-b Supplemental Allowances for Certain Retired Group II Members.

I. An eligible retired group II member of the New Hampshire retirement system whose annual retirement allowance is less than an amount specified in paragraph II and who retired on or before June 30, 1998, shall receive a one-time supplemental allowance. An eligible retired group II member shall be a member, or beneficiary of such member, who retired with at least 20 years of creditable service under RSA 100-A:5, II, or member, or beneficiary of such member, who retired under RSA 100-A:6, II.

II. The one-time supplemental retirement allowance payable to the member shall be the percentage of the member's annual retirement allowance as follows:

(a) Annual retirement allowance less than \$9,300, the applicable percentage to reach a \$10,000 annual retirement allowance;

(b) Annual retirement allowance greater than or equal to \$9,300 and less than \$11,700, 7 ½ percent;

(c) Annual retirement allowance greater than or equal to \$11,700 and less than \$13,700, 5 ½ percent;

(d) Annual retirement allowance greater than or equal to \$13,700 and less than \$15,700, 4 percent;

(e) Annual retirement allowance greater than or equal to \$15,700 and less than or equal to \$17,700, 3 percent.

III. The one-time supplemental retirement allowance payable to each beneficiary of the member shall be determined as described in paragraph II except the specified amounts of \$9,300, \$10,000, \$11,700,

\$13,700, \$15,700, and \$17,700 shall be multiplied by the ratio of the beneficiary's annual retirement allowance to the member's annual retirement. The provisions of this section shall not apply to a group II member who has retired on a reduced or vested deferred retirement allowance. The additional allowance shall become a permanent addition to each member or beneficiary's base retirement allowance, as provided in RSA 100-A:41-a.

5 Funding of Supplemental Allowances. The total actuarial cost of the additional allowances provided in RSA 100-A:41-b as inserted by section 4 of this act shall be funded on a terminal basis from the special account established in RSA 100-A:16, II(h).

6 Repeal. RSA 100-A:5, II(c)(2) and (3), relative to the reduction in minimum service retirement allowance due to federal social security benefits or other benefits, are repealed.

7 Applicability. The changes to retirement system benefit amounts in sections 2 and 4 of this act shall apply as of the effective date of this act, but payment of the benefit amounts accruing to any member or beneficiary as of the effective date may be delayed by the retirement system until such time as necessary administrative and system upgrades are accomplished provided such payment is by September 30, 2000.

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

The signatures below attest to the authenticity of this Report on SB 186-FN, an act relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance

*Conferees on the Part
of the Senate*

Sen. J. King, Dist. 18
Sen. F. King, Dist. 1
Sen. Wheeler, Dist. 21

*Conferees on the Part
of the House*

Rep. Dyer, Hills. 8
Rep. Holbrook, Belk. 7
Rep. Mercer, Hills. 27
Rep. Lynch, Ches. 19

Senator J. King moved adoption.

SENATOR J. KING: I would appreciate concurrence with the House.

Adopted.

COMMITTEE REPORTS

HB 226-L, establishing municipality bond payment schedules and percentages. Banks Committee. Vote 4-0. Ought to pass with amendment, Senator Klemm for the committee.

2000-4171s

08/09

Amendment to HB 226-LOCAL

Amend RSA 162-K:8 as inserted by section 1 of the bill by replacing it with the following:

162-K:8 Issuance of Bonds. The municipality may authorize, issue and sell general obligation bonds, which shall mature within 30 years from the date of issue, to finance the acquisition and betterment of real and personal property needed to carry out the development program within the development district together with all relocation costs incidental thereto. ***Bonds issued under authority of this chapter shall be payable in***

annual payments which shall be so arranged that the amount of annual payment of principal and interest in any year on account of any bond shall not be less than the amount of principal and interest payable in any subsequent year by more than 10 percent of the principal of the entire bond. The total amount of such payments shall be sufficient to extinguish the entire bond on account of which they are made at maturity. The first payment of principal on any bond shall be made no later than 5 years and the last payment not later than 30 years after the date thereof. Each authorized issue of bonds shall be a separate loan. All dedicated tax increments received by the municipality pursuant to RSA 162-K:10 shall be pledged for the payment of these bonds and used to reduce or cancel the taxes otherwise required to be extended for that purpose, and the bonds shall not be included when computing the municipality's net debt under RSA 33.

SENATOR KLEMM: This bill gives municipalities flexibility in paying off bond issues. Flexibility in paying off bond issues allow municipalities to develop or redevelop areas with the money raised by the bond issuance. The municipality would designate a Tax Increment Financing district (TIF) in which these bonds would be used. The committee amendment changes the subsequent year payment percentage from 5% to 10%, giving municipalities greater payment flexibility. The committee recommends this bill ought to pass as amended.

Amendment adopted.

Ordered to third reading.

HB 1373, relative to payments of first and second mortgage home loans. Banks Committee. Vote 4-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: This bill is the result of a study committee from 1999. The bill requires lenders to disclose at the time of application for a first mortgage loan an explanation of how payments are applied if the payment is applied on the date received. The bill also stipulates that there shall be no second mortgage prepayment penalty after the loan has been in existence for five years. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 304, relative to school employee and volunteer background investigations. Education Committee. Vote 6-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-3957s

03/09

Amendment to HB 304

Amend the bill by replacing section 2 with the following:

2 Education; School Boards, Transportation and Instruction of Pupils; School Employee and Volunteer Background Investigation; Crimes Changed. Amend RSA 189:13-a, V to read as follows:

V. Any person who has been convicted of [~~murder, child pornography, aggravated felonious sexual assault, felonious sexual assault, or kidnapping~~] **any violation or attempted violation of RSA 630:1, 630:1-a,**

630:1-b, 630:2, 632-A:2, 632-A:3, 632-A:4 633:1, 639:2, 639:3, 645:1, I(b), 645:1, II, 645:1, III, 645:2, 649-A:3, 649-B:3, or 649-B:4, or any violation or any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene, in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, or charter school. By decision of the appropriate governing body, a school administrative unit, school district, or charter school may deny a selected applicant a final offer of employment if such person has been convicted of any felony in addition to those listed above. The governing body may adopt a policy stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

SENATOR MCCARLEY: House Bill 304 amends the list of crimes that prevent a person convicted of such offenses from being hired by school administrative units, school districts, or charter schools. Currently the background checks conducted on prospective employees and designated volunteers only search for convictions of murder, child pornography, felonious sexual assault or aggravated felonious sexual assault and kidnapping. The search for these crimes would be expanded to such crimes as endangering the welfare of a child and indecent exposure in the presence of a minor, computer child pornography and committing acts of obscenity. The committee amendment also adds the crimes of indecent exposure and lewdness involving a child under 12. The Senate Education Committee recommends this bill as ought to pass as amended.

Amendment adopted.

Ordered to third reading.

HB 1191-FN-L, relative to the adoption of charter school and open enrollment provisions in cooperative school districts and authorized regional enrollment areas. Education Committee. Vote 6-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: House Bill 1191 is intended to clarify a gray area when a district within an AREA agreement or when a town within a cooperative school district adopts the provisions of a charter school law. House Bill 1191 clarifies that if a charter school and open enrollment provisions are adopted by a cooperative school district, the percentage of people as permitted to attend the charter schools shall be approved by the voters. It also requires that if a charter school is adopted by either a sending or receiving town in an existing AREA agreement after approval by the state board, an AREA review board must meet to discuss possible amendments to the AREA agreement. It does not require that any specific action be taken as a result of the meeting. The bill also provides that for a new AREA agreements the AREA planning board must include in its written plan, how the adoption of a charter school will affect districts within the AREA. The Education Committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 470, relative to the administrative authority of the board of trustees for the regional community-technical colleges. Education Committee. Vote 6-0. Ought to pass with amendment, Senator Johnson for the committee.

2000-4177s

04/01

Amendment to SB 470

Amend the bill by deleting section 1 and renumbering the original sections 2-4 to read as 1-3, respectively.

Amend the bill by replacing section 1 with the following:

1 Board of Trustees; Duties. Amend the introductory paragraph of RSA 188-F:4-a to read as follows:

188-F:4-a. Duties. [~~The duties of the board of trustees shall be to:~~] It is the intent of the general court that the trustees, when exercising their responsibilities under this chapter, recognize and foster the unique character and educational mission of the system. To this end, the board of trustees shall be authorized to administratively organize each institution within the New Hampshire community-technical college system so that it meets the educational mission of the system. In addition to this general authority, the trustees are authorized to:

SENATOR JOHNSON: Senate Bill 470 authorizes the Board of Trustees of the New Hampshire Community-Technical College System to administratively organize each institution within the system, in keeping with the mission of the system. It also allows the Board of Trustees to appoint and fix the compensation of the presidents of the colleges, subject to the approval of the executive council. The passage of SB 503 in 1998 was the first step in giving the system some additional flexibility to assist in the operation of the colleges. Senate Bill 470 represents the next step in the progression of our community technical colleges. Allowing the Board of Trustees to have this additional authority and flexibility will enable the board to focus on the mission of the system and make the changes necessary to meet that mission. The commission of the status of community-technical education discussed this bill at its last meeting, and the bill had the support of the overwhelming majority of that commission. The Education Committee unanimously recommends this bill ought to pass with amendment and I ask for your support of that recommendation. Thank you, Madame President.

SENATOR MCCARLEY: I would encourage the Senate's support of this legislation. I think that the legislation that we undertook in SB 503 was a critical element in moving forward in terms of providing the kind of workforce that this state has got to have to keep us in the booming economy that we are in. I certainly commend Senator Johnson for the work that he put in, in getting this legislation brought out when he did. I think that it is a big step forward. The language in the amendment is a reflection of a slight change in the original version, which I certainly support because I think that it is important. Each time that we take big steps forward, particularly in the education realm, we all occasionally think that we need to take a deep breath and look at it very carefully. This bill will be going over to the House. I do fully support sending this to the House and letting them have their opportunity to have the hearing over there as well. I hope that if the House has any questions that we are able to work them out, because I think giving the ability of the community-technical colleges system to manage itself as independently as possible, is the direction to go, but I think that we need to get there to quote a former governor of our state, "in a measured fashion." So I think that we need to simply keep an eye on this, but I would encourage your support and commend Senator Johnson and Senator D'Allesandro for their work.

SENATOR D'ALLESANDRO: I, too, want to speak very briefly. I want to commend Senator Johnson for his due diligence with regard to this situation. As chair of the commission, we did discuss this bill. We heard testimony from the chairman of the Board of Trustees and from others, concerning the ability of the vocational technical colleges to give immediate response to manifested needs that come up. This bill would allow them to do that. That is in the best interest of New Hampshire, because one of the things that New Hampshire truly needs is a qualified, capable workforce. This allows the educational institutions to adapt to a problem, put together programs that are needed by business and industry, and allows our students to progress and get good jobs at good wages and thus keep the New Hampshire economy viable. I think that it is a good step. We have worked diligently on this. Nothing is perfect, but certainly, at this time, we have to move forward and we have to do things in reaction to what the needs are of citizens. Thank you.

Amendment adopted.

Ordered to third reading.

SJR 1, concerning the status of the White Mountain National Forest within the U.S. Forest Service's forest management plan. Energy and Economic Development Committee. Vote 3-0. Ought to Pass, Senator F. King for the committee.

SENATOR F. KING: In 1999 the legislature created a study committee to look at the relationship between the White Mountain National Forest and the state. That study committee has had four meetings. One was an all-day tour of the forest. There were two public hearings in Concord and a public hearing in Lincoln. The public hearing that took place in Lincoln, 34 towns that come together to call themselves White Mountain National Forest host towns, presented a position statement relative to the forest. Those position statements that they presented to the committee are incorporated into SJR 1. The sponsorship of SJR 1 are representatives of the committee that has been meeting. At the public hearing there was substantial support and no opposition to this SJR 1. The committee recommends ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1160, relative to access to the enhanced 911 system. Executive Department and Administration Committee. Vote 5-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: Madame President and members of the Senate, this bill would require health insurers to allow subscribers to call the enhanced 911 system in emergencies. There is an emerging practice in the health insurance industry to require subscribers to call designated firms that they have contracts with. These firms determine whether or not the subscriber should call 911. Though this practice has not yet appeared in New Hampshire, this bill will not allow the practice to begin. Rapid response is an essential quality for a successful enhanced 911 rescue, and requiring an extra call would cause unnecessary delay. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1382-FN, making it a felony for inmates to harass corrections personnel and others by propelling bodily fluids. Executive Department and Administration Committee. Vote 6-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill makes it a class B felony for an inmate to harass corrections personnel by causing or attempting to cause such employee to come in contact with blood, seminal fluid, urine, or feces by throwing or expelling such fluid or material. Though inmates can have their time served extended within their sentences, most inmates that resort to this behavior are serving maximum time, and there isn't a sufficient deterrent for this behavior. The committee recommends this bill Ought to Pass.

SENATOR F. KING: Senator Francoeur, it seems to be a little bit unclear whether this applies to local correction facilities or just facilities operated by 'the' Department of Corrections, which I assume is the state department? I just want to make the record clear that this law, if it passes, will apply to inmates housed in county facilities as well as the state system.

SENATOR FRANCOEUR: I believe, Senator King, as it talks by assault by prisoners, that when the definition of prisoners are all those incarcerated throughout the state, not just in the county, but also in the state prison as well.

Adopted.

Ordered to third reading.

HB 1422-FN, relative to the composition of and procedures for the appellate board of the department of employment security. Executive Department and Administration Committee. Vote 6-0. Ought to Pass, Senator Brown for the committee.

SENATOR BROWN: This bill is the result of recommendations of a study committee. The bill changes the composition and appointment procedure of the appellate board of the Department of Employment Security. This legislation staggers the terms of members and changes their term of service from 3 to 4 years, and limits serving on the board to eight consecutive years. The appeals that are considered regard payments of benefits to employees. The bill also allows an employee to appeal to the board before they appeal to the Supreme Court, and allows the board to hear tax related appeals as well. The committee recommends this bill ought to pass.

SENATOR FERNALD: Can you explain why there is a term limit in here for the commission members? Is this something that we do regularly on commissions?

SENATOR BROWN: As I understand it, the term limit is eight consecutive years. Take a year off and you can come back for eight more years. I am not sure what the reason was, but there was some consideration in the study committee about the kinds of things that are heard, and they just felt it was better to have a turnover. That is all that I know about it.

Adopted.

Ordered to third reading.

HB 1450-FN, relative to hearings and appeals of equal pay claims. Executive Department and Administration Committee. Vote 5-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: This bill establishes a clear procedure that the Labor Department would follow for hearings and appeals about unfair treatment based on pay. There currently isn't a procedure for these hearings and appeals based on unfair pay. This bill sets the deadlines for notification, claims, hearings, and appeals. This puts into statute a way that people being treated unfairly in the workplace through low pay can seek remedy with the labor department. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 467, relative to the exemption from regulation of certain elevating devices. Executive Department and Administration Committee. Vote 5-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill allows the labor commissioner to exempt certain elevating devices from the requirements of the elevator and accessibility lift law. The lifting devices that could be exempted would include dumb waiters and other restaurant lifts. This is not intended to affect lifts used for people. The current requirements for lifts affect dumb waiters in such a way that the expense to use them and to meet the safety criteria is prohibitive. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 471, relative to authorizing the town of Seabrook to establish a reserve fund for tax stabilization related to the decommissioning of the Seabrook nuclear plant and ratifying articles 12 of the 1999 Seabrook annual town meeting. Executive Department and Administration Committee. Vote 6-0. Ought to Pass, Senator Cohen for the committee.

SENATOR COHEN: In 1999 residents of the town of Seabrook voted to establish a non-lapsing special reserve fund. The purpose of the fund is to stabilize the town's tax rate when the property value of the Seabrook nuclear power plant begins decommissioning. After townpeople voted for this fund, the Department of Revenue Administration decided that there was not sufficient statutory authority to establish such a fund. This bill ratifies the vote of the people in Seabrook and allows the establishment of this non-lapsing special reserve fund to stabilize town taxation with the decommissioning of the nuclear power plant. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1171, restricting the payment of salaries to suspended judicial officers. Finance Committee. Vote 8-0. Inexpedient to Legislate, Senator Larsen for the committee.

SENATOR LARSEN: The Finance committee could not support this bill because it felt that it infringed upon the separation of powers. As a result, Senate Finance recommends HB 1171 inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 1559-FN, establishing a committee to study the organization and functions of the New Hampshire state port authority. Finance Committee. Vote 7-1. Ought to pass with amendment, Senator Larsen for the committee.

2000-4183s**04/09****Amendment to HB 1559-FN**

Amend the bill by replacing subparagraph I (a) as inserted by section 2 of the bill with the following:

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

SENATOR LARSEN: House Bill 1559 was referred to Finance by the Energy and Economic Development Committee. The Finance Committee amended the bill to change the membership to three House members from what was written as four. The Senate Finance Committee recommends HB 1559 as ought to pass as amended.

Amendment adopted.

Ordered to third reading.

SB 458, increasing the salary of the executive secretary of the retirement system and changing the title to executive director. Finance Committee. Vote 8-0. Ought to Pass, Senator J. King for the committee.

SENATOR J. KING: Senate Bill 458 was referred to Senate Finance by the Committee on Executive Departments, which passed it unanimously. This bill changes the title of the secretary of the New Hampshire Retirement System to Executive Director. It also increases the salary. Currently the maximum is \$62,171 salary group N. This would be changed to a maximum of \$81,046 in salary group S. The department stated that the increase in salary and associated benefits would total \$25,265 in 2001 and each year thereafter. The Senate Finance Committee unanimously recommends SB 458 ought to pass. Thank you.

SENATOR ROBERGE: Senator King, would you please address the situation of where the money is coming from for this? Maybe it will be coming out of the Retirement Fund?

SENATOR J. KING: I would imagine...most of the money...I think that it is coming out of the Retirement Fund. That is my understanding at the present time. Yes.

SENATOR FRANCOEUR: Senator King, when we had discussion in ED & A about the salary. It was clear where the money was coming from. I believe that half was coming out of the general fund and half comes out of the Retirement Fund. In the ED & A Committee, I believed we discussed, thought that the idea of increasing the salary as long as it was being borne by the fund...it wasn't a problem since this fund has grown significantly over the past couple of years. Did the Finance Committee talk about that or did this inadvertently get passed by?

SENATOR J. KING: I was under the understanding that it would be done by them. I can check to make sure. Basically all of the other expenses there are taken out of that fund.

SENATOR F. KING: The funds to provide money for this position will come from the Retirement System Fund itself, not from general fund dollars.

SENATOR D'ALLESANDRO: I rise in support of Senator King's legislation. Remember that the New Hampshire Retirement Fund as it currently exists, is over a \$4 billion fund. At one time the salary for the Executive Director, the name will be changed, was really quite low. You

need a person who is very capable and very competent to manage a fund of that magnitude. This legislation is an attempt to do that, and to fill that position so that our state employees and their retirement benefits will be protected as we move forward, because we want sound management policies in place and we want the best person available who can do that. I strongly support this bill and encourage my colleagues to vote for it. Thank you.

Adopted.

Ordered to third reading.

SB 468, relative to the family division of the courts and relative to the jurisdiction of the family division in Rockingham county. Finance Committee. Vote 5-3. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Madame President, 468 was referred to Senate Finance by the Judiciary Committee. Already we have a Family Division of the Courts in Rockingham and Grafton Counties, and 468 would require the Supreme Court to expand the Family Division to two additional counties during the biennium beginning 2001. The bill also establishes a committee to study implementation of our statewide family division. The bill further provides that family division matters arising in the towns of Deerfield, Northwood, Nottingham, shall be heard in the Auburn district courthouse. The bill also would allow the Supreme Court to designate a location other than the Portsmouth District Court within the Portsmouth or Hampton District for the hearing of Family Division matters. A majority of the committee recommended this bill out as ought to pass.

SENATOR PIGNATELLI: I want to thank the majority of the Finance Committee for voting this bill out ought to pass. In 1994 and 95 when the legislative committee made its report regarding the family court to the legislature, it was making a bold statement loud and clear that it was putting the interest of children and families first on the court's docket, but also in the state of New Hampshire. I think that the legislature was correct in 1995 when they did that, and it needs to remain a top priority in this state. With the passage of this bill, we continue to expand the family division by two more counties within the next biennium. I hope that I will not be alone next year when this bill and the courts go through the budget process. I hope that I will not be alone...I think that I won't be...in arranging for the court system to have the funds that it needs to hire the case managers and to do the work that needs to be done to properly fund this in the two additional counties. The Family Court System is not perfect, we all know that. We have heard about some of the problems. People are trying to address some of the issues. I am proud to say that I hope that that will be accomplished very soon. So it is not a perfect system, but it is working well for the majority of people. I believe that expanding it into two additional counties would be a good step toward making the family system more accessible, more convenient, more efficient and less adversarial for New Hampshire families utilizing this court system. Thank you again.

Adopted.

Ordered to third reading.

HB 1465, extending the reporting date of the committee to study the non-group health insurance market. Insurance Committee. Vote 6-0. Ought to Pass, Senator Francoeur for the committee.

SENATOR FRANCOEUR: This bill simply extends the non-group health insurance study committee. The non-group insurance market in New Hampshire is in need of continued examination to ensure that a viable market exists. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

SB 469, relative to mutual insurance holding companies. Insurance Committee. Vote 4-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: This bill enables mutual insurers to raise capital by retaining their mutual identity, but at the same time issuing stock in the insurance operating company. A mutual insurer would be permitted to do that by forming a mutual insurance holding company. This is important legislation for several reasons. First, mutual insurers are at a significant disadvantage in the marketplace without this ability. Unlike stock insurers, which can sell additional shares of their company, mutual insurance companies are limited to raising capital by borrowing money. Another important reason for supporting this legislation is the federal Gramm-Leach-Bliley Act. This act provides that a mutual insurance company may re-domesticate to another state if its home state does not make reasonable provision for the formation of mutual holding companies. Thus, mutual holding companies located in New Hampshire could choose to leave the state if New Hampshire doesn't adopt a mutual holding company statute. The Senate Insurance Committee recommends this bill ought to pass.

Adopted.

Senator Fraser offered a floor amendment.

2000-4178s

08/04

Floor Amendment to SB 469

Amend the bill by replacing section 2 with the following:

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

SENATOR FRASER: This amendment is being passed out. The bill as it is written, Madame President, has passage of 60 days. This amendment that I am asking the Senate to pass would become law upon passage.

Floor Amendment adopted.

Ordered to third reading.

SCR 6, urging the President and Congress to address the challenge of high prescription medication prices. Insurance Committee. Vote 5-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: Prescription medications over the years have become a larger and larger part of the costs of health care in this country. These rising costs are not only a burden on the citizens, but also the state and the Department of Health and Human Services. This resolution calls on the President and Congress to address these rising costs on a national basis. The committee unanimously recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1149, commemorating the anniversary of the founding of certain branches of the United States armed forces. Internal Affairs Committee. Vote 4-0. Ought to Pass, Senator Fraser for the committee.

SENATOR FRASER: This bill requires that in commemoration of the founding of the United States Army, Navy, Air Force, and Coast Guard, the governor shall order the flag of each branch to be flown over the state house on the anniversary of its founding. Last year the General Court approved similar legislation recognizing the Marine Corps founding, and this bill will ensure that all branches are similarly recognized. The committee was unanimous in recommending this bill ought to pass.

Adopted.

Ordered to third reading.

HB 1151, establishing a committee to study the creation of a New Hampshire local government records management trust and to consider funding alternatives. Internal Affairs Committee. Vote 3-0. Ought to Pass, Senator Trombly for the committee.

SENATOR TROMBLY: This bill addresses a concern that at the local level many important historical documents are being lost because of a lack of preservation or concerted effort to see that they are kept in one place. This establishes a study committee that will come up with a plan for preserving local, historical documents, records and statistics, and also come up with a way to fund doing the same. Thank you, Madame President.

Adopted.

Ordered to third reading.

HB 1156, establishing June 20th each year as Destroyer Escort Day. Internal Affairs Committee. Vote 5-0. Ought to Pass, Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: This bill establishes June 20th each year as Destroyer Escort Day to commemorate those who lost their lives while serving aboard these vessels. These vessels provide important protection and support to destroyers during World War II, the Korean Conflict, and the Vietnam Conflict, and the men on these ships served with valor. The committee recommends this bill ought to pass.

Adopted.

Ordered to third reading.

HCR 33, establishing a joint New Hampshire-Vermont legislative cooperative effort regarding the Connecticut river. Interstate Cooperation Committee. Vote 2-0. Ought to Pass, Senator Johnson for the committee.

SENATOR JOHNSON: House Concurrent Resolution 33 urges the congressional delegations of New Hampshire and Vermont to seek continuation of cooperative partnerships and support from the New England Federal Partners for Natural Resources to the Connecticut River Joint Commissions for purposes of carrying out the recommendations of the Connecticut River Management Plan. This resolution has already been passed by the state of Vermont and the New Hampshire House. We are the last step in its adoption. The Connecticut River is one of 14 rivers designated as American Heritage Rivers. The Joint River Commission has developed a Corridor Management Plan involving the 175 miles from the Canadian border to the Massachusetts state line. This stretch of the river has 53 riverfront towns along both banks. The Commission plays

an important role in the management of this natural asset. The Interstate Cooperation Committee recommends that HCR 33 be ought to pass and urges your support for this important commission. Thank you.

Adopted.

Ordered to third reading.

SCR 5, urging the New England states and New York to consider cooperative strategies to address the challenge of the high cost of prescription medicines. Interstate Cooperation Committee. Vote 3-0. Ought to Pass, Senator Disnard for the committee.

SENATOR DISNARD: Senate Concurrent Resolution 5 urges the New England states and New York to consider cooperative strategies to address the challenge of the high cost of prescription medicines. The states of Maine, New Hampshire, Vermont and Massachusetts have been meeting to look into how to address the high costs of pharmaceuticals. Connecticut, Rhode Island, New York and New Jersey have now joined this group. This resolution is offered as a step toward adoption of a regional contract. At a time when busloads of our citizens can travel to Canada to purchase the same prescriptions at lower cost, it is imperative that we work together toward more equitable prices. The Interstate Cooperative Committee urges you to adopt SCR 5. Thank you.

SENATOR LARSEN: I only want to add that I think that knowing that Congress is acting so slowly on the issue of high cost of prescription medicines that this kind of joint cooperation of the New England states hold the best promise for the people of our state to see some prescription price decreases, and perhaps our ability to do something that will actually do some good for this issue.

Adopted.

Ordered to third reading.

HB 1109, relative to the modification of spousal support orders. Judiciary Committee. Vote 4-0. Inexpedient to Legislate, Senator Gordon for the committee.

SENATOR GORDON: House Bill 1109 came before the Senate Judiciary Committee and it purports to amend the manner in which permanent alimony awards can be modified. I guess that what I would say is that I am not sure that the Judiciary Committee is entirely sure as to what the bill was intended to do, as no one from the House appeared to testify in favor of the bill. There were two individuals who did testify on the bill, and both testified in opposition to the bill, they indicated that they felt that it was both unnecessary and unwanted. As a result of the hearing and testimony, the Senate Judiciary Committee recommends this bill as inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 1242, relative to the standard for modification of a child custody order. Judiciary Committee. Vote 4-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-4135s

04/09

Amendment to HB 1242

Amend RSA 458:17, V (a)(2) as inserted by section 1 of the bill by replacing it with the following:

(2) If the court finds repeated, intentional, and unwarranted interference by a parent who has permanent primary physical or permanent joint or shared physical custody with the visitation or custodial rights of the other parent, the court may order a change in physical custody without the necessity of showing harm to the child, if the court determines that such change would be in accordance with the best interests of the child;

SENATOR TROMBLY: This bill really doesn't change anything that isn't already the current state of the law. It simply codifies the current case law on the standards for modification of a child support order.

Amendment adopted.

Ordered to third reading.

HB 1448, relative to the partition of real property. Judiciary Committee. Vote 7-0. Ought to pass with amendment, Senator Trombly for the committee.

2000-4121s

05/10

Amendment to HB 1448

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

AN ACT relative to the partition of real estate and division of property.

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

1 Division of Property Interests. Amend RSA 547-C:1 to read as follows:

547-C:1 Parties. Any person owning a present undivided legal [~~estate in land~~] *or equitable interest or estate in real or personal property (hereinafter called "property")*, not subject to redemption, or the holder of an equity of redemption shall be entitled to have *partition or division* in the manner hereinafter provided. If such *interest or estate* is in fee, he *or she* shall be entitled to *partition or division* in fee; if a life estate or a term for years, he *or she* shall be entitled to *partition or division* thereof to continue so long as his *or her estate or interest* endures. A life tenant, remainderman, or a tenant for years of whose term at least 20 years remains unexpired may, in the exercise of the court's equitable powers, have *partition of the fee*. The existence of a lease of the whole or a part of the [~~land~~] *property* to be divided shall not prevent *partition or division*, but such *partition or division* shall not disturb possession of a lessee under a lease covering the interests of all the co-tenants.

2 Petitions for Partition of Property. Amend RSA 547-C:2 to read as follows:

547-C:2 Petition. A petition may be filed by such person in the probate court in the county in which the [~~estate~~] *property* or any part of the [~~estate~~] *property* lies *or is then located*, particularly describing the [~~estate~~] *property*, the names of all owners or persons interested, if known, and the share *or interest* of the petitioner in the [~~estate~~] *property* and praying for *partition or division* of the [~~estate~~] *property*. Upon petition by the administrator or upon its own motion, the court may cause any [~~real estate~~] *property* to be partitioned or divided *and awarded or assigned* in accordance with procedures described in this chapter. *Nothing in this chapter is intended to abrogate common law or statutory authority of the superior and district courts to adjudicate issues of personal property between parties engaged in litigation before those courts.*

3 Appeal of Partition Judgment. Amend RSA 547-C:3 to read as follows:

547-C:3 Appeal. In cases where a right to jury trial is guaranteed by the constitution, a person may, at the time judgment by the probate court is declared, appeal therefrom to the superior court. The appeal shall be entered 15 days from the date of the register's issuance of the notice of decision unless for good cause shown the time is extended by the superior court. If a trial by jury is requested, the superior court shall expedite such request and schedule the case for trial in as timely a manner as possible and may cause any [~~real-estate~~] **property** to be partitioned or divided in accordance with procedures described in this chapter. In all cases which are so appealed, it shall be the duty of the superior court to transmit to the judge of the probate court, within 10 days after the case is finally disposed of, a certificate showing the final disposition of the case.

4 Property Owner Unknown. Amend RSA 547-C:4 to read as follows:

547-C:4 Owner Unknown. If the persons interested in any such [~~real estate~~] **property** with the petitioner are unknown, it shall be described in the petition in the same manner as is required in the case of taxing unimproved lands of nonresidents, specifying the share held by each petitioner, and stating that it is held with persons unknown.

5 Disputed Partition; Notice. Amend RSA 547-C:5 to read as follows:

547-C:5 Notice. The petitioner shall give notice to all persons interested in the [~~estate~~] **property**, by causing the petition and order of notice thereon to be served on each in the same manner that writs of summons are required to be served.

6 Petitionee-Owner Unknown. Amend RSA 547-C:9 to read as follows:

547-C:9 Petitionee-Owner Unknown. If any petitionee is unknown the court may, in its discretion, appoint an agent to aid and advise in petitionee's behalf in making the partition *or division*.

7 Trial of Issues; Disposition of Property. Amend RSA 547-C:10 to read as follows:

547-C:10 Trial of Issues. Matters alleged in the petition may be denied or avoided by the petitionee by plea, and further proceedings may be had, and an issue of fact or of law made and tried, as upon a writ at common law or a bill in equity, and the court shall have full power to determine the respective interests of all the parties; or the petitionee may file a plea denying that the petitionee holds any part of the [~~pre-mises~~] **property** with the petitioner, with a brief statement of matters in defense.

8 Judgment for Partition; Quieting Title. RSA 547-C:11 is repealed and reenacted to read as follows:

547-C:11 Judgment for Partition. If the issue is determined in favor of the petitioner, or if after notice the petitionee does not appear, or if no sufficient objection is made, the court shall render judgment that partition be made, and shall by decree set off and assign to the petitioner or petitionee their shares according to their respective rights, titles, or interests, and award costs, as the court deems equitable and just. In so doing, with an appropriate pleading, the court may also quiet title in discharge or extinguishment of any right, title, or interest that may otherwise unlawfully or inequitably encumber or burden the real estate as fully and completely as a court of general equity may do. The court shall make such partition as it decrees by metes and bounds or other distinct description. The partition shall be recorded at the registry of deeds for the county where the real estate lies.

9 Quiet Title. Amend RSA 547:11-c to read as follows:

547:11-c Quiet Title. An action may be brought in probate court by any person claiming title to, or any interest in, real or personal property, or

both, *in partition under RSA 547-C*, listed in the estate of a deceased person or listed as guardianship, conservatorship, or trust assets over which the probate court has jurisdiction, against the estate, guardian, conservator, or trustee who may claim to own the same, either in fee, for years, for life or in reversion or remainder, or to have any interest in the same, or any lien or encumbrance thereon, adverse to the plaintiff, or in whom the land records disclose any interest, whether or not the plaintiff is entitled to the immediate or exclusive possession of such property, for the purpose of determining such adverse estate, interest or claim, and to clear up all doubts and disputes and to quiet and settle the title to the same. In any action brought under this provision, where applicable, the procedure set forth in RSA 498:5-b through 5-d shall be followed.

10 Recovery of Costs Against Petitioner. Amend RSA 547-C:17 to read as follows:

547-C:17 Against Petitioner. If on the trial of an issue *involving property*, as provided in RSA 547-C:10, it is determined that the petitioner has no share *or interest* in the ~~[estate]~~ *property*, or [a] less ~~[share]~~ than the petitioner claims, the petitionee shall recover the taxable costs of such trial.

11 Undisputed Partition; Processing of Petition. Amend RSA 547-C:19 to read as follows:

547-C:19 Petition. If there is no dispute ~~[about the title]~~, a petition for partition ~~[may]~~ *shall* be filed with the judge of probate for the county where the ~~[real estate]~~ *property* or the greater part thereof lies *or is then located*, who shall appoint a time and place of hearing on the petition.

12 Procedure. Amend RSA 547-C:21 to read as follows:

547-C:21 Procedure. If on the hearing no sufficient objection appears, ~~[the judge shall cause partition to be made by a committee, who shall be appointed, be sworn, give notice and proceed, and]~~ the court shall appoint guardians or agents for all minors or persons incapacitated, and agents for all persons unknown or out-of ~~[the]~~-state, interested in ~~[such]~~ *the [estate] property*, ~~[receive and accept the report of such committee,]~~ and render judgment and award costs thereon, in the manner prescribed in this chapter.

13 Division with Consent. Amend RSA 547-C:22 to read as follows:

547-C:22 ~~[Division With Consent]~~ *Unequal Division and Sale*. Whenever ~~[an estate]~~ *property* is so situated *or is of such a nature* that it cannot be divided so as to give each owner his or her share ~~[of the estate]~~ *or interest* without great prejudice or inconvenience, the whole or a part of the ~~[estate]~~ *property* may be assigned~~[-if the parties consent,]~~ to one of them, the assignee paying to the others who have less than their share such sums as the ~~[committee]~~ *court shall award or order*.

14 Sale. Amend RSA 547-C:25 to read as follows:

547-C:25 Sale. When the proceedings are pending, if it is alleged in the petition that the ~~[estate]~~ *property* is so situated *or is of such a nature* that it cannot be divided so as to give each owner his or her share ~~[of the estate]~~ *or interest* without great prejudice or inconvenience and the court so finds, ~~[or if, upon the report of the committee that the estate is of the nature aforesaid, the court so finds,]~~ the court may order it to be sold and the proceeds from the sale to be divided among the owners according to their respective *rights, titles, or interests*, and may make all other orders that may be necessary to cause such sale and the distribution of the proceeds, as a court of equity may do in like cases.

15 Mortgagees; Division of Property. Amend RSA 547-C:28 to read as follows:

547-C:28 Mortgagees, etc. No partition *or division of property* shall be avoided by any conveyance made by a petitionee after the entry of the petition therefor, nor by any conveyance *or other disposition*, unless duly recorded *or effected* at the date of such entry, nor by any mortgage, attachment or lien thereon, whenever made, nor by the death of either party; but the share *or interest* of each petitioner shall be set off in severalty, and be subject to all legal claims thereon, as if the claimant had been a party thereto.

16 Awarding or Assigning Property. RSA 547-C:29 is repealed and re-enacted to read as follows:

547-C:29 Award. In entering its decree the court may, in its discretion, award or assign the property or its proceeds on sale as a whole or in such portions as may be fair and equitable. In exercising its discretion in determining what is fair and equitable in a case before it, the court may consider: the direct or indirect actions and contributions of the parties to the acquisition, maintenance, repair, preservation, improvement, and appreciation of the property; the duration of the occupancy and nature of the use made of the property by the parties; disparities in the contributions of the parties to the property; any contractual agreements entered into between the parties in relation to sale or other disposition of the property; waste or other detriment caused to the property by the actions or inactions of the parties; tax consequences to the parties; the status of the legal title to the property; and any other factors the court deems relevant.

17 New Section; Construction. Amend RSA 547-C by inserting after section 29 the following new section:

547-C:30 Construction. Proceedings under this chapter shall be remedial in nature. The provisions of this chapter are to be liberally construed in favor of the exercise of broad equitable jurisdiction by the probate court in any proceeding pending before it.

18 Repeal. The following are repealed:

- I. RSA 547-C:12, relative to oath; notice.
- II. RSA 547-C:13, relative to publication of notice.
- III. RSA 547-C:14, relative to setoff; report.
- IV. RSA 547-C:15, relative to judgment; record.
- V. RSA 547-C:16, relative to costs.
- VI. RSA 547-C:23, relative to non-assent.
- VII. RSA 547-C:24, relative to recommitment.

19 Effective Date. This act shall take effect January 1, 2001.

2000-4121s

AMENDED ANALYSIS

This bill expands the procedure for partition of real property to include equitable interests or estates in real or personal property.

SENATOR TROMBLY: Currently, if people jointly own a piece of real estate and one party no longer wishes to be a joint owner of that real estate, they have to petition the probate court to partition. There is an antiquated, outdated system that the court has to follow, which requires the appointment of a committee to appraise the property and make a recommendation back to the court. It really doesn't work because the judge can make the decision on who is going to get what. This bill removes the antiquated part of that statute. The amendment reflects what we did last year in terms of adding that the probate court could also have jurisdiction over a jointly owned property by the same parties, which

would prevent them from litigating the real estate in a probate court and the personal property in Superior Court. We did that, but there were some changes that needed to be made to that, so that was tightened up. That bill that we passed earlier this session relative to the personal property is languishing over in the House in anticipation of us taking care of it here today. Thank you, Madame President.

Amendment adopted.

Ordered to third reading.

SB 463, revising the uniform partnership act. Judiciary Committee. Vote 3-0. Interim Study, Senator Trombly for the committee.

SENATOR TROMBLY: The Judiciary Committee is asking that you send this bill to study because more work needs to be done on the uniform act before it is ready for passage. Thank you.

Committee report of interim study is adopted.

HB 1194, relative to the composition of planning boards in certain cities. Public Affairs Committee. Vote 5-0. Ought to Pass, Senator McCarley for the committee.

SENATOR MCCARLEY: House Bill 1194 allows a city with a city council, city manager form of government, to establish a planning board composed of the city manager or designee, a member of the city council and seven appointed persons. This legislation will allow for greater public participation on planning boards. As drafted, HB 1194 allows an option which could be chosen by a city, this is not required. The Public Affairs Committee recommends HB 1194 as ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1327, relative to residency of prisoners for purposes of voter registration. Public Affairs Committee. Vote 5-0. Inexpedient to Legislate, Senator Disnard for the committee.

SENATOR DISNARD: House Bill 1327 would have required that persons confined in prison would have to attach a statement relative to their last domicile prior to incarceration when registering to vote. The other provision of HB 1327 would have required that the service address of registered armed services voters be added to the checklist with the voter's name. Because of the recent court ruling dealing with prisoners not being eligible to vote, the Public Affairs Committee recommends that HB 1327 be inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 461, establishing a committee to study the creation of a flag to honor all police departments in the state. Public Affairs Committee. Vote 3-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: This bill was filed at the request of constituents who wanted a state flag to use in ceremonial occasions, to be displayed on graves of police officers, for parades, and other special events. If the committee should recommend that a police flag be adopted, this could well be the first in the nation, another first for our great state! The Public Affairs Committee, with great enthusiasm, recommends that SB 461 be ought to pass. Thank you very much.

Adopted.

Ordered to third reading.

SB 464, relative to the use of municipal and school district facilities for stunt biking and relative to the sale of bicycles at public auction. Public Affairs Committee. Vote 4-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-4187s

04/09

Amendment to SB 464

Amend the bill by replacing section 3 with the following:

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

SENATOR MCCARLEY: Senate Bill 464 limits the liability of municipalities and school districts which allow stunt biking in certain facilities. Several years ago we passed the same type of legislation protecting the communities that put forward roller blading, skate boarding or roller skiing facilities, which are safe places for kids to come and take part in these activities, much better than the streets where they were encountering constant difficulties with police and other citizens. We heard a lot of testimony at the hearing about the number of kids that are sometimes perceived to be kids that may be looking for trouble by virtue of the fact that they like to roller blade or roller ski, or to perhaps get in people's way, but this has been a wonderful thing for them. Many of these kids have shown a marked improvement in their attitudes about things, school work and everything. The testimony on this was very good. The second part of the legislation also allows that in a situation where stolen bikes and what have you, are recovered by local police departments, that when those are sold in local auctions, that the revenues from those sales can actually go to a bicycle safety program, which would be a small, but important source of funding to provide things like helmets and what have you. The committee amendment merely makes the legislation effective upon passage. The Public Affairs Committee recommends ought to pass as amended.

Amendment adopted.

Ordered to third reading.

HB 427, relative to the laws requiring a prescription to possess hypodermic needles and modifying the drug paraphernalia laws applying to syringes. Public Institutions, Health and Human Services Committee. Vote 5-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: Just to set the stage, this passed the House Criminal Justice Committee unanimously this year. It passed the House on a voice vote. It passed both the House and Senate in 1992 and 1993, was vetoed on those occasions. It passed the House again in 1994 and 1995. In 1997 a less enlightened Senate killed it on those occasions, but I know that we, are far more enlightened and will understand the issue now. We had excellent testimony from our state Medical Director, Doctor William Kessler. He gave us a lot of statistics about blood borne diseases in New Hampshire and how they are spread. Obviously, this ability of people 18 and over to purchase clean needles from a licensed pharmacy will help in reducing the spread of HIV and AIDS. It will also help in reducing the spread of Hepatitis B and C. What Doctor Kessler said is that it will also help people who are not intravenous drug users from acquiring these diseases from someone who has used a dirty needle and has been infected. He said that HIV, Hepatitis B and C transmission that occurs through injection drug use has a cascading effect. As these infections are passed

to the user's children and to their sexual partners, who then further spread these diseases within the community. Therefore, reducing the risk of disease transmission among injection drug users is a legitimate medical and public health rationale for increasing access to clean syringes. He also gave us data from the state of Connecticut when they changed their syringe laws; they had very rigorous evaluations done by the CDC, and their state health department and they came up with important conclusions. That the proportion of intravenous drug users who purchase syringes and pharmacies increased substantially after their law. The proportion of intravenous drug users who obtained syringes from less reliable sources decreased. The proportion of syringe sharing, reported by intravenous drug users decreased. This is what we want to have happen in New Hampshire. Both the National Association of Boards of Pharmacy and the American Pharmaceutical Association have strongly encouraged state legislatures to revise laws to permit over the counter purchase of syringes to decrease disease transmission. One interesting statistic from Connecticut is that the needle stick injury rate among Hartford police officers were lowered after their laws were passed. There is also an advantage to the population of diabetics in our state that are insulin dependent and need to be able to have needles. Sometimes they are not available. My son in-law, when he comes to visit, he is a forgetful kind of lawyer and he often forgets his prescription, and we have to make a long distance call to find a pharmacy that will be able to open and sell him the needles that he needs for his very life. So this is an important bill. I encourage you to support the unanimous recommendation of the Public Institutions, Health and Human Services Committee of ought to pass.

SENATOR KRUEGER: I think that it would be very easy, certainly it would have been for me, to have a knee-jerk reaction and reject this piece of legislation, but I can't, because the logic that was provided to me, the information that was provided to me, which I asked for, was compelling. I found no objection at the hearing from the chiefs of police. Let's face it, there isn't probably anyone in this room that could say no the Representative, she is quite an amazing lady and I admire her for that. Thank you very much.

Adopted.

Ordered to third reading.

Senators Francoeur, Gordon, F. King and Russman are in opposition to HB 427.

HB 1390, establishing a commission to study the relationship between public health and the environment. Public Institutions, Health and Human Services Committee. Vote 4-0. Ought to Pass, Senator Squires for the committee.

SENATOR SQUIRES: I rise in support of HB 1390. For a number of years it has been recognized that environmental hazards can have a major impact on public health and quality of life in New Hampshire. This committee will study the environmental exposure to indoor and outdoor air pollutions. I will give you an example as to why this is important. I went to a medical meeting recently, and there were four different manufacturers trying to sell different inhalers for asthma. We are going down the wrong road here, we are figuring out how to treat the disease instead of how to prevent it. There is probably by some standards, an epidemic of asthma in New Hampshire. It is very rapidly rising. It is unlikely that

there is anything other than some sort of inhalant or environmental problem. There is an excellent study going on in Manchester, trying to address that very question. This is an important bill and I urge you to pass it.

Adopted.

Ordered to third reading.

HB 1410, relative to the joint health council. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to Pass, Senator Krueger for the committee.

SENATOR KRUEGER: I rise in strong support of HB 1410. This legislation makes several changes to the Joint Health Council. First, it changes the membership of the council. It quite honestly, makes it more fair. It adds limits to the number of terms a member may serve on that council. The bill establishes requirements for how often the council must meet; therefore, there is no huge lag and delay between drugs that could help the people of our state, and, how the agenda is set forth. It requires that decision on additions and alternations in the drug formulary be rendered within three months, and that any denial of a request be made in writing with appropriate scientific data, thus, avoiding what has been perceived as arbitrary and sometimes capricious behavior. Finally, HB 1410 requires that the formulary be updated at least annually, and requires it be available both electronically and in paper format. As the prime sponsor of SB 326, the intent of which, was the elimination of the Joint Health Council, I believe that this bill is a good compromise between the interest of the nurse practitioners and the concerns presented by the medical community. I must tell you that there will be a motion to table this, and I object strongly to that. I feel that after a study committee made recommendations and after the groups came together on numerous occasions, that we have the best piece of legislation that we can have, which will ultimately help the people, especially in the rural areas in the state of New Hampshire. I really urge you very carefully to think about the number of hearings, the number of people that came forth. The fact that this was agreed on, I understand, until as late as last night. That might appear, although I am not saying that it is, a last ditch effort by some members of the medical society to thwart the need for nurse practitioners to get out there and prescribe. With those remarks, thank you.

SENATOR WHEELER: It is really hard for me to know where to begin. I was unprepared for the fact that we would decide to reverse a vote that we took last month, I believe, when we passed SB 326. A bill, which passed our committee unanimously and was adopted by the Senate without dissent. The part that everybody seems to be concerned about is on page two of the bill. It is a repeal of the requirement that every drug that a nurse is able to use, has to have been petitioned to be used and approved by the Joint Health Council. That was clearly understood and was discussed. I thought that it was understood. It existed in SB 326 that we passed. It existed in the bill that the House passed that is sent to us now, HB 1410, that we are considering. It was a result of a compromise, but I just want to review a little of the history of how we got to where we are now. The Joint Health Council was established in 1991 to create and administer the formulary that would govern the prescriptive practices of ARNPs. In 1993, HB 593 enabled ARNPs to dispense, that which they could prescribe. This was going through at the same time that the

Joint Health Council was talking about creating an exclusionary formulary. At that point, the New Hampshire Medical Society became involved, and over strenuous objections by the ARNPs and the health care advocates, pushed an amendment to HB 593 that requires all new FDA approved drugs manufactured after September 1994 to be reviewed by the Joint Health Council before they may be prescribed by ARNPs. Those are the words that we struck when we passed SB 326. This amended law created tremendous confusion in the formulary. For example, looking at the formulary for a post 1994 drug, it is impossible to determine if the drug does not appear on the list because it has been reviewed, and was approved, or because it has not yet been subject to the review. This caused serious delays in the process of approving new drugs for their available use by ARNPs for their patients. In 1998 we tried again in 1421, to deal with the explosion of new drugs coming onto the market. We had an amendment that passed that said that new routes of administration such as oral injection and IV for previously approved substances, need not be requested. Prior to this, all FDA approved drugs were being reviewed, which only added to the confusion, as different companies would have approval for the same drug under a different name. This is all what the Joint Health Council is supposed to be dealing with. In 1994, this is what got us where we are now, laboring under an antiquated formulary that had not been updated since 1997. ARNPs requested the introduction of HB 530, which established a legislative study committee to review the policies and procedures of the Joint Health Council. Senator Krueger and I both served on this, recognizing the need for improved access to newly available prescription medications, the demonstrated safe prescriptive practices of New Hampshire ARNPs, and the history of strong oversight by the Board of Nursing. The study committee voted 5-0 to get rid of the Joint Health Council, that is how this started. Senator Krueger and I sponsored a bill with the House members to get rid of the Joint Health Council. That raised a considerable amount of controversy. So we worked out a compromise. The amendment that we have before you, the bill which passed the Senate, the same form now has passed the House, is a compromise that still keeps the Joint Health Council in place. It still has a minority of nurses on the Joint Health Council. There is still a review when necessary, but it doesn't make a nurse have to go before the Joint Health Council to find out if she or he can prescribe a drug. I feel so strongly that this is an important policy that we have already adopted, that I can't see why we are reviewing it now. So I urge you not to table this. We have discussion, we have had hard work to reach a compromise. The House ED & A Committee is not an easy committee. They supported this bill. It passed the House ED & A Committee. We need to pass this bill and do what the study committee recommended, and that is make the prescriptive authority that we have given statutorily to nurses. Make it work properly. Thank you.

SENATOR SQUIRES: I rise to offer some comments, realizing that to do so after emotion being proper. Since being here, one of the most interesting, but also disturbing aspect of public policy is the involvement of the legislature in what ought to be professional decisions. We went through this last year with glaucoma treatment. We have been through it with multiple other issues. This is the same. What we need to do, in my opinion, is to move these decisions out of the legislative arena whenever possible. Everything that the two preceding speakers said is true, except for the problem that the public policy implications of this bill are not clear, and here is why. On the one hand, there is, as I think Sena-

tor Wheeler indicated, that passage of this bill will in fact, make it possible for a nurse practitioner to prescribe any drug, unless it winds its way through the Joint Health Council. Now I think that is a mistake. I think the same thing is going to come to physicians, that no one should have the right, just simply because one of the 350 drugs that are going to be approved this year is suddenly... I am going to start ordering it. But that is the policy. Now the two sides of the issue are that well if you want to change the policy, the Joint Health Council can do that, and yet there is no statutory authority that allows the Joint Health Council to require drugs to be reviewed. On the other hand, there is this difficult problem of the 1994 time line. I believe that we should not pass this bill. It does need an amendment. Most of it needs to remain intact. I think that we can improve it, if we desire. I have heard both sides. Some of the nurse representatives say, "no, it is not our intent to have unfettered access to FDA drugs." Others say it is. We need to make sure that we understand, as a legislature, what it is that this bill is saying. The way that it is written, in my judgement, is that it is not clear.

SENATOR FERNALD: Senator Squires, when we were dealing with this in the committee before, what we had heard was that with this wording **TAPE CHANGE** formulary rather than inclusionary. I think that I am using the right words. Which is to say that they could set the formulary to say that you can't use any drugs unless we approve them. What I just heard you say was that you were concerned that new drugs would come out and the nurses would automatically be able to use them with this change. But what I understood was that the Joint Health Council could actually decide to have a blanket rule that says that you can't use any new drugs until we say so. Have I misunderstood what we heard in committee, or did the committee misunderstand what the end result will be if we pass this as it appears?

SENATOR SQUIRES: Two responses. First of all, it should not be our job to legislate an inclusion or exclusionary formulary. In fact, states do it both ways and it works in either format. What the problem is, is that it is not clear if the Joint Health Council has the statutory authority to do that.

SENATOR FERNALD: To do the exclusionary?

SENATOR SQUIRES: To do either one. And thus, we need to make it clear from the public policy standpoint, what it is. It should be done...the way that this bill, were it to pass, in essence...I don't know what kind of a formulary. I think that it says that there will be from the Joint Health Council's standpoint, an exclusionary formulary, but, unless they happened to do it, any drug is to be prescribed. And therein lies the problem. If the Joint Health Council were to make some policy, it could be challenged. Frankly, I think they need rulemaking authority, that would be one way to solve this problem. Then the issues would be placed where they belong, in the hand of the professionals that know the most about this problem and not here.

SENATOR RUSSMAN: Senator Squires, **TAPE INAUDIBLE** and I am a layman, but it seems to me that my constituents really, would really rather have a doctor making the decision on what drugs they are taking, than the doctor's nurse. It seems like this somehow relaxes what we already have in place further, and with all of the new drugs coming out and all of the interactions and all the things that we have to be worried about, it just seems that...does this actually further relax what we

already have? Is it going to allow for more or less, because the way that I would vote on this would depend upon that because I think that the constituents would much rather have a doctor rather than a nurse make that decision. If they want to do it, they ought to go to medical school?

SENATOR SQUIRES: I think that it does offer the potential to relax it, and it opens the door to a very contentious discussion and debate and endless bills to try to fix the problem. It should be moved out of here into the Joint Health Council.

Senator Pignatelli moved to have **HB 1410**, relative to the joint health council, laid on the table.

A roll call was requested by Senator Pignatelli.

Seconded by Senator F. King.

The following Senators voted Yes: F. King, Johnson, Below, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Larsen, J. King, Russman, D'Allesandro, Klemm.

The following Senators voted No: Gordon, Fraser, McCarley, Trombly, Krueger, Brown, Wheeler, Cohen.

Yeas: 15 - Nays: 8

Adopted.

LAID ON THE TABLE

HB 1410, relative to the joint health council.

HB 1607, establishing a study committee to consider legislation reducing to zero the number of mentally retarded or developmentally disabled individuals in the state who are not receiving or have not received medicaid services. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to pass with amendment, Senator McCarley for the committee.

2000-4164s

08/09

Amendment to HB 1607

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

AN ACT establishing a study committee to consider legislation reducing to zero the number of persons with developmental disabilities and persons with brain injuries in the state who are not receiving or have not received medicaid services.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a study committee to consider legislation which would require New Hampshire to reduce to zero the number of persons with developmental disabilities and persons with brain injuries in the state who are not receiving or have not received medicaid services for which they are eligible.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall consider legislation which would require New Hampshire to reduce to zero the number of persons with developmental disabilities and persons with brain injuries in the state who are not receiving or have not received medicaid services for which they are eligible. The committee shall also consider the minimum time frame and costs required to accomplish this reduction.

2000-4164s**AMENDED ANALYSIS**

This bill establishes a study committee to address the distribution of medicaid services to persons with developmental disabilities and persons with brain injuries.

SENATOR MCCARLEY: I rise in support of HB 1607. This legislation would establish a committee to examine the minimum timeframes and cost required to reduce the number of developmentally disabled individuals eligible for Medicaid, awaiting evaluation supports and services, otherwise known as the "waiting list". The amendment to this bill adds the goal of also reducing the waiting list for services for those individuals with brain injuries. We currently are looking at approximately 159 individuals who are on this waiting list. I would urge us to support this study committee. It apparently would also put us in line with the ruling regarding the Americans with Disabilities Act to indicate that we were working on a comprehensive plan to guarantee the most appropriate settings for all of our individuals who need help. I would encourage you to pass this bill with the amendment. Thank you.

SENATOR DISNARD: I strongly urge support by my peers for this bill, especially as it relates to adults. For some reason, I have had many calls this last month, relating to the number of adults in Sullivan and Cheshire county who are on waiting lists, special needs and Medicaid service that are unable to receive them because of lack of funding by the state. I have also heard people in groups discussing possible suits against the state. I can also recall past legal action against the state in special needs regards, and each time, we have lost. I hope that we will vote for this study committee.

Amendment adopted.

Ordered to third reading.

HCR 24, relative to integration of people with disabilities. Public Institutions, Health and Human Services Committee. Vote 6-0. Ought to Pass, Senator Wheeler for the committee.

SENATOR WHEELER: I rise to join the committee in unanimous support of HCR 24. A number of individuals with disabilities testified in support of this resolution. They told us that as members of their communities, they have learned to do things for themselves. Many of these people actually had been in the Laconia State School. It was incredible testimony. Now they are taking care of themselves and they know how to budget their money, they have been able to maintain their rights and their privacy. But they became concerned when our attorney general filed an amicus brief in the case of Olmstead versus L.C. in the state of Georgia. They were afraid that this would lead to the reopening of the Laconia State School and reinstitutionalization. After the attorney general understood what all of the concerns were, the amicus brief was withdrawn, but they want to make sure...the disabled community that testified, want to make sure that their concerns are known to us and that they strongly support this resolution, and that the legislature also supports the integration requirement of the Americans with Disability Act, which requires that public services programs and activities be administered as such that qualified individuals with disabilities are placed in the most integrated setting appropriate to their needs. Georgia still has institutions, so there is a major difference there. This resolution will

bring peace of mind to disabled individuals in this state. Bring peace of mind that New Hampshire will not revert to using institutions to provide their programs and services. Instead, this resolution is a promise to respect and maintain the rights of the disabled individuals in our state as outlined by the Americans with Disabilities Act. It also is an opportunity for us to reaffirm the ground breaking work done in our state, by being the first state to adopt this central principle of de-institutionalization, which we did with the closure of the Laconia State School. So I am hoping for your unanimous support for this resolution. It is a very strong message to this important segment of our community. Thank you.

SENATOR SQUIRES: I would like to speak in agreement. This testimony...this hearing was moving. Somehow the impression was given to substantial numbers of people with disabilities that they would be sent back to Laconia. To hear the experiences of people that had been there wondering if they would be forcibly returned was very powerful. We tried, both myself and Senator Wheeler, to reassure these people that that was not the intent of the state of New Hampshire. These individuals need reassurance. So I hope that the bill, and I hope that recorded testimony today, indicates clearly, that it is not the policy of the state of New Hampshire to entertain such a proposal, be it at Laconia or any other institution.

SENATOR D'ALLESANDRO: I rise to speak very briefly. As a person who has been in state government for awhile, I used to visit the Laconia State School. I was appalled by the conditions at the Laconia State School. Absolutely appalled that some of those buildings had governors names of them. The warehousing of human beings that took place there was absolutely incredible. We embarked on de-institutionalization and we have been able to integrate people into society and give them a better chance. At least give them an opportunity. If that fear can be allayed by the passage of this resolution, the fear that we are going to do that again, we are again warehouseing people...I think that we should unanimously pass it. At one time, in this state, we had over 2000 people in the New Hampshire hospital. We had capacity at Laconia State School. Believe me, those of us who visited those institutions on a weekly, monthly basis, were in essence horrified by some of the things that took place. Thank you.

SENATOR F. KING: I wasn't going to speak, but I rise to obviously support the committee report and agree with everything that has been said. I would just encourage the legislators who speak so passionately about this, when the next budget is prepared, will have the courage to raise the money to fund this...put the money into the budget, and have the courage to raise the money to support the budget, because therein lies the problem. We speak very highly about these issues, but when it comes time to pay for them, we leave the ship, and I think that is wrong.

Adopted.

Question is on the motion of ordering to third reading.

A roll call was requested by Senator Wheeler.

Seconded by Senator Trombly.

The following Senators voted Yes: F. King, Gordon, Johnson, Fraser, Below, McCarley, Trombly, Disnard, Roberge, Eaton, Fernald, Squires, Pignatelli, Francoeur, Larsen, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Klemm, Hollingworth, Cohen.

The following Senators voted No:

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

HB 1106, making the widening of Interstate 93 from Manchester to the Massachusetts border a state priority. Transportation Committee. Vote 3-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: House Bill 1106 directs the Commissioner of Transportation to give the widening of Interstate 93 from Manchester to the Massachusetts border a very high priority. Currently, 104,000 cars per day are counted at Exit 1 on Interstate 93. It was built for 46,000 cars per day. This project has been on the state's ten-year highway plan since 1985. House Bill 1106 merely directs that this be a high priority in order to keep this important project from sliding further back on the waiting list. The only way to handle the projected traffic load along this corridor is to have four travel lanes. The Department of Transportation's plan call for the median to be designed to handle light rail traffic with one lane heading in each direction. Also in the design would be a "high occupancy vehicle" lane which would be limited to buses and automobiles with two plus passengers. Additionally, more bus parking lots would be constructed in Salem and Londonderry. The Senate Transportation Committee recommends that HB 1106 be ought to pass. Thank you.

SENATOR FRANCOEUR: I urge the Senate today to support this bill. Anybody that has traveled from Senator Klemm's district on exit one, northbound, you will find as you come out of the four lanes down to two, there are a lot of accidents, almost daily in that area. The traffic, I am sure, from the time you meet the New Hampshire border, headed north in the evening, it can take you anywhere from 30-45 minutes just to get to exit four, which is probably about eight miles. Also, in the southbound sides, in the morning, I don't think that a week goes by where there isn't an accident on this part of the highway. Especially in this section that would be widened from here to Manchester. Even last Saturday with the lighter traffic than during the rush hours, there were accidents just north of exit four also, on the turnpike. I would ask that the Senate that we urgently support this and we will later on, as the transportation from Kenison's office, to really get going on this part and to get it into gear, because the amount of traffic and the dangers that it is causing to the people are significant. Thank you.

Senator Pignatelli moved to have **HB 1106**, making the widening of Interstate 93 from Manchester to the Massachusetts border a state priority, laid on the table.

Adopted.

Senators Gordon and Russman are in opposition to the laid on the table motion.

LAI D ON THE TABLE

HB 1106, making the widening of Interstate 93 from Manchester to the Massachusetts border a state priority.

HB 1143-FN, relative to renaming New Hampshire route 28 in the town of Wolfeboro as the "Gary Parker Memorial Highway." Transportation Committee. Vote 4-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: State trooper Gary Parker was killed in the line of duty on November 29, 1989 in the town of Warren. He was at the time, transporting a prisoner to the Grafton County House of Corrections. This legislation would rename a portion of route 28, located in the town of Wolfeboro, in memory of Trooper Parker. This legislation was filed at the request of his family and supported by the State Trooper's Association and the selectmen in the town of Wolfeboro. I might point out that they one of the sponsors of this legislation was the late Representative Ken MacDonald who served as a state Senator at one point in time and who was our good friend. An emblem has already been designated for the memorial plaque. The cost for putting up the signs would be roughly \$500. It is anticipated that the state would bear the cost. If it didn't, the State Trooper's Association has already agreed to pay that cost. We would certainly recommend that this legislation ought to pass.

Adopted.

Ordered to third reading.

HB 1169, relative to gates and bars on class VI roads. Transportation Committee. Vote 3-0. Inexpedient to Legislate, Senator Gordon for the committee.

SENATOR GORDON: I suspect that most of you know that class VI roads are public roads, but generally they are not maintained by the municipalities. As a result of that, local landowners or abutting landowners are entitled to put up gates and bars to restrict access, and this is a tradition that has come down over the years. Originally the gates and bars were intended to prevent animals from straying off of a landowner's property. Currently the selectmen in local communities, have the right to regulate the gates and bars. If they feel that the gates and bars unduly restrict traffic on a class VI road, they can order to have them removed or altered. This legislation would have changed the burden so that the landowners would have had to go to the selectmen first to get permission to put up the gates and bars. After hearing the Senate Transportation Committee indicated that there wasn't sufficient evidence to indicate that there was a need to do so, and that the current practice is sufficient. We would recommend that this legislation be inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

HB 1251, relative to driver education training reimbursement. Transportation Committee. Vote 2-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: House Bill 1251 has to do with driver education training reimbursement. Under the current law, there is a fund established, and this fund is established by revenues which are generated from the sale of vanity plates. When each public school provides for the education of a student in driver's education, after that student completes that course, they are entitled to a reimbursement and currently that reimbursement is \$150, and that money goes back into, hopefully, into the school coffers. There is some question as to how it is being used and I don't know if there has ever been an audit, but that money does go back to the school with the intention that it would provide facilities to further driver education. What has been happening is, with the number of students that are looking for driver's education, and the limited ability

for schools to provide programs, more and more students are going out and having private driver's education courses. The driver's education courses are at substantially greater expense to those students than public school courses. But the public schools have been reluctant to expand their programs. So what this would do is say that if in fact there is a reimbursement program, that students who have to, or are forced to go out and buy a private program and pay for it themselves, would be entitled to the \$150 reimbursement to make things fair and equal. We recommend this legislation as ought to pass.

Adopted.

Referred to the Finance Committee (Rule #24).

HB 1265-FN, relative to registration of certain antique OHRVs. Transportation Committee. Vote 2-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: House Bill 1265 establishes registration requirements and fees for antique all terrain vehicles and antique trail bikes. This legislation was introduced at the request of the Fish and Game Division in order to correct some inequities. First of all, HB 1265 makes the number of years for classification as an antique snowmobile the same as for off-highway recreational vehicles, 25 years. Secondly, HB 1265 allows for the transfer of registration plates, something which has not been allowed before. Lastly, the legislation clarifies the registration of antique ATV's, snowmobiles and antique trail bikes. The Transportation Committee recommends that HB 1265 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1322, relative to the regulation of certain outdoor advertising devices. Transportation Committee. Vote 3-0. Ought to Pass, Senator Below for the committee.

SENATOR BELOW: House Bill 1322 adds restrictions on the reconstruction of destroyed or abandoned advertising devices and on the height of devices to the regulation of outdoor advertising devices adjacent to interstate, federal aid primary, or turnpike highways. The legislation was filed as a result of a sign which blew down in Milford. This sign was almost the same height of the Kearsarge Tower! When local individuals tried to prevent a huge replacement sign from being put up, they found that there were no applicable restrictions. House Bill 1322 prohibits constructing advertising devices higher than 50 feet from the base of the structure along state highways. The Transportation Committee recommends that HB 1322 be ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 1357-FN, relative to the sale of state-owned property in the towns of Belmont and Laconia. Transportation Committee. Vote 2-0. Ought to Pass, Senator Gordon for the committee.

SENATOR GORDON: If any of you have had the opportunity to drive up interstate 93 and you have passed exit 20 and see the development there, and then you keep driving north, and then the next exit that you come to is exit 22...many people have asked "whatever happened to exit

21?" Well, exit 21 was intended to be a bypass. It was supposed to be a new road that would lead into Tilton and go over to Laconia. When interstate 93 was built, that was the plan that was put into place in the 60's. After that the state started at actually the other end, not the highway, but at the other end and built the bypass around the city of Laconia with the intention of connecting that bypass back to interstate 93. **TAPE CHANGE** it has taken between the 1960's and today for the state to come to a point where it says that they give up. That is what this bill is about. We give up. What this bill would do is to authorize the sale of the land, which was taken for right of ways, and put them on the market and allow them to be sold back to property owners, locally in the area. We recommend it as ought to pass.

Adopted.

Ordered to third reading.

HB 1614, naming 2 bridges. Transportation Committee. Vote 3-0. Ought to Pass, Senator Roberge for the committee.

SENATOR ROBERGE: House Bill 1614 names the bridge for the new Manchester airport access road the Pearl Harbor Memorial Bridge and the new circumferential highway bridge between Litchfield and Merrimack, the POW/MIA Memorial Bridge. While it may be unusual for the state to name bridges before they are constructed, unanimous consent is given to the support for honoring these two important groups of people who have served our nation. The Transportation Committee recommends ought to pass. Thank you.

Adopted.

Ordered to third reading.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment to the following entitled House Bill sent down from Senate:

HB 1212, relative to extending the reporting date of the open adoption study committee and relative to persons eligible to adopt.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Randy Lyman
Mary Stuart Gile
Thomas Arnold
David Bickford

SENATE ACCEDES TO HOUSE REQUEST

HB 1212, relative to extending the reporting date of the open adoption study committee and relative to persons eligible to adopt.

Senator Pignatelli moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Trombly, Squires, Pignatelli

MOTION OF RECONSIDERATION

Senator Gordon having voted with the prevailing side moved reconsideration on **HB 505-FN**, establishing a special license plate for veterans, whereby we ordered it to third reading.

Adopted.

HB 505-FN, establishing a special license plate for veterans.

SENATOR GORDON: You may recall from our last session that HB 505, had originally been heard in the Transportation Committee. What HB 505 would do is to create a new veteran's license plate. I think that we were all in agreement in belief that that was in fact a good idea. I got contacted by a constituent who is a veteran, but in addition to being a Veteran, he was also awarded the Purple Heart. His concern was that if he was a Purple Heart, and gets license plates, the Purple Heart license plates, you have to pay the annual fee for those plates, of \$5 a year. And that we just passed a Veteran's Plate, where in fact you pay a one time fee up front of \$25, and then you don't pay after that. So he asked why if we were having Veteran's Plates, where there wasn't an annual fee, would we take our Purple Heart veterans and cause them to have to pay an annual fee. So I said that I thought that we might be able to take care of that. So I have an amendment which I would like to offer to make that change so that the plates would be consistent.

Senator Gordon offered a floor amendment.

2000-4165s

05/09

Floor Amendment to HB 505-FN

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

AN ACT establishing a special license plate for veterans and allowing certain veterans to be issued special number plates without charge.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as section 3:

2 Special Number Plates for Certain Veterans; Issuance without Charge.

Amend RSA 261:86, II to read as follows:

II. Plates furnished pursuant to this section shall be issued without charge. Notwithstanding RSA 265:73 or any other law, any person who is issued a plate pursuant to subparagraphs I(c)-(e) shall not be entitled to free parking privileges provided for disabled veterans. Individuals who qualify for special plates for certain veterans shall only be issued one set of plates pursuant to this section.

2000-4165s

AMENDED ANALYSIS

This bill establishes a special license plate for veterans and allows certain veterans to be issued special number plates without charge.

SENATOR GORDON: I think that I have already spoken to the amendment. Please support this amendment. Thank you.

Floor Amendment adopted.

SENATOR MCCARLEY: Senator Gordon, I know that you did speak to it, but I wonder if you would speak in slightly more detail to the actual limits. I understand the purpose behind the amendment, but could you

just explain it to me. You probably can speak faster than I can read it at this point. I am willing to acknowledge that with your attorney skills. I am sure that you can speak faster than I can read. Could you just tell me the plan?

SENATOR GORDON: Yes. I would like to talk to the language, but the language is drafted by Legislative Services. So I would like to tell you that I have a complete understanding of the language, and it does exactly what I think that it does, but I can tell you that it was provided to Legislative Services. I have talked to the Department of Safety, who is in agreement with this and has no objection to the change. It is my understanding that this language carries out what we intend it to be, and that is that the plates would be furnished and without additional charge, although it does not entitle anyone to free parking privileges.

SENATOR WHEELER: Senator Gordon, I certainly intend to support it, but I would be a little happier if I knew exactly what I was supporting. Are you making the Purple Heart Plates the same as the Veteran's Plates, so that it is a one-time fee?

SENATOR GORDON: Yes.

SENATOR WHEELER: A lifetime fee with no renewal?

SENATOR GORDON: Right, but there is a little bit of difference. Actually it is two plates that are affected. The Purple Heart Plates and the Pearl Harbor Survivor Plates, both of which are paying the annual \$5 fee. So that would make these plates consistent and would say that you would pay one up front fee. The difference, however, is that we are just starting out with the Veteran's plates so people will be paying that up-front fee. In the case of the Pearl Harbor Survivors and the Purple Hearts, they already have their plates issued. So in essence, they are not going to have any fee, however, most of them have been paying that \$5 annually for some period of time.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Francoeur moved to have **HB 312**, relative to the carrying of firearms in courthouses, taken off the table.

Adopted.

HB 312, relative to the carrying of firearms in courthouses.

Senator Francoeur offered a floor amendment.

2000-4137s

09/01

Floor Amendment to HB 312

Amend RSA 159:19 as inserted by section 1 of the bill by replacing it with the following:

159:19 [~~Courtroom~~] **Courthouse** Security.

I. No person shall knowingly carry a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, whether open or concealed or whether licensed or unlicensed, upon [~~his~~] **the** person or within any of [~~his~~] **the person's** possessions owned or within [~~his~~] **the person's** control in a courtroom or area used by a court. Whoever violates the provisions of this paragraph shall be guilty of a class B felony.

II. Firearms may be secured at the entrance to a courthouse by courthouse security personnel. [~~A person who knowingly carries a loaded or unloaded pistol, revolver, or firearm, or any other deadly weapon as defined in RSA 625:11, V past a screening device at an entrance to a courthouse shall be guilty of a violation.~~]

III. [The supreme court shall adopt rules defining “a courtroom or area used by a court”] For purposes of paragraph I, **“area used by a court” means:**

(a) In a building dedicated exclusively to court use, the entire building.

(b) ***In any other building which includes a court facility, courtrooms, jury assembly rooms, deliberation rooms, conference and interview rooms, the judge’s chambers, other court staff facilities, holding facilities, and corridors, stairways, waiting areas, and elevators directly connecting these rooms and facilities.***

IV. The provisions of this section shall not apply to marshals, sheriffs, [~~policemen~~] ***deputy sheriffs, police*** or other duly appointed or elected law enforcement officers, bailiffs and court security officers, or persons with prior authorization of the court for the purpose of introducing weapons into evidence ***and as otherwise provided for in RSA 159:5.***

V. It shall be an affirmative defense to any prosecution under paragraph I that there was no notice of the provisions of paragraph I posted in a conspicuous place at each public entrance to the court building.

SENATOR FRANCOEUR: The amendment allows that firearms to be secured at the entrance to a courthouse with the security personnel, which would allow the lock boxes, which the Senate had passed a couple of years ago. It would really create a safe storage of firearms for people, instead of leaving a loaded weapon in the car or a knife or any of those other ones that are contained. That is basically what it does. We have taken out the second part of line 10-12, which was agreed upon last week. This is the final amendment which would allow the lock boxes. Thank you.

SENATOR MCCARLEY: Senator Francoeur, if I read section I, and it tells me that I knowingly or unknowingly can’t do something, then I read section II where I am going to knowingly walk on court property and then put it in a lock box. I am not trying to pick on the language, I have discovered that language is critically important in the business that we are in. I am just trying to make sure that that makes sense. Those of you who are attorneys, does that work in terms of the language? I appreciate your efforts on this, but to me, it seems slightly construed. It is kind of an odd situation one can find oneself in.

SENATOR FRANCOEUR: I think that if you read on line 7, it says, “the person’s control in a courtroom or area used by a court.” The entrance to the building isn’t used as a courtroom. So this allows you...currently you can go up and be able...as police officers do, some of them secure their firearms in lock boxes, in the facilities, a lot of them don’t have places for the public to secure theirs, so this isn’t an area that is in a courtroom that is used where the judge and jury are sitting there, this is in an area as you come into the entrance of the building, and come in the front door, before you go through the electronic devices for the metal detectors and that stuff, this would be prior right to that.

SENATOR COHEN: I think that the question in II as has been mentioned, I think, the entrance to the courthouse is distinct from the area that is used by a court which is defined in III. I don’t see any inconsistency there. I am just rising in support of Senator Francoeur’s bill regarding guns, which I think, may be a first time.

SENATOR FERNALD: I think that Senator McCarley has raised a valid point. As section I says, "you can't knowingly bring a firearm in an area used by a court." III defines an area used by a court as "the entire building" if the only thing that the building is used for is a court, which means that you can't go in the entrance to the security personnel to give them the gun to put into the lock box because you have already violated paragraph I. So in spite of all of the work and time that has gone into this, I would suggest that III-a be further amended to say, "in a building dedicated exclusively to court use, the entire building, exclusive of the area between the entrance and the courthouse security', or something like that, otherwise, I think there is a conflict.

SENATOR D'ALLESANDRO: Just alluding to the Hillsborough County Courthouse in Manchester, Senator Francoeur, you walk through one door into another door and then there isn't any other place to go except through a metal detector. So by virtue of this bill, when you have walked into that door, without an opportunity to secure a weapon, if you are bringing it, you are already guilty of a crime because there is no place to put it. Do you know what I am saying? Can you vision the courthouse in Manchester where you just walk in. There are two sets of doors. You walk through the first set of doors through a hallway, then you walk through the second set of doors, and immediately there is a metal detector facing you before you take one step into the courthouse. Then there is a counter on the right hand side. So where would you give up your weapon before you are in violation of the law?

SENATOR FRANCOEUR: Senator D'Allesandro, if it would please the Senators and take care of their worries, I will add "after the entire building," exclusive as Senator Fernald has brought forward. The area between the entrance and the courthouse security, if that would satisfy you, I will ask Legislative Services to amend it. I am sure that we can get it back in a couple of minutes.

SENATOR RUSSMAN: I think that it is a good amendment. I actually wouldn't mind in paragraph IV that if you are licensed to carry, you could be exempt for this as well so that not only...in other words, if you are validly licensed to carry, in any event, it wouldn't apply. It just...I guess this is a would you believe? In these types of cases, I have some real reservations about the concept here. I think that those people who are willing or wishing to do harm can wait outside the building and do the harm if they choose to?

SENATOR WHEELER: Senator Francoeur, were you intending to withdraw this temporarily and have another amendment drafted, or are we supposed to vote on this?

SENATOR FRANCOEUR: I have asked Senator Gordon if he would make a motion to table. I am sure that we have other bills coming off of the table and in about five or ten minutes we can have this back from Legislative Services.

SENATOR WHEELER: I am not positive that that word will solve the problems for all of the courthouses. I am thinking of the Dover District Court and they don't have any metal detectors, and you just sort of step into the foyer and it is not what I call security. I don't know if that wording is going to work for a lot of courthouses. I don't have a good suggestion, but I am saying that we have a problem.

Senator Gordon moved to have **HB 312**, relative to the carrying of firearms in courthouses, laid on the table.

Adopted.

LAID ON THE TABLE

HB 312, relative to the carrying of firearms in courthouses.

TAKEN OFF THE TABLE

Senator Russman moved to have **SB 459**, relative to underinsured motorists, taken off the table.

Adopted.

SB 459, relative to underinsured motorists.

Senator Russman moved ought to pass.

SENATOR RUSSMAN: I think that we are going to be brief with this bill because I think that everyone knows the drill at this point. This bill is a consumer bill and it allows you or anybody to settle their case with the person who hurt them, so long as it doesn't prejudice or hurt their own insurance carrier. If it does hurt or prejudice your own insurance carrier, then your own insurance carrier wouldn't have to pay any additional amounts that you may have that you paid the premium for and that you have coverage for. It is a consumer measure. I would be happy to answer any questions or speak again if it becomes necessary.

SENATOR FRASER: I agree wholeheartedly with Senator Russman that I think that everyone in the Chamber, with the possible exception of Senator Below, we know what this bill is all about, because he wasn't here that day. We had a great debate last week, we truly did. I enjoyed it. It is fun to take on the lawyers. This is not a consumer bill. All that it does is initiate litigation, because if this becomes the law, then every time that the plaintiff doesn't notify their carrier, their uninsured motorist carrier, that they are going to settle, then the companies are obviously going to say, "well, then we think that our rights have been prejudiced" we are going to have some litigation. It is going to be a bonanza for the trial bar, among other reasons. I gave you a whole cluster of reasons last week. I am speaking for the majority of the committee. The vote out of committee last week was 5-2 for inexpedient to legislate. Without further debate, I would ask for a roll call when we vote on this bill.

SENATOR F. KING: Can this be construed to be a pro-insurance company bill?

SENATOR FRASER: This is an error omissions contract for the lawyers.

SENATOR FERNALD: I didn't speak the last time on this bill, but I have had a chance to think about it. I remember reading a few years ago, a story about a Delta Airlines crash that happened somewhere down South, and the process that the insurance company went through to settle the claims of the families who had lost loved ones in that crash. There was a discussion about how the insurance company had the representatives go and they became the friends of the families and really sort of endeared themselves to the victim's families and reached settlements, and how successful it was. I don't know that that exactly happens in automobile cases, but I am willing to bet that if you asked 100 people in the general population, what is uninsured motorist coverage, ninety-nine would not have a clue. What this

is addressed at is the circumstance where a person is in an accident, they are injured, the insurance company for the other driver who is at fault, contacts you and says, "oh we are the insurance company and this person has \$25,000 worth of coverage and we will pay you the full \$25,000, you just need to sign this little release and you get your check." The people do it and they have no idea that under their own policy, they have \$100,000 of uninsured motorist coverage that allows them to get further recovery from their own insurance company because the other driver was underinsured for the injury that the driver suffered. That the insured suffered. Now I understand the arguments that Senator Fraser made last week, which was that...he talked about subrogation, which is to say that if an insurance company...if I am in an auto accident, the other driver is at fault, and I ask my company to pay under the underinsured motorist coverage, if they pay me, then my insurance company can go after the other driver and try to get back the money that they paid to me, because that was the person who was ultimately at fault. All that this bill says is that if...obviously I am a lawyer, but if I were to sign a release with the other insurance company, so that my insurance company can't go after the other driver, and then I want to go after my own insurance company for this uninsured coverage, I have to prove that my insurance company never would have recovered a nickel from the other driver. That is what it says at the very end, lines 18-22 roughly. That if I have signed this release, and that was a mistake, because the policy required me to go to the insurance company first before I do that, I just have to show that they have been harmed by what I did. I think that it is consumer protection. I don't see how the companies are harmed. This is actually just a nice little hook that is in there that harms people and it is not like it is going to give people claims that they are not entitled to. This is insurance that people have contracted for and then they can't recover because they make a mistake, because they don't even know what uninsured motorist coverage is. Thank you.

SENATOR FRASER: Senator Fernald, would you agree with me that if the carrier doesn't put the third party liability carrier on...your insurance company doesn't put the carrier on notice before the fact, before you settle on behalf of your client, that the company loses it right to subrogation?

SENATOR FERNALD: The question was, "If my company doesn't put..." I am sorry, could you please repeat the question?

SENATOR FRASER: If you have a client and you don't notify his carrier before you settle with the third party liability wrongdoer, you settle on behalf of your client from the uninsured, for the liability of \$25,000, which seems to be the number that people have been using as an example, would you agree with me that the carrier, your client's insurance carrier, loses his right to subrogation?

SENATOR FERNALD: If the insured signed a release with the other driver at fault and his insurance company, then the right of subrogation is gone and this bill only makes a difference in that circumstance if my insurance company actually lost out because I signed that release. If the other guy never had a nickel, then I can go against my insurance company and no one has lost anything that they contracted for.

SENATOR WHEELER: I have given this bill a lot more thought than I even expected to and I have actually changed my opinion. I now intend

to vote for the bill. I think that very few people know about the advanced written consent part in their policy. And as far as the subrogation rights go, one of the reasons that I really enjoy serving in the legislature is learning things like "subrogation rights", I don't think that as a practical matter, that it makes any difference, because no one has been giving me any evidence that if you have settled with an uninsured or underinsured motorist, that there are other assets that the person could go after, that your insurance company could go after, and get. The letter that I have says, "There never is or was a case to my knowledge, where a wrongdoer with smaller, minimal limits, automobile liability insurance had any other assets which your insurance company could go after by a subrogation after it paid you." I also think that your insurance company would not be harmed by this, if we get rid of the advance written consent, because as Senator Russman already told you, if they can show that your failure to obtain the advance written consent to the proposed underlying settlement did in fact eliminate or harm their chance to get their money back, then they will still be able to exercise their rights. So I do believe that it is a consumer protection bill. I don't think that the advance written consent is necessary. I would urge you to vote in favor of it. Thank you.

SENATOR GORDON: Yes, I rise to probably prove the point that it takes three attorneys to take on one good insurance adjuster. This isn't an area of law where I have a great deal of experience in. I think that when I first heard of the bill, I probably had a negative perception of it as well, then I listened to the debate last time and changed my mind and supported it. I would continue to support it. I find the debate interesting about whether or not this is the lawyer's employment act, because if in fact that was true, every time that I have heard that said in this legislature, instead of having close to 4,000 lawyers in the state, you probably would have 20,000 by now. In any event, my issue here is that we need to look at this on the basis of policy and whether it is a good policy for us to adopt in the state. I think that Senator Fraser is right to the extent that if this was an ordinary contract and we were looking at ordinary relationships between two parties, I think that I probably would agree with Senator Fraser and say that we should give equal weight to each one and that we should go forward with that. That is not the case and we recognize that that is not the case in many respects. We realize that we have lots of laws, and that there are two parties to a contract and that they don't have equal power. We have landlord-tenant statutes for example, where we recognize that landlords have a stronger bargaining position than tenants in most cases. We do that with manufactured home parks. We recognize that manufactured home parks, the owners of those parks have a more powerful position than those people who occupy those parks. With employment law, we recognize that employers are in a stronger contractual position than the employees; therefore we have legislation that favors employees. In sexual harassment cases that is the case, certainly. So when we have recognized in all sorts of law, that you do have contracts, but you have to give weight to the parties in those contracts. I think that is the issue here, that we have to look at this as a contract between an individual and an insurance company, but they are not equal in that contract, and in order to protect that interest of that ordinary person, that constituent that we have out there, we perhaps have to give them a little extra weight. I think that is what this bill does. I think that it is good public policy.

SENATOR RUSSMAN: I will be brief, but I cannot in all honesty, sit here and take the notion that somehow the lawyers are at fault here. I am a lawyer and I am proud to be a lawyer. It is a learned profession. It does teach you to think analytically no matter what you do in life, and I just think that it is the best training for any job, what anybody does, no matter what it is. At the same time, this is a David and Goliath issue relative to the consumer. If you think for one instant, that any insurance, I don't care if it is a life insurance company, a car insurance company, a fire insurance company or a health insurance company, wants to give you money...that they want to give you money...they don't get paid to give you money. Everybody that is involved that wants to give you what they can give you, and that is all that they want to give you. They don't want to give you any more. If you have ever been involved with a fire loss or any other loss, you will know what I mean. If you know of anyone else that has been involved, you will know what I am talking about. In all honesty, when it comes to consumers versus the Goliath, thank God that there are some lawyers out there that will take them on, but this is not necessarily an issue relative to that, because it very often happens prior to the lawyers ever getting involved **TAPE CHANGE**.

Question is on the motion of ought to pass.

A roll call was requested by Senator Fraser.

Seconded by Senator Russman.

The following Senators voted Yes: F. King, Gordon, Below, McCarley, Trombly, Disnard, Fernald, Pignatelli, Krueger, Brown, J. King, Russman, D'Allesandro, Wheeler, Cohen.

The following Senators voted No: Johnson, Fraser, Roberge, Eaton, Squires, Francoeur, Klemm.

Yeas: 15 - Nays: 7

Senator Larsen (Rule #42).

Adopted.

Ordered to third reading.

Recess.

Out of Recess.

TAKEN OFF THE TABLE

Senator Roberge moved to have **SB 337-FN**, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations, taken off the table.

Adopted.

SB 337-FN, requiring any person applying for or renewing a driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations.

Question is on the motion of ought to pass.

Adopted.

Senator Roberge offered a floor amendment.

2000-4196s

05/04

Floor Amendment to SB 337-FN

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

AN ACT requiring any new resident applying for a permanent driver's license to be checked through the National Crime Information Center (NCIC) for outstanding warrants or court defaults, as a precondition to issuance, and authorizing interest penalties on unpaid violations.

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

1 New Section; Service by State Police. Amend RSA 106-B by inserting after section 12 the following new section:

106-B:12-a Service by State Police. The director shall make a quarterly report to the commissioner of safety and the governor, the senate president and the speaker of the house on the results of service of criminal process, warrants and notices and arrests of persons wanted for outstanding warrants and court defaults. This report shall include the number of persons arrested and denied a license, and the amount of revenue raised.

2 NCIC Record Checks Required Prior to Issuance of Permanent Driver's License. Amend RSA 263:5-a, III to read as follows:

III. The director may issue a temporary driver's license to a person who applies for a license under paragraph I until he receives the record and determines whether the person should be granted a driver's license. The director may refuse to issue a temporary driver's license to a person who is under suspension or revocation in another jurisdiction or who would present a hazard to the safety of others. *After issuance of the temporary license and prior to issuance of a permanent license the applicant's record for outstanding warrants or defaults shall be checked through the NCIC, by running the exact name and date of birth given on the surrendered license or birth certificate through the NCIC computer system. The department shall not isolate applicants based on NCIC "Soundex", phonetic matches; name only; or date of birth only computer matches. If there is an exact match of name and date of birth, the application shall be denied until such time as the warrant or court default is cleared. During that period the applicant's current license and operating privileges shall be suspended by the state.*

3 New Paragraph; Nonrefundable Fee. Amend RSA 263:5-a by inserting after paragraph VI the following new paragraph:

VII. Any person who provides false information as provided in paragraph VI shall forfeit any fee paid.

4 New Paragraph; Interest after Suspension. Amend RSA 263:56-a by inserting after paragraph II the following new paragraph:

II-a. After suspension as provided in paragraph II, interest on amounts not paid when due shall be computed at the rate of 1 percent per month from the date of suspension to the date payment is actually made. Interest shall be collected by the department or the court and deposited into the general fund. No interest shall be computed on fines assessed before January 1, 2001. The commissioner and the court shall have the discretion, as justice may require, to waive the payment of interest computed under this paragraph.

5 Interest on Fines Credited to the General Fund. Amend RSA 263:56-d to read as follows:

263:56-d Suspension for Forfeitures of Recognizances. Notwithstanding the provisions of RSA 263:56-a, I, I-a, II and III-VII, the procedure for suspension of licenses and collection of payments for forfeited recognizances for driving offenses shall be in accordance with RSA 597:38-b. Payments collected by the court under RSA 597:38-b shall be deposited into a special fund, known as the default bench warrant fund. The commissioner may draw on such fund to pay the cost of state, county and local law enforcement officials who make arrests pursuant to bench warrants issued for persons improperly at large for driving-related offenses up to a maximum amount of \$100 per bench warrant. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the disbursement of moneys from the default bench warrant fund to pay the costs related to law enforcement officials and bench warrants. The commissioner may also draw upon such fund to pay the cost of breath analyzer machines, upon the recommendation of the advisory committee on breath analyzer machines pursuant to RSA 106-G:1.

6 Notice of Interest on Unpaid Fines. Amend RSA 262:44, I to read as follows:

I. Such defendant shall receive, in addition to ~~his~~ *the* summons, a uniform fine schedule entitled "Notice of Fine, Division of Motor Vehicles" ~~which~~; *the fine schedule* shall contain the normal fines for violations of the provisions of title XXI on vehicles for which a plea may be entered by mail *and notification that unpaid fines may be subject to interest pursuant to RSA 263:56-a, II-a*. The defendant shall be given a notice of fine indicating the amount of the fine plus penalty assessment at the time the summons is issued; except if, for cause, the summoning authority wishes the defendant to appear personally. Defendants summoned to appear personally shall do so on the arraignment date specified in the summons, unless otherwise ordered by the court. Defendants who are issued a summons and notice of fine and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the fine plus penalty assessment to the director of motor vehicles within 30 days of the date of the summons. The director of motor vehicles shall remit the penalty assessments collected to the police standards and training council for deposit in the police standards and training council training fund and to the state treasurer to be credited and continually appropriated to the victims' assistance fund in the percentages and manner prescribed in RSA 188-F:31. Fines shall be paid over to the commissioner of administrative services, or to such department or agency of the state as the law provides, within 14 days of their receipt.

7 Default of Personal Recognizance. Amend RSA 597:38-b, I to read as follows:

I. Whenever a party recognized to appear for any offense ~~involving driving~~ makes default and the recognizance is declared forfeited, the court shall send a notice of default to the division of motor vehicles. The division shall send a notice to the person owing the recognizance, demanding payment within 30 days and stating that failure to make payment within the 30-day period shall result in suspension of such person's driver's license or driving privilege until such time as the person provides proof to the department of safety that he *or she* has paid the amount of the forfeited recognizance to the court.

8 Effective Date. This act shall take effect January 1, 2001.

2000-4196s

AMENDED ANALYSIS

This bill:

I. Requires any person applying for a permanent driver's license to be checked through the National Crime Information Center (NCIC).

II. Authorizes the collection of interest on outstanding unpaid fines, with proceeds dedicated to the general fund.

III. Broadens the scope of personal recognizance defaults subject to interest penalties.

IV. Requires that any person who provides false information when applying for a license forfeit any fee paid.

SENATOR ROBERGE: This amendment does three things. 1) It provides that the Department of Safety check only the people who move into New Hampshire and apply for a driver's license. 2) New people moving into New Hampshire currently receive a six-month temporary license. The NCIC checks can be performed after the issuance of the temporary license, but before a permanent license is issued. This gives the department six months to perform the checks. It eliminates the need for new troopers. It also eliminates any concerns about lines waiting at the NCIC check. 3) The one percent interest on the \$6.3 million in outstanding court fines will bring in \$756,000 which will be deposited into the general fund.

SENATOR F. KING: Senator Roberge, at one point in the process of this bill, there appeared to be money available for the Department of Safety to carry out their responsibilities. That money is now removed?

SENATOR ROBERGE: It is. The feeling is that with the full six months to do the check, they can perform the duties with current personnel.

SENATOR F. KING: It was my understanding that they also thought that they had to have some clerical persons to help do this job?

SENATOR ROBERGE: That was my feelings, Senator. That is my understanding.

Floor Amendment adopted.

Referred to the Finance Committee (Rule #24).

SUSPENSION OF THE RULES

Senator Trombly moved to suspend the Rules of the Senate for bypassing the motion of referring to the Senate Finance Committee.

Adopted by the necessary 2/3 vote.

Question is on the motion of ordering to third reading.

Adopted.

Ordered to third reading.

Senator F. King is in opposition to SB 337-FN.

TAKEN OFF THE TABLE

Senator Fernald moved to have **SB 329**, relative to the display of tobacco products, taken off the table.

Adopted.

SB 329, relative to the display of tobacco products.

Question is on the committee report of inexpedient to legislate.

SUBSTITUTE MOTION

Senator Fernald moved to substitute ought to pass for inexpedient to legislate.

SENATOR FERNALD: This is a bill that came out of the study committee that was set up last year to study the issue of preventing youth smoking and tobacco use. It is the same study committee that worked on the question of how the \$3 million that is going into youth prevention or tobacco prevention should be allocated. So you will see that the cosponsors are people who were on that study committee. This bill deals with a different aspect of the whole youth prevention of tobacco use problems. We have tobacco products other than cigarettes, particularly snuff and little beady flavored cigarettes that come from India and other places, that are marketed and decorated in a way to be attractive to children. Often times they are placed very near the candy and on low shelves. The problems are twofold. One is that they are put near the candy and the second is that they are put in places where they are easily shoplifted by children. This is in some cases, the first introduction children have to tobacco products and they start down this road of addiction. The purpose of this bill is to have these products in places where a child's access to them is a little tighter than just the free for all that we have now. The bill, as introduced, says that the products have to be either in a place that is accessible only with the assistance of a sales personnel, or in a separate room or in plain view and under the control of an employee. Some have felt that part B on line seven and eight is a little vague, so I have prepared a floor amendment that simplifies the language and simply says that the products have to be in an area where the removal from the display can be readily observed by an employee. I would urge you to pass the ought to pass motion and then I will introduce my floor amendment to simplify the language somewhat. I think the sense is the same and it gets a little more directly to the point by taking out about ten words. Thank you.

SENATOR BROWN: Senator Fernald, I have a question on the penalty part. Any person who violates this is guilty of a violation and a fine of not less than \$100. Do you know if there is some mechanism to...because there are a lot of small stores out there who won't know about this law...is there some mechanism whereby they are given notice and can't miss it so that they aren't subject to this fine without knowing about it?

SENATOR FERNALD: I can't tell you precisely how the state is going to notify stores. I do know that a lot of them are already aware because they have written to us about this bill, so they know that we are considering this issue. There are a lot of laws on the books that provide for a new penalty every day, and of course there is discretion on the part of the enforcing agent how many days fine they are really going to charge even though there has been 100 days of violation.

SENATOR BROWN: I guess I was wondering if it might not make sense to have the first time violation be a warning of some sort and then from then on, accumulate a fine if they don't correct it. Does that make sense to you?

SENATOR FERNALD: I think that this is an important issue and that making it a violation makes sense.

SENATOR JOHNSON: There again, I think this is an affront on the retailers again who are struggling now to make a living. I think that to clarify what Senator Fernald said, since we heard this bill the last time,

federal government has passed a law forbidding the so-called “beady cigarettes” from coming into this country, so I am sure that any of the retailers that had been using that product, which at that time was legal, will no longer be doing that. I think that unless his amendment addresses line item nine, “in a separate room dedicated to tobacco products” a lot of the retailers have a struggle now with their floor space, and I just think that it would be an additional burden on them to expect them to keep the products in a separate room.

SENATOR WHEELER: Senator Fernald, listening to the question from Senator Brown, don't you think that the issue of youth smoking is such a serious public health issue that asking people to keep the cigarettes in view isn't really too much of a hardship, even in a small store? And further, that as far as educating store owners about the law, as I read it, unless you were planning to change it, isn't the effective date still January 1, 2001, so that there would be at least six months during which to educate people about the law? Am I correct about that?

SENATOR FERNALD: You are correct about the effective date. You are also correct about the burden on stores. In my experience, stores keep their cigarettes behind the counter and in view, so we are really only talking about snuff, which is a relatively small amount of product that they need to move, just to a different counter. There is no requirement that they be in a separate room, they simply have to be in view. That is the least restrictive alternative of the three, and I don't see that any store in this state would have any trouble complying with these requirements.

SENATOR F. KING: Senator Fernald, I have a little bit of concern that Senator Brown mentioned, that has to do with the fine. Who would be the person that would be fined? The clerk or the owner of the store or the manager of the store? Who would be fined for this infraction?

SENATOR FERNALD: I suspect that it would be the store owner since they are the ones who generally decide where on the shelves products go.

SENATOR F. KING: Well they have to be under somebody's supervision, so the store owner could have it in such a place that they were under the clerk's supervision...I used to run a place like this and that gas station had a lot of cigarettes and stuff in it, and I wonder...I don't know if I would want to let myself be subject to a fine based on my help. Sometimes school kids working in the afternoon, and looking in the other direction. I mean I think that it ought to be clear that it ought to be the person who is there running the store at the time, should be the one who gets fined, not the store owner.

SENATOR FERNALD: I think what you haven't seen, Senator King, is my amendment, which takes out the words on line seven, “in plain view and under the control of a responsible employee.”

SENATOR F. KING: I apologize for not seeing your amendment, but the fact is, I haven't seen it. I am talking about the bill.

SENATOR FERNALD: I understand that you are talking about the bill and I am trying to let you know that I have a floor amendment, and on line eight of that floor amendment, it would take out those first ten or so words, so it would say, “where removal of the product.”

SENATOR F. KING: Okay, I will wait until I see the floor amendment.

SENATOR DISNARD: I rise once again in strong opposition. Once again we go after the mom and pop stores. Some of those people are just getting by, by the skin of their teeth. When I hear “under the control of” or

when I hear that they don't have any space...I am amazed to hear other Senators say that that isn't a problem. I was at the hearing. There weren't many people in this room that were at that hearing. There isn't much space in some of these small stores. At these hearings we had people come in and say that the youth are cutting back on cigarettes, so the regular cigarette education and provisions in the law are working. When I hear everyday that the laws...people are being fined and the fines are being instituted... I don't call that much of an answer either. I think that once in a while we forget that some of us have a pension, some of us get good incomes from different types of professions, but we don't realize what these small stores go through. We don't have much empathy in some instances for them. It is difficult, if not impossible, for some of these little stores, when they compete with the big stores, to be able to think of even hiring an extra person, plus the paperwork, the fringe benefits, plus everything else. Why don't we vote with our hearts once in awhile. Thank you.

SENATOR D'ALLESANDRO: I rise to speak against this piece of legislation. I just think of the little guy as Senator Disnard has clearly articulated. The little guy is struggling to survive today. He is being overtaken by the large chain stores that are moving into every area of our city. And, the large drug stores that are coming into our cities and becoming all purpose stores. So this little guy, who is trying to survive and maintain that little corner store, he is worried about pilferage, he is worried about the sale of his beer because he has to have a sign up there that says "be 18 or be gone", he is worried about this, and he is worried about that, he can't get any help. There is no help available. All of them have help wanted signs and they can't them. Now we are saying to this guy, here is another situation. You are doing your best to keep these things out of children's way. You are working hard at that, but boy if something happens now, you get a \$100 fine and you keep getting that in each subsequent violation. I think, how much are we going to ask that little person, who is struggling to make a living, how often are we going to regulate and more regulate and more regulate that individual? It is tough making a buck today for the little guy. He has lost his market-share because of the chain stores moving in and they sell everything. Every one of the products that that little guy kept for us on a Saturday night when we needed something, or a Sunday morning when we needed something, those products are all available in the big stores today, so we put more and more pressure on the little guy. The big guy has no problem adapting to this legislation, none whatsoever. He has a 40,000' store with lots of help and lots of money, but the little guy suffers again. We said at one time, that 80 percent of the businesses in the state of New Hampshire were little businesses. Well we are putting those little guys out of business. Those guys that struggle day in and day out to make a living and to service us in our neighborhoods in our communities. This is another nail in that person's coffin. Thank you.

SENATOR WHEELER: Well I am thinking about the little guy too, and I am thinking about the little guy who is struggling to breathe because that little guy got addicted to cigarettes as a child and smoked for 50,60 or 70 years. I am thinking about the fact that we have one of the highest rates in the country of teenage girls that smoke. I am thinking about what it is going to do to them. I am sorry. If the only way that you can make a living, I grant you tobacco is a legal product, but we also know

how much damage it causes. If the only way that you can stay in business is by selling something that has the ability and probably the definite affect of killing someone, I don't think that is real protection of the little guy.

SENATOR FERNALD: Senator D'Allesandro, I think that you have in front of you a copy of my proposed floor amendment, which we haven't reached yet because we are waiting to vote on the ought to pass. Could you tell me, after reading the floor amendment, how the little guy, the mom and pop storeowner is going to have trouble complying with this statute if it becomes law as I have amended it?

SENATOR D'ALLESANDRO: It says "accessible to customers only with direct assistance by the sales person." If that sales person is going to get that particular item for that individual and someone else is in the store doing something, there is a possibility that he may not be able to watch both at the same time. In plain view under the control of a responsible employee so that the removal of the product from the...

SENATOR FERNALD: Senator D'Allesandro, you are not looking at my floor amendment, you are looking at the original bill which I wish to amend with the floor amendment.

SENATOR D'ALLESANDRO: Okay. Let me go to the second shot. A) "Accessible to the customer only with the direct assistance by the sales personnel". Most of these little stores only have one person working. "Where the removal of the product from the display can be readily observed by the employee", sometimes these things are in glass cabinets and are open, and sometimes people do take things without the direct observation of the employee. "In a separate room dedicated to tobacco products, the access to which is clearly observable by a responsible employee". Well some of these guys can't create that separate room. There just isn't the capability of doing that. I think that it does put a burden on that person. Listen, we can do anything, you can do anything. In my opinion, it means putting more people in that venue. Putting more people in that store so that all of these cases can be taken care of. That is a burden on the little guy.

SENATOR FERNALD: Would you agree, Senator D'Allesandro, that the second word on line nine is "or" so although we have a, b and c here, the store only has to comply with one of these three. If they don't want to do a separate room, if they don't want to make the product accessible with only the assistance of a clerk, they can go for option b. Would you agree with that?

SENATOR D'ALLESANDRO: Well, I do agree that on line nine, after the semicolon it does say "or". There is no question in my mind about that. In terms of do they have that option? Yes, they have that option because option "c" could probably be a tremendous financial burden to them, so obviously they are going to look at a and b and say, which can I live with, which can I make happen, because "c" is out of the question for most of those people.

SENATOR FERNALD: Senator D'Allesandro, wouldn't you agree that generally speaking, in convenience stores, the small stores that you are talking about, that the cigarettes are already in a place where removal of the cigarettes from the display would be observed by the employee?

SENATOR D'ALLESANDRO: In most of the stores that I am talking about, that is right. The cigarettes are usually behind the cash register on a rack. That is correct.

SENATOR GORDON: I guess what I am hearing is that if I vote for this bill I am voting to put small retailers out of business. I guess that is not my experience, at least not in my Senate district, because we find enough other ways to do that without passing this bill. I have a number of mom and pop stores just in my own hometown of Bristol. I think that every single one of them is distressed right now in terms of profitability, but I don't think that it has much to do with this bill, I think that it has a lot more to do with the fact that the Rite-Aid just moved into town. Now there just isn't enough business for everybody, and that those small mom and pops are just finding it impossible to sell beer at the same price that the Rite-Aid is. So I am having a little bit of difficulty right now. In Plymouth, we are talking about moving in the new Wal-Mart. Of course the Wal-Mart, just as Senator D'Allesandro said, is going to sell everything. It is going to sell it cheaper, and that is going to put a lot of stress on these mom and pop stores. I can tell you that if they do go out of business as a result of that, it is going to be because Wal-Mart came to town, it is not because I voted for this piece of legislation that made them put the cigarettes behind the counter. I don't think that there is anybody who wants to make life more miserable for anybody, including the retailers, or make doing business for a small businessman any more onerous, but I guess that I have to strike a balance here. The balance is that the benefits that we will get as public policy from this, keeping tobacco products potentially away or less accessible to children, on the balance, is that more important than the additional burden that it might put on those small retailers? I think that for many of us, those of us who voted for increases in cigarette tax, we had a far greater effect on the profitability of these stores than this piece of legislation ever will have, and in terms of negatively impacting their business and whether or not they will be able to stay in business. So if you voted for the cigarette tax, this should be a piece of cake. So I guess in conclusion, I guess in wrapping up is, I have weighed the difference here between what effect this will have on the retailers in my district, which I think for the most part, has no effect at all, because I think the responsible retailers that I represent are already doing this, and weigh that against the potential benefit of keeping tobacco products away from kids. I guess that I fall down on the side of let's keep the products away from the kids. I am going to vote for it.

SENATOR KRUEGER: I rise in support of this floor amendment. I heard the testimony and quite frankly, didn't support the original bill. I think that the floor amendment certainly addresses any concerns that I had. I just wanted to say that I actually must be a little naive, because I was surprised when I saw these little colorful boxes full of that stuff that you chew, the baseball players used to have in their pocket and then in their cheek. It was right there, and it didn't feel right that it was down on the bottom shelf where some little kid goes and gets a handful. I don't think that we should ever do anything to encourage people under age that might be tempted. I have a lot of faith in young people, but I also have a lot of faith that we have been seeing more and more about tobacco companies trying to entice people. I really don't think that this is anti-retail stores, I hope that it is not anti-mom and pop. I also did check around my district and most people were already doing this anyway. I think that it is time.

SENATOR MCCARLEY: Senator Fernald, I think that these are good changes. I think that I have supported this in the past. I do have a question on the fine section. It is back to a language problem that I am hav-

ing. If I read this correctly, is it my understanding that there is no room here. "You shall be guilty...not less than...each continuing shall constitute a separate offense..." So that if it takes somebody five days to fix this problem, they are facing \$500?

SENATOR FERNALD: TAPE CHANGE

SENATOR MCCARLEY: If it takes you four days to reconstruct where you currently have snuff, it is going to cost you \$500, in addition to whatever it costs you to move it. Is that correct?

SENATOR FERNALD: Yes.

SENATOR MCCARLEY: I was hoping that you were going to say no.

SENATOR COHEN: Senator Gordon, is it true that in committee testimony we heard that this wouldn't really effect the small mom and pop stores because they can't afford to have anything stolen, they have to watch out for everything anyway? That the real offenders may be the Wal-Marts and the Rite-Aids, the big stores.

SENATOR GORDON: That is consistent with the testimony that we heard.

SENATOR COHEN: Thank you.

SENATOR BELOW: Senator Fernald, on line 13, it says that "each day of a continuing violation shall constitute a separate offense". In that case, wouldn't a judge or a prosecutor have the discretion and have to separately fine the offenses that occurred on a separate day because it is a separate offense to oppose an additional \$100 fine for each separate offense?

SENATOR FERNALD: TAPE INAUDIBLE

SENATOR SQUIRES: I rise to support the bill. I was thinking about the issue with the little guy, and to move it away from this, consider for the moment a restaurant. Now we heard that CVS and big chains can do this. Now if we think about food, would we want two standards in a larger restaurant, but in a different standard in a small restaurant? So if you go into a place with a counter, is it okay to have meat that has been around a week, or the dishes may be just lightly washed because it is small, and the answer is obviously no. It is an issue of public health and it has to apply in the uniform fashion, regardless of size. I think that we might work on the violation question a bit, but the principle ought to be that it is in the public's interest if it is good, and it certainly is, then it should apply equally to all providers of these products. Thank you.

Senator F. King moved the question.

Adopted.

Question is on the motion of ought to pass.

Adopted.

Senator Fernald offered a floor amendment.

2000-4200s

01/09

Floor Amendment to SB 329

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

1 New Section; Display of Tobacco Products. Amend RSA 126-K by inserting after section 8 the following new section:

126-K:8-a Display of Tobacco Products.

I. No retailer shall display tobacco products, as defined in RSA 126-K:2, XI, except in areas:

(a) Accessible to customers only with direct assistance by the sales personnel;

(b) Where removal of the product from the display can be readily observed by that employee; or

(c) In a separate room dedicated to tobacco products, the access to which is clearly observable by a responsible employee.

II. Any person who violates the provisions of this section shall be guilty of a violation and subject to a fine of not less than \$100. Each day of a continuing violation shall constitute a separate offense.

2 Effective Date. This act shall take effect January 1, 2001.

SENATOR FERNALD: I am not sure that there is anything more to say. I will just identify it for the record as amendment #4200.

SENATOR KLEMM: Senator Fernald, could you please tell me who is going to carry out the enforcement of this?

SENATOR FERNALD: The bill does not say. I would assume that it would be the same people who do tobacco licensing, but I do not know specifically.

Question is on the adoption of the floor amendment.

A roll call was requested by Senator Francoeur.

Seconded by Senator Fernald.

The following Senators voted Yes: Gordon, Below, McCarley, Trombly, Roberge, Fernald, Squires, Pignatelli, Larsen, Krueger, Wheeler, Cohen.

The following Senators voted No: F. King, Johnson, Fraser, Disnard, Eaton, Francoeur, Brown, J. King, Russman, D'Allesandro, Klemm.

Yeas: 12 - Nays: 11

Floor Amendment adopted.

Ordered to third reading.

TAKEN OFF THE TABLE

Senator Francoeur moved to have **HB 312**, relative to the carrying of firearms in courthouses, taken off the table.

Adopted.

HB 312, relative to the carrying of firearms in courthouses.

Senator Francoeur offered a floor amendment.

2000-4202s

09/01

Floor Amendment to HB 312

Amend RSA 159:19 as inserted by section 1 of the bill by replacing it with the following:

159:19 [~~Courtroom~~] *Courthouse* Security.

I. No person shall knowingly carry a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, whether open or concealed or whether licensed or unlicensed, upon [his] *the* person or within any of [his] *the person's* possessions owned or within [his] *the person's* control in a courtroom or area used by a court. Whoever violates the provisions of this paragraph shall be guilty of a class B felony.

II. Firearms may be secured at the entrance to a courthouse by courthouse security personnel. [~~A person who knowingly carries a loaded or unloaded pistol, revolver, or firearm, or any other deadly weapon as defined in RSA 625:11, V past a screening device at an entrance to a courthouse shall be guilty of a violation.~~]

III. [~~The supreme court shall adopt rules defining "a courtroom or area used by a court"~~] For purposes of paragraph I, **"area used by a court" means:**

(a) In a building dedicated exclusively to court use, the entire building exclusive of the area between the entrance and the courthouse security.

(b) ***In any other building which includes a court facility, courtrooms, jury assembly rooms, deliberation rooms, conference and interview rooms, the judge's chambers, other court staff facilities, holding facilities, and corridors, stairways, waiting areas, and elevators directly connecting these rooms and facilities.***

IV. The provisions of this section shall not apply to marshals, sheriffs, [~~police~~men] ***deputy sheriffs, police*** or other duly appointed or elected law enforcement officers, bailiffs and court security officers, or persons with prior authorization of the court for the purpose of introducing weapons into evidence ***and as otherwise provided for in RSA 159:5.***

V. It shall be an affirmative defense to any prosecution under paragraph I that there was no notice of the provisions of paragraph I posted in a conspicuous place at each public entrance to the court building.

SENATOR FRANCOEUR: I will make this short, Madame President. Basically what this amendment does is it added line 16 on the floor amendment, which specifically spells out, "exclusive in the area between the entrance and the courthouse security".

Floor Amendment adopted.

Ordered to third reading.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 1185, extending the report date of the committee established to study mercury source reduction and recycling issues to November 1, 2000.

HB 1282, establishing a committee to study the possibility of self-insuring state employees.

HB 1321, relative to certain funds collected by order of the public utilities commission.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

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

HB 1258, relative to invasive plant, insect, and fungal species.

HB 1502, relative to lead paint abatement.

HB 1127, establishing a committee to study the application and appeal procedures for excavating and dredging permits.

HB 1264, relative to the unlawful use of theft detection shielding devices.

HB 1268, relative to certain vehicle registrations.

HB 1272, allowing school nurses to possess and administer epinephrine for certain emergency treatment.

HB 1301, relative to regional appointments to the state committee on aging.

HB 1413, relative to the rights of ownership of cemetery plots or burial spaces.

HB 1588, relative to the authority of the department of transportation regarding rail safety inspections.

SB 319, relative to interstate school districts.

SB 352, repealing the equipment challenge grant program within the New Hampshire community-technical colleges.

SB 377, relative to peer support programs within the department of health and human services.

Senator D'Allesandro moved adoption.

Adopted.

2000-4127

05/10

Enrolled Bill Amendment to SB 170-FN-A

The Committee on Enrolled Bills to which was referred SB 170-FN-A AN ACT establishing a Parents as Teachers Program in Sullivan county and making an appropriation therefor.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 170-FN-A

This enrolled bill amendment makes a technical correction to the bill.

Enrolled Bill Amendment to SB 170-FN-A

Amend RSA 198:36 as inserted by section 1 of the bill by replacing line 2 with the following:

pursuant to RSA 541-A, necessary to carry out the provisions of this subdivision.

Senator Trombly moved adoption.

Adopted.

2000-4150-EBA

08/10

Enrolled Bill Amendment to SB 313

The Committee on Enrolled Bills to which was referred SB 313

AN ACT establishing a commission to study the relationship between postsecondary education and recipients of temporary assistance to needy families.

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

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to SB 313

This enrolled bill amendment makes grammatical corrections in section 4 of the bill.

Enrolled Bill Amendment to SB 313

Amend section 4 of the bill by replacing lines 6-13 with the following:

II. The commission shall study, take public testimony, make recommendations and prepare a report on issues including, but not limited to: how successful New Hampshire's welfare reform program has been in helping recipients achieve long-term economic independence, what education options are currently open to recipients, and what options are possible to increase access to post-secondary education for low income parents. The study commission shall seek, and invite by letter, input from the departments of health and human services and employment security, the university of New Hampshire school of health and human services, New Hampshire Legal Assistance, the regional community-technical college system, the New Hampshire Job Training council, the New Hampshire

Senator Trombly moved adoption.

Adopted.

2000-4185-EBA

03/09

Enrolled Bill Amendment to HB 1368-FN

The Committee on Enrolled Bills to which was referred HB 1368-FN

AN ACT establishing a Civil War memorials commission for the construction and maintenance of New Hampshire Civil War monuments and memorials.

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

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to HB 1368-FN**

This enrolled bill amendment inserts an omitted word and an omitted citation.

Enrolled Bill Amendment to HB 1368-FN

Amend RSA 21-K:22 as inserted by section 1 of the bill by replacing line 3 with the following:

distinct from all other funds. All monetary gifts, grants, and donations accepted pursuant to RSA 21-K:21 shall be

Senator Trombly moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Senate Bill sent down from the Senate:

SB 400-L, relative to emergency medical and trauma services.

HOUSE MESSAGE

The House of Representatives has adopted the Committee of Conference report on the following entitled bill:

SB 186-FN, an act relative to additional cost of living adjustments and increased minimum allowances for certain retired group II members, and relative to requiring spousal acknowledgement of a member's election of an optional retirement allowance.

